

POLICY BRIEF

Right to Information: The foundation for transparent and responsive governance in Afghanistan

INTRODUCTION

The right to access information held by public authorities (the right to information) is a fundamental human right and a multi-dimensional tool serving both governments and citizens. According Article 19 of the Universal Declaration of Human Rights, Article 19 of International Covenant on Civil and Political Rights and Article 50 of the Afghan Constitution the right to information is the cornerstone of good governance and vital for meaningful citizen participation. The right to information can assist journalists in preparing investigative reports, strengthen public participation in decision making and provide a clearer understanding of government policies.

The right to information plays an important role in promoting transparency, uncovering corruption, holding public bodies accountable, and providing better understanding of how basic public services function. Information is often at the heart of successful legal action, as it relates to what has happened, what is planned to happen, and who the parties involved are, thereby enabling one to decide what legal action to take. Often, information will be sought on to events and cases in other legal areas, such as land rights or corruption, but sometimes it may solely be about the right of the public or individuals to access information.

This Policy Brief highlights civil society's contribution in promoting the right to information in Afghanistan and the effort put into advocating for a legal mechanism to ensure this right. It also highlights the

challenges and weaknesses of the current right to information system, as identified by Afghan civil society organizations and international experts in an Access to Information Law Workshop held in Kabul in January 2015. The Brief concludes with a set of

recommendations that, if taken into account by the relevant authorities, will ensure a stronger access to information law, a truly functioning oversight commission and robust proactive disclosure of information.

THE CURRENT STATUS OF ACCESS TO INFORMATION

Afghan civil society organizations began to advocate for a stronger Access to information Law back in 2010. A draft of the law was prepared but delayed for almost 4 years by the government. Finally, on 15 February 2014, as a result of persistent pressure from civil society and media organizations a committee was assigned by President Karzai to finalize the draft law and send it to the parliament. On 15 March 2014 the committee finalized the law and sent it to the parliament for approval. On 18 October 2014, it was approved by a joint committee of the Afghan parliament (both lower and upper houses). Afghan President, Dr. Ashraf Ghani, endorsed the law on 30 November 2014 and the law was published in the Official Gazette on 23 December 2014.

The law in its current form has many weaknesses. For example, in practice there needs to be a strong and independent commission, overseeing access to information and addressing public complaints, but the current legislation does not establish an independent mechanism to address public complaints and take action against those limiting public access to information. Some other weaknesses in the current law are as follow:

1. There is no prohibition on asking requesters for the reasons for their requests.

2. There is no requirement to provide requesters with a receipt for their request.
3. There is no public interest override in the law. This is very important to ensure that information is released in the public interest.
4. There is no requirement to provide requesters with an explanation if their requests are refused, or to notify them about their right to make a complaint.
5. According to Article 3(7) and Article 28 the rules on private bodies are unclear. They seem to cover all bodies that are established by law, but this would be far too broad. The law should rather cover bodies that are owned, controlled or funded by the State or that undertake public functions.
6. There is no protection for civil servants who release information in good faith pursuant to the law or to expose wrongdoing.
7. There is not requirement for officials to provide assistance to requesters who are disabled or who do not know how to read or write.

In order to have a stronger Access to Information Law, International best practices such as maximum exposure, proactive disclosure, minimum exemptions, easy procedures, strong complaints mechanism and clear penalties should be ensured in the law.

Civil Society has been advocating on an ongoing basis to amend the current law and to address issues such as the establishment of an independent information commission, inclusion of all private and public sectors among the entities that are required to provide information, dropping the mandatory application form, ensuring proactive disclosure of information, and undertaking education and awareness raising on access to information.



Figure 1. Building blocks of a robust right of access to information system

KEY CHALLENGES

Despite the fact that the ATI Law has been adopted, there are still several weaknesses and challenges to ensure citizens' right to information. The establishment of the Oversight Commission on Access to Information is a major achievement. However, without amending the current Law so as to clearly define terms, conditions, penalties, timelines, obligations and the requirements of public authorities, along with proper efforts to implement a revised ATI Law, the ATI Law will not be a very strong tool to ensure

transparency, accountability and public participation in Afghanistan.

Confidentiality of information has become a culture in most government administrations. Access to information is very challenging and most people cannot easily access the required information because of the prevailing culture of information secrecy and confidentiality. Similarly the low level of public awareness about the role and importance of access to information and weak proactive disclosure of information are major issues to be addressed.

To address these problems, the recommendations of national civil society and media institutions and international standards need to be taken into account. The Afghan government should commit to revise the Access to Information Law and establish a robust public

access to information considering major building blocks of such a system (see Figure 1).

RECOMMENDATION

- **Amend Access to Information law:** The government and the parliament should approve the amendments proposed above so that the Access to Information Law meets international best practices and to ensure that there are clear definitions and limits to information protected as state secrets.
- **Establish and Independent Access to Information Commission:** The government should complete the process of establishing the ATI Commission and back it with the required political will and adequate financial resources to do its job properly.
- **Implement the law properly:** The government should ensure proper implementation of the law, including by establishing specific ATI offices in every public authority.
- **Ensure Proactive Disclosure:** The government should establish mechanisms to promote proactive disclosure at all levels of government (including penalties for non-disclosure), so as to ensure easy access to information for the general public.
- **Facilitate Information Provision:** The government should facilitate information provision to the marginalized and especially to women, people with disabilities, and those who cannot read and write.
- **Training on Access to Information:** The government, ATI Commission and those who are active in the area of the right to information should educate and strengthen the capacity of public officials on the right to information and information provision
- **Awareness raising:** The media, civil society and donor organizations should support the government in contributing to public awareness raising on the role and importance of the right to information.

ABOUT INTEGRITY WATCH AFGHANISTAN

Integrity Watch is an Afghan civil society organization committed to increase transparency, accountability, and integrity in Afghanistan.

Integrity Watch Mission

The mission of Integrity Watch is to put corruption under the spotlight through community monitoring, research, and advocacy. We mobilize and train communities to monitor infrastructure projects, public services, courts, and extractives industries. We develop community monitoring tools, provide policy-oriented research, facilitate policy dialogue, and advocate for integrity, transparency, and accountability in Afghanistan.

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