

# Afghanistan Public Policy Research Organization

## Legal Literacy: A Handbook

August 2017

Training Manual

موسسه مطالعات عامه  
افغانستان

appro 

د افغانستان  
د عامه څېړنو موسسه

Page left blank intentionally.

## Acknowledgements

This manual was compiled by APPRO's Training Department.

### About APPRO

Afghanistan Public Policy Research Organization (APPRO) is an independent social research organization with a mandate to promote social and policy learning to benefit development and reconstruction efforts in Afghanistan and other less developed countries through conducting social scientific research, monitoring and evaluation, and training and mentoring. APPRO is registered with the Ministry of Economy in Afghanistan as a non-profit non-government organization and headquartered in Kabul, Afghanistan with regional offices in Mazar-e Sharif (north), Herat (west), Kandahar (south), Jalalabad (east), and Bamyan (center). APPRO and its individual researchers have undertaken projects in Europe, Central Asia, Pakistan, India, Africa, China, and Turkey.

APPRO is the founding member of APPRO-Europe, a network association for disseminating applied research findings from conflict environments, conducting training on the policy process, and carrying out evaluations. For more information, see: [www.appro-europe.net](http://www.appro-europe.net)

APPRO also acts as the Secretariat for the National Advocacy Committee for Public Policy, comprising sub-committees on Education, Food Security, Access to Justice, Anti-corruption, NAP 1325, and Access to Health. For more information, see: [www.nac-pp.net](http://www.nac-pp.net)

APPRO takes full responsibility for all omissions and errors.

© 2017. Afghanistan Public Policy Research Organization. Some rights reserved. This publication may be reproduced, stored in a retrieval system or transmitted for non-commercial purposes only and with written credit to APPRO. Where this publication is reproduced, stored or transmitted electronically, a link to APPRO's website at [www.appro.org.af](http://www.appro.org.af) should be provided. Any other use of this publication requires prior written permission, which may be obtained by writing to: [mail@appro.org.af](mailto:mail@appro.org.af)

## Table of Contents

Introduction.....	5
What is Legal Literacy?.....	5
Working Definitions .....	6
Outcomes of Legal Literacy .....	7
How to Conduct Legal Literacy .....	7
<b>Government Structure of Afghanistan.....</b>	<b>8</b>
<b>Afghanistan’s Constitution .....</b>	<b>8</b>
<b>Executive Branch .....</b>	<b>9</b>
<b>Judiciary Branch.....</b>	<b>9</b>
Supreme Court .....	10
<b>Legislative Branch .....</b>	<b>10</b>
National Assembly Sessions .....	10
National Assembly Secretariat.....	11
Legislative Process .....	11
<b>Legal Literacy and Access to Information Law .....</b>	<b>12</b>
<b>Afghanistan’s Access to Information Law .....</b>	<b>12</b>
<b>Importance of Access to Information Law for Civil Society .....</b>	<b>13</b>
<b>Civil Society’s Capacity for Exercising Access Rights.....</b>	<b>14</b>
<b>Legal Procedures for Accessing Information .....</b>	<b>14</b>
<b>Legal Literacy and Afghanistan’s NAP 1325 .....</b>	<b>15</b>
<b>Afghanistan’s NAP 1325 Objectives 2015-2022.....</b>	<b>17</b>
<b>Accountability.....</b>	<b>17</b>
<b>Constitutional Provisions .....</b>	<b>17</b>
<b>Legal Provisions .....</b>	<b>18</b>
<b>NAP 1325 Pillars.....</b>	<b>18</b>
Participation.....	18
Protection .....	18
Prevention.....	18
Relief and Recovery .....	19
<b>Implementation .....</b>	<b>19</b>
Steering Committee .....	19
Steering Committee Members.....	19
<b>Monitoring and Evaluation .....</b>	<b>19</b>

## Introduction

This manual is developed as a result of APPRO's collaboration and interaction with numerous government agencies and civil society organizations throughout Afghanistan since 2007. The manual is intended to serve as a resource for policy analysis trainers and civil society individuals and organizations that wish to pursue positive societal change through policy reform and consistent with the principles of good governance.

In democracies, the right of citizens and their representative organizations to express opinions and demand democratic change are constitutionally guaranteed and specified in numerous related laws, regulations and policies. The pre-conditions of policy reform in a democracy are freedom of assembly and speech and access to information and corridors of power, all necessary elements of the democratic process, and practical instruments to facilitate policy reform based on constructive interaction between state authorities and civil society.

This manual provides an overview of legal literacy as a means to pursue legitimate change. The manual provides two main examples using legal means to pursue change. These are Afghanistan's National Action Plan for implementation of UNSCR 1325 (NAP 1325) and Afghanistan's Access to Information Law.

The contents of this manual may be adapted to suit the profile and specific needs of the trainees.

This manual should be used in conjunction with "Policy and Institutional Analysis: A Handbook", "Evidence-based Advocacy: A handbook", and "Monitoring and Evaluation: A Handbook", all available from APPRO's website.<sup>1</sup>

## What is Legal Literacy?

"Legal Literacy" as topic of training evolved from a branch of professional legal education to teach law students to read and write legal arguments.<sup>2</sup> Based on the recognition that a certain degree of understanding of the law is required for effective participation of citizens in modern society, without the necessity to reach the professional standard of "thinking (and writing) like a lawyer," a broader, more inclusive, approach considers legal literacy as a capacity spread across a larger spectrum with lawyers and judges at one end and laypersons with little or no capacity in law at the other. Legal literacy has three components:

- Ability to understand words used in a legal context and make critical judgements about the substance of the law and available legal resources and legal process,

---

<sup>1</sup> See: <http://appro.org.af/publication/policy-and-institutional-analysis-a-handbook/>, <http://appro.org.af/publication/evidence-based-constructive-advocacy-a-handbook/>, and <http://appro.org.af/publication/monitoring-and-evaluation-a-handbook/>

<sup>2</sup> Zariski, Archie (2011), What is Legal Literacy? Available from: [http://lgst.athabascau.ca/courses/documents/LGST249\\_sample.pdf](http://lgst.athabascau.ca/courses/documents/LGST249_sample.pdf)

- Ability to draw conclusions from legal resources, and
- Ability to use those conclusions to take action and articulate strategies to improve the legal system.<sup>3</sup>

The main objectives of legal literacy are to:

1. Disseminate information on and increase knowledge about the law and legal resources,
2. Empower citizens to make active use of the law, and
3. Support constructive criticism of the law and legal processes.<sup>4</sup>

Legal literacy contributes to a process of self and social empowerment. It incites citizens not only to activate rights they have by law, but also to redefine and reshape these rights.<sup>5</sup> As such, legal literacy is part and parcel of democracy, conditions citizens' full participation in society, and contributes to the protection of the rights of the most vulnerable.<sup>6</sup>

## Working Definitions

**Law** refers to a body of rules of conduct, principles and regulations defined for a community and applicable to it by a controlling authority. Law includes legislation, but also customs and recognized policies enforced by judicial decision.<sup>7</sup> Laws states what people, society and government can and cannot do. They provide the duties and responsibilities for every citizen. Laws exist to regulate behavior of citizens. Violators of laws are punished. In the same way that Parliament passes laws to control the behavior of citizens and the state, citizens can set rules on how to organize themselves and interact. Customary rules are usually based on complex sets of values derived from religion and tradition.

Formal laws and customary rules set the boundaries within which all community members are expected to act. Laws and rules determine who can or cannot use economic and social resources and under which conditions citizens can or cannot participate in political and social life.

**Right** is an entitlement to something, whether to concepts like justice and due process, or to ownership of property or some interest in property, real or personal. These rights include various **freedoms** (of speech, press, religion, assembly and petition) and **protection** against interference with enjoyment of life and property, **civil rights** such as voting, marriage, protection by law, freedom to contract, access to

<sup>3</sup> See, for example, Canadian Bar Association (1992), *Reading Legal World: Literacy and Justice in Canada*, Report of the Canadian Bar Association Task Force on Legal Literacy, Ottawa: Canadian Bar Association; and American Bar Association (1989), *Legal Literacy Survey Summary*. Chicago: American Bar Association.

<sup>4</sup> Zariski, Archie (2011).

<sup>5</sup> Hassan, Fatema Rashid (1994), *Limits and Possibilities of Law and Legal Literacy: Experience of Bangladesh Women*. *Women and Political Weekly*, 29(44): 69-76.

<sup>6</sup> Kumar, Anoop (2013), *Legal Literacy: Cornerstone for a True Democracy*, Available from: <http://www.grin.com/en/e-book/264802/legal-literacy-cornerstone-for-a-true-democracy>

<sup>7</sup> Based on definitions from: Afghanistan Legal Education Project (2015), *An Introduction to the Law of Afghanistan*, 3<sup>rd</sup> edition, Stanford University, available from: <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/12/Intro-to-Law-of-Afg-3d-Ed.pdf>; and Economic Commission for Africa, African Centre for Women (1997). *Strategies for Promoting Legal Literacy*, available from: <http://repository.uneca.org/bitstream/handle/10855/15794/Bib-64287.pdf?sequence=1>

courts, and trial by jury, **natural rights** such as right to life, liberty, and privacy, and **human rights** protect people throughout the world from terror, torture, barbaric practices and deprivation of civil rights.<sup>8</sup>

*In a democracy and under good governance, **laws are put in place to protect rights** and promote justice, equality and equitable resolution of conflicts at different levels and in different situations. In a democratic and constitutional system the law is to represent people's vision of what justice is, and the will of citizens who select their representatives through elections.*

## Outcomes of Legal Literacy

With proper understanding of the law, legislative language and processes, civil society actors can provide informed input in legislative development and reform. Legal literacy capacitates civil society to productively engage in and contribute to processes to support citizens' rights from the onset of the legislative process.

Awareness of the legal and legislative process provides grounds for citizens to claim and protect their rights with legitimacy and through legal provisions. This is particularly the case for marginalized and underprivileged groups, who are most subject to rights' violations, and are usually deprived of both knowledge and understanding of legal resources that could protect them.

Legal literacy provides civil society and individual citizens with the tools to hold the government and its representatives accountable. At the individual level, it provides citizens with the tools to resist violations of their rights. At the community / societal level, legal literacy gives civil society grounds to monitor the enforcement of legal obligation by governing authorities.<sup>9</sup>

## How to Conduct Legal Literacy

Methods of legal literacy vary depending of the profile and needs of the group targeted. Prior to the design of a specific module, a needs assessment should be carried out to identify the specific objectives of legal literacy.

Ordinary citizens from different communities with little interaction with formal judiciary have different training needs in legal literacy from civil society actors actively engaged in the defense of legal rights, or government actors involved in the implementation of policies but in need of a deeper understanding of the legal framework in which their work is embedded.

For **contents** of legal literacy training, the following questions need to be answered:

---

<sup>8</sup> Based on West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc., available from: <http://legal-dictionary.thefreedictionary.com/right>

<sup>9</sup> Based on HASSAN, Fatema Rashid (1994), Limits and Possibilities of Law and Legal Literacy: Experience of Bangladesh Women. Women and Political Weekly, 29(44): 69-76; and KUMAR, Anoop (2013), Legal Literacy: Cornerstone for a True Democracy, Available from: <http://www.grin.com/en/e-book/264802/legal-literacy-cornerstone-for-a-true-democracy>

- Are there specific areas of the law / legal framework the target group is interested in? Why?
- Are there specific areas of legislative processes the group is interested in?
- What is the target group expecting to accomplish with this training?

For **methods** of legal literacy training, the following questions need to be answered:

- What are the contextual and cultural attributes of the community in which the group functions?
- What are the formal structures through which legislation can be implemented?
- How do the attributes and formal structures affect attempts in pursuing change through the legal framework and provisions?
- Which tools are best suited for the delivery of the content? Can the contents be taught to an illiterate public, for instance?

As with all types of training, legal literacy training requires working definitions for key terms as a means to standardize the vocabulary used throughout the training and facilitate productive engagement between the trainer and the participants, and among the participants. Legal literacy training also requires ongoing references to legal and related documents and discussions on the implications of legal provisions for the responsibilities of the citizens and the state.

In the case of Afghanistan, the following structures and legal provisions are relevant.

## Government Structure of Afghanistan

The Government of the Islamic Republic of Afghanistan consists of the Executive, Legislature, and Judiciary branches. The President is head of state and executes his authority in all three branches in accordance with the Constitution. Since the 2014 presidential elections, Afghanistan has had the President, Chief Executive, First Vice President, and Second Vice President.

## Afghanistan's Constitution

The Constitution came into effect in 2004. The key points of the Constitution are as follows:

- Afghanistan is an Islamic Republic with Islam as its official religion.
- Followers of other religions are free to perform religious ceremonies in accordance with the provisions of the law.
- No law shall be contrary to the beliefs and practices of Islam.
- Men and women have equal rights and duties before the law.
- Afghanistan has a presidential system of government.
- The President is responsible to the nation and the lower house, or *Wolesi Jirga*.
- The President is directly elected by the Afghan people with two vice-presidents, nominated by presidential candidates during elections.
- A National Assembly consisting of *Wolesi Jirga* (house of people) as the lower house and *Meshrano Jirga* (house of elders) as the upper house.
- *Wolesi Jirga* members are elected by Afghan citizens during elections.
- *Wolesi Jirga* has the authority to impeach ministers.

- The President appoints ministers, attorney general, and Central Bank's Governor with the approval of Wolesi Jirga.
- Ministers should not hold foreign passports. Wolesi Jirga should vote whether to approve appointments of ministers holding dual nationality.
- Pashto and Dari are the official languages of the state, with the full recognition of Uzbeki, Turkmani, Baluchi, Pachaie, Nuristani, Pamiri and other languages as national languages (Article 16). Areas with main languages other than Pashto or Dari may have as official language the area-specific main language.

The President is elected with more than 50% of the votes casted during presidential elections through free, general, secret and direct voting. The President serves a five-year term and can serve a maximum of two terms. There are three branches of the government.

The president must be Muslim, an Afghan citizen born of Afghan parents, and should not be guilty of war crimes. The president is the commander-in-chief of the armed forces. Presidential responsibilities include:

- Determining policies with the approval of the National Assembly.
- Appointing the nation's ministers, the attorney general, the director of the central bank, and the justices of the Supreme Court with the approval of Wolesi Jirga
- Appointing the nation's first and second vice presidents.

## **Executive Branch**

The Executive Branch is constitutionally mandated to implement laws, rules and regulations. In accordance with Article 71 of the Constitution, the Executive Branch is comprised of ministers who work under the President. Ministers are appointed by the President and approved by the Wolesi Jirga. There are 25 ministries and several independent, cross-ministerial agencies, departments and commissions.

## **Judiciary Branch**

The Judiciary is comprised of the Supreme Court, Appeal Courts and Primary Courts whose organization and mandates are regulated by law. The Judiciary is headed by the Supreme Court, the entity responsible for Afghanistan's judicial system and judges. The Supreme Court is the highest judicial organ and consists of nine justices, appointed by the President with the endorsement of the Wolesi Jirga. The initial appointments take place in accordance with Clause 3 of Article 50 and Article 118 of the Constitution. Three justices are appointed for a period of four years, three for seven years, and three for 10 years. Later appointments are for a period of 10 years. The appointment of the Supreme Court justices for a second term is not permitted. The President appoints one of the justices as Chief Justice. Supreme Court justices, except under circumstances stated in Article 127 of the Constitution, are not dismissed until the end of their terms.

Cases are resolved in courts taking into consideration the quality and nature of the case in two stages, primary and appeal. The Supreme Court deals with cases referred by Courts of Appeal to establish whether or not laws have been accurately applied or breached. The Supreme Court may also be authorized to take on specific cases directly.

The courts are required to resolve cases in accordance with the Constitution and other laws of the Islamic Republic of Afghanistan. If there is no clear legal provision for the case, the case shall be handled in accordance with articles 130 and 131 of the Constitution.

Trials in Afghanistan's courts are open to the public but subject to limitations by law. The court may convene the trials in a close procedure only if they are legally required to do so or that it is deemed necessary. Making notice of the final decision shall always be open to public. The courts shall be duty bound to rely on the reasons, grounds and legal provisions for a decision to issue.

### **Supreme Court**

The Supreme Court is the highest authority of the judiciary of the Islamic Republic of Afghanistan. The Supreme Court is composed of nine judges appointed by the president in an agreement with Wolesi Jirga and in accordance with Articles 117 and 118 of the Constitution. The President shall appoint one of the members as the Chief of the Supreme Court.

The Supreme Court consists of the following Dewans:

- General Criminal Dewan
- Public Security Dewan
- Civil and Public Rights Dewan
- Commercial Dewan

Each Dewan is headed by a member of the Supreme Court as selected on rotation basis by the chief justice for the period of one year.<sup>10</sup>

### **Legislative Branch**

The Legislature in Afghanistan is the National Assembly, consisting of Wolesi Jirga and Meshrano Jirga, and the highest legislative organ in the country. There is an independent Judiciary branch of the government consisting of the Supreme Court (Stera Mahkama), High Courts and Appeal Courts. The President appoints the nine members of the Supreme Court with the approval of Wolesi Jirga.

Article 90 of the Constitution stipulates that the National Assembly shall have the following duties:

- Ratification, modification or abrogation of laws or legislative decrees
- Approval of social, cultural, economic as well as technological development programs
- Approval of the state budget as well as permission to obtain or grant loans
- Creation, modification and or abrogation of administrative units
- Ratification of international treaties and agreements, or abrogation of membership of Afghanistan in them
- Other authorities enshrined in this Constitution.

### **National Assembly Sessions**

Both Houses of the National Assembly, Wolesi Jirga and Meshrano Jirga, convene two regular sessions for the term of nine months annually. The sessions are held concurrently but separately, unless:

---

<sup>10</sup> Adapted from: Sial, Omar (2006), "Islamic Republic of Afghanistan Legal System and Research, Houser Global Law Program", Available from: <http://www.nyulawglobal.org/globalex/Afghanistan.html>

- The legislative term or annual sessions are inaugurated by the President, or
- It is deemed necessary by the President.

The Speaker of the Wolesi Jirga presides over the joint sessions of the National Assembly. The sessions are open, except when the Speaker of the National Assembly or ten Members of the House request its secrecy. The President can order extraordinary sessions of the National Assembly during recess.

### **National Assembly Secretariat**

On commencement of parliamentary period, each of the two houses of the National Assembly elects one member as their Speaker for the term of the legislature, two members as first and second deputies, and two members as secretary and assistant secretary for a period of one year. These individuals shall form the administrative teams of Wolesi and Meshrano Jirgas. Wolesi Jirga has the authority to establish a special commission on the proposal of one third of its members to review or investigate the actions of the government.

### **Legislative Process**

All laws are to be approved by both Houses of the National Assembly (Wolesi and Meshrano Jirgas) and endorsed by the President. Proposal for drafting a law is made by the government or members of the National Assembly. If related to regulating Judiciary, the Supreme Court makes the proposal through the government.

Draft laws are first submitted to Wolesi Jirga, which has one month to either approve or reject it by two-thirds of the votes. If approved, the proposal is then submitted to Meshrano Jirga, which has to approve or reject within fifteen days.

In case the President rejects a law approved by the National Assembly, it is sent back within fifteen days with the reasons for rejection. If the Wolesi Jirgan re-approves it with two thirds of all the votes, the draft will be considered endorsed and enforceable.

Proposals for drafting the budget and financial affairs laws are only made by the government. While deciding about the proposed laws, the National Assembly gives priority to treaties and development programs if the government considers them to be urgent.

The state budget and development program of the government is to be submitted, through the Meshrano Jirga to Wolesi Jirga. If the budget is approved by Wolesi Jirga, it will be implemented without being submitted to the Meshrano Jirga, after endorsement by the President.

In case of discussing urgent matters such as the annual budget, or development program, or issues related to the national security, territorial integrity and independence of the country, the sessions of the National Assembly shall not end until a decision is made.

If one House rejects decisions of the other, a joint commission comprised of an equal number of members from each House will be formed to solve the difference. The decision of the joint commission is enforced after endorsement by the President. In case the joint commission cannot solve the difference, the decision will be considered rejected. In such cases, the Wolesi Jirga will need pass it with two-thirds majority in its next session, after which it can be endorsed by the President.

Based on the preceding sections, the next two sections use Access to Information Law and Afghanistan's NP 1325 as case examples for conducting legal literacy.

## Legal Literacy and Access to Information Law

The world's first freedom of information (in written form) legislation was adopted by the Swedish Parliament in 1766. In modern times, the United States was the first country to adopt the Freedom of Information Act, in 1966, granting its citizens the right to information held by federal government agencies. The full law with amendments came into effect in 1974. In the decades that followed other countries adopted similar laws awarding their citizens of similar rights. The first countries that followed the example of the United States and adopted such laws were developed countries with stable democracies. However, in the last two decades, a number of developing countries have passed similar laws and the number of countries with access to information legislation has increased significantly.<sup>11</sup> By 2013 the number of countries having specific legal provisions for the right or access to information by the public had reached 95.

The right to and access to information are essential parts of good governance. Information allows citizens to scrutinize the actions of their government and is the basis for informed debate. There are certain limitations where a request for information may be refused if the requested information pertains to matters of national security or public safety,<sup>12</sup> for example. In the vast majority of cases with comprehensive access to information legislation, the decision by authorities to refuse access to information can be challenged in the courts by the requester. This, however, requires legal literacy of the citizens whereby citizens are fully aware of their rights according to existing laws and can practice those rights without fear of persecution.

During its first session, in 1946, the General Assembly of the United Nations unanimously adopted a resolution on freedom of information, according to which freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated. The narrowest definition of "freedom of information" implies the right of each individual to inspect or copy documents held by government bodies. In view of a greater precision and preclusion of ambiguity, the latter can be defined as the right of "access to information".<sup>13</sup>

## Afghanistan's Access to Information Law

Afghanistan's Access to Information Law came into effect in December 2014. Based on an assessment of the contents of this Law, the "Global Right to Information Rating" (GRIR) ranks Afghanistan at 63,

---

<sup>11</sup> Parto, S., E. Saadat, and S. Siddiqi (2015), "Afghanistan's Access to Information Law: A Preliminary Review", available from: <http://appro.org.af/publication/afghanistans-access-to-information-law-a-preliminary-review/>

<sup>12</sup> Open Democracy Advice Centre (ODAC), (2011), "Right to Access Information Training Manual", p 7, available from: <http://www.r2k.org.za/wp-content/uploads/2012/12/rti-training-manual-dec-2012.pdf>

<sup>13</sup> Aip, (1998) "The right to Access to Information", Access to Information Program, Sofia, Bulgaria, p.2, available from: <http://www.aip-bg.org/pdf/concept.pdf>

comparable to Switzerland but better than Portugal, Spain, Turkey, Pakistan, Greece, Denmark, Belgium, Italy, Germany, and Austria (ranked 102).<sup>14</sup>

The Afghan Access to Information Law is based on the 3rd paragraph of Article 50 of the Afghan Constitution, stating that “the citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law”.<sup>15</sup> Article 50 provides for two limitations to the right to information. First, the Law does not apply when access to information is harmful to others’ rights and, second, availability of the information must not risk public security.

The Access to Information Law applies to governmental institutions and non-governmental entities such as NGOs, civil society organizations, and political parties. The law consists of 32 articles, divided into 6 chapters as follows:

1. General Provisions
2. Access to information
3. Providing Information
4. Oversight Commission on Access to Information
5. Addressing Complaints
6. Miscellaneous Provisions

Article 2 lists the objectives of the Law as follows:

1. To ensure the right of access to information for all citizens from the government institutions.
2. To observe Article 19 of the International Covenant on Civil and Political Rights, Article 3 of Afghanistan’s Constitution according to which no law can be in conflict with Islamic Sharia principles, and Article 28 on the responsibility of non-government organizations to provide information.
3. To ensure transparency and accountability in the conduct of governmental and non-government institutions.
4. Structure the process of requesting information by the public and the provision of information by governmental entities.<sup>16</sup>

## **Importance of Access to Information Law for Civil Society**

In Afghanistan, information has historically been the property of the government. One of the reasons for the lack of public access to information has been the autocratic political system. Democratization of the political system since 2001 has led to the recognition of the fundamental rights of people to information. The passing of Access to Information Law is a significant step toward democratization of government and a break from the historical traditions of governing in Afghanistan.

Information dissemination and access to information are important development indicators. Access to information can lead to a change in the level of citizen awareness and engagement with a likely positive change in the historically autocratic political culture of Afghanistan. Increased citizen awareness is likely

---

<sup>14</sup> Parto et al. (2015), p. 11, and Global Right to Information Rating (2015), available from: <http://www.rti-rating.org/countrydata>

<sup>15</sup> Islamic Republic of Afghanistan (2004), Constitution of Afghanistan, Article 50, p. 13.

<sup>16</sup> Islamic Republic of Afghanistan (2014), Access to Information Law, Article 2, p.1.

to lead to transparency and accountability of governmental authorities and, ultimately, changed behavior among politicians and political actors.

Afghanistan is signatory to the Universal Declaration of Human Rights and committed to freedom of expression and freedom of opinion as a fundamental human right. The realization of freedom of expression and freedom of opinion is possible through the dissemination of information and the access of all citizens to information. The signing of Access to Information Law is a step toward the realization of human rights principles.

## **Civil Society's Capacity for Exercising Access Rights**

Access to information or freedom of information laws are ineffective if citizens and civil society organizations lack the capacity to exercise their right of access. Advocacy groups are unlikely to take full advantage of access laws if they lack resources to maintain a specialized, legally trained staff who can pursue complex information requests.

The media and advocacy and civil society organizations are less likely to use access laws if there are no channels for effective political action. Individuals and businesses will request information about the administrative activities of government only if remedies are available for cases in which officials have acted inappropriately. An access law is unlikely to be used extensively unless other steps are taken to build capacity and confidence within civil society and increase its role and influence over the policymaking and administrative processes of government.<sup>17</sup>

## **Legal Procedures for Accessing Information**

The Law specifies information as “any type of document, recorded and registered information, models and samples”. The Law also requires that information by public entities be disseminated in a manner “accessible by and usable to the public”. Any individual or organization has the right to ask for information from governmental entities and the entity in question is obliged to comply by providing the requested information.

The application for information is submitted through a “Request for Information” form. The response from the government entity is to be provided in written form within ten days of the request. An additional three days can be granted in cases of unexpected circumstances. If the request is submitted by the media, the information shall be provided within three days without the possibility of extension. If the required information concerns the safety and security of an individual, it shall be provided within 24 hours of the request with no provisions for extensions. The information providing entity determines the costs of preparing and providing the information, payable by the requester. The amount charged by the information providing entity is subject to limits set by the Monitoring Commission.

Each governmental entity should have a department or section in charge of providing information to those who request it. The department or section should provide the requester with the required forms. The information department's responsibility is to ensure that the information request form is delivered to the right department or individual within the governmental entity. Complaints regarding lack of cooperation or transparency should be submitted, in written form, to the entity in question. If the

---

<sup>17</sup> Alasdair, R. (2002), “Access to Information: A key to Democracy”, The Carter Center, p 13-14.

complaints are not addressed within three days, the applicant can send the complaints to the Oversight Commission. The Oversight Commission is to consist of 13 individuals appointed for a period of three years.

While it is too early to conduct a comprehensive assessment of the impact of Afghanistan's Access to Information Law, it is possible to investigate the potential impact of the law in specific areas such as the public's right to know about public services and whether this law could become a useful instrument in effecting structural reform in public service delivery in Afghanistan. The following articles of the law state the procedures to request information and timeframe for government sources in providing information:

**Article 5: Request for Information**

- 1) For access to information, the applicant shall refer to the relevant institution and fill the information request form.
- 2) Institutions are responsible to respond in written to the information requested.

**Article 6: Timeframe for Providing Information**

- 1) Institutions are responsible to provide the requested information to the applicant in a maximum duration of 10 working days starting from information request day. In case of justifiable reasons this duration can be extended to three more days.
- 2) Institutions are responsible to provide media with the requested news related information within three days of time period from the date of receiving information request form.
- 3) Institutions are responsible to provide the requested information that is necessary for the safety, security and freedom of an individual within 24 hours of receiving request form.

The second example for conducting legal literacy training is Afghanistan's National Action Plan for the implementation of the United Nations Security Council Resolution 1325, known as Afghanistan's NAP 1325.

## **Legal Literacy and Afghanistan's NAP 1325**

UNSCR 1325, adopted by the United Nations' member states on October 31, 2000, formally acknowledges women's right to participate in all aspects of conflict prevention and resolution, peacekeeping, and peace building, and to be included in decision making bodies at all levels of government. UNSCR 1325 was followed by six subsequent resolutions on Women, Peace and Security (WPS), creating a normative policy framework for UN Member States to adopt a gender perspective in their peace operations and provide guidance for translating high level recommendations into concrete policies and action plans (Box 1).

Under UNSCR 1325 each member state has been expected to develop a National Action Plan as a national strategy to implement UNSCR 1325 and other resolutions of the Women Peace and Security agenda. 1325 does not mention National or Regional Action Plans (N/RAPs) for implementation. The need for N/RAPs was further elaborated in the UN Security Council statement (2002), UN Secretary General's Report (2004), and UNSCR 1889 (2009), inviting member states to prepare National Action Plans as a step towards the implementation of UNSCR 1325.

### Box 1: UNSCR 1325 and subsequent resolutions

- UNSCR 1325, adopted by the United Nations' member states on October 31, 2000 formally acknowledges women's right to participate in all aspects of conflict prevention and resolution, peacekeeping, and peace building, and inclusion in decision making bodies at all levels of government
- UNSCR 1820 (2008) draws attention to sexual violence being used as a weapon of war and calls for the need for prosecution of gender-based war crimes.
- Resolution 1888 (2009) calls for appointment of a Special Representative on Sexual Violence in Conflict, and the establishment Women's Protection Advisors within Peacekeeping missions.
- Resolution 1889 (2009) focuses on women's participation in peace building and calls on United Nations Secretary General to develop a set of global indicator to measure impact of UNSCR 1325 at global and national levels. It further welcomes "the efforts of member states in implementing Resolution 1325 at the national level, including the development of national action plans".
- Resolution 1960 (2010) calls for refining institutional tools to combat impunity related to sexual violence, notably through the set up of a 'naming and shaming' list in annual reports.
- Resolution 2106 (2013) on the need to better operationalize existing obligations, particularly those related to sexual violence.
- Resolution 2122 (2013) on women's leadership and empowerment as a central component for resolving conflicts and promoting peace through a number of specific calls for regular consultations, funding mechanisms to support women's civil society organization and changes in the Council's working methods in relation to WPS.

Source: UN Women, *Global Technical Review Meeting: Building Accountability for Implementation of Security Council Resolutions on Women, Peace and Security, Final Report*, November 2013.

Through its Recommendation Number 30, issued in October 2013, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) further renewed the focus on the implementation of UNSCR 1325 through adequately funded National and Regional Action Plans, while calling on all member states to:

... cooperate with all UN networks, departments, agencies, funds and programmes in relation to the full spectrum of conflict processes, including conflict prevention, conflict, conflict resolution and post-conflict reconstruction to give effect to the provisions of the Convention" and "enhance collaboration with civil society and non-governmental organizations working on the implementation for the Security Council agenda on women, peace and security.<sup>18</sup>

A later (2014) interpretation of National Action Plans for UNSCR 1325 states:

.... [National Action] Plans should contain concrete recommendations on how women should be included in all peace and conflict related decisions and processes, and how a gender perspective should be included in efforts to prevent conflict and sexual violence, protect women and girls, and in relief and recovery activities. [The Plans] provide an opportunity to assess priorities for the states' work both nationally and internationally and to co-ordinate relevant actors, including co-operation with civil society. Plans should contain clear goals, actions and responsibilities and mechanisms for monitoring and evaluation.<sup>19</sup>

In Afghanistan the Ministry of Foreign Affairs has had the responsibility for developing a National Action Plan for WPS. Afghanistan's NAP 1325 was released formally in June 2015.

<sup>18</sup> Adopted in 1979 by the UN General Assembly, ratified by Afghanistan in 2003.

<sup>19</sup> See: OSCE / PRIO (2014), "Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325" (Oslo: PRIO)

## **Afghanistan's NAP 1325 Objectives 2015-2022**

1. Participation of women in the decision making and executive levels of the Civil Service, Security and Peace and Reintegration.
2. Women's active participation in national and provincial elections.
3. Women's access to effective, active and accountable justice system.
4. Health and psychosocial support for survivors of sexual and domestic violence throughout Afghanistan.
5. Protection of women from all types of violence and discrimination.
6. Provision of financial resources for activities related to women in emergency.
7. Implementation of IDPs policy provisions related to UNSCR 1325.
8. Put an end to impunity for violence against women (VAW) and related crimes.
9. Engage boys and men in fighting Violence Against Women.
10. Support and provide capacity building for civil society (particularly women's organizations) on UNSCR 1325 and women, peace, and security.
11. Increase economic security for vulnerable women through increased employment opportunities.
12. Increase access to education and higher education for girls and women, particularly for the internally displaced persons and returnees.

### **Accountability**

- The central role for monitoring, implementation and evaluation of NAP lies with the Steering Committee
- All implementing agencies report annually to DHRWIA, which will be reported to the SC for approval
- The SC reports to ARG, the Parliament and the International Community

### **Constitutional Provisions**

According to Article 22 of the Afghan Constitution, “[a]ny kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.” This Article is the foundation for incorporating principles of gender equality and non-discrimination in government policies and initiatives. Women's right to vote and representation in the National Assembly is enshrined in the 1964 Constitution. These rights were strengthened in 2004 with the new Constitution that set the 26 percent quota of seats for women in the Lower House (Wolesi Jirga) and 17 percent in the Upper House (Meshrano Jirga). Following the 2010 elections, Afghan women represented 27.7 percent of the Wolesi Jirga.

Articles No 43, 44, 53, and 54 of the Afghan Constitution articulate provisions on education, healthcare, welfare, and employment services for women. These articles ensure women's access to education, healthcare, and employment in Afghanistan, which are pre-conditions for their meaningful political participation as well as an important component of the relief and recovery.

## Legal Provisions

The laws of Afghanistan guarantee the protection of women's right and freedom. The government is legally bound to protect women against violence. In 2009 the Elimination of Violence against Women (EVAW) Law was adopted, which lists 22 offences including forced marriage and rape. In an attempt to strengthen the legal provisions and structures to eliminate violence against women and increase women's participation, the government has taken the following significant steps:

- Adoption of the EVAW Law
- Amendment of some of the provisions in the Civil Servants Law to promote women's rights
- Development of the Family Law
- Development of procedures to prevent discrimination
- Development of Shelter Regulations, and
- Presidential Decree No 45 (Paragraph 32) on Elimination of Violence against Women.

## NAP 1325 Pillars

### Participation

- Increase effective participation of women in the decision-making and executive levels of the civil service
- Ensure women's active and effective participation in leadership positions of security agencies
- Ensure women's effective participation in the peace process
- Encourage women's meaningful participation in the drafting of strategies and policies on peace and security
- Strengthen women's active participation in politics

### Protection

- Protect women from all forms of violence and discrimination through the enforcement, monitoring and amendment of existing laws and development of new laws and policies.
- Promote women's human rights gender mainstreaming of laws, policies, and institutional reforms.
- Create an enabling environment for women to have access to justice through women's effective participation in the judiciary.
- Protect women from all forms of violence through awareness raising and public outreach.
- Provide health, psychological, and social services for women survivors of violence throughout Afghanistan.
- Effect special measures to ensure women's protection from sexual violence.

### Prevention

- Prevent violence against women.
- Eliminate culture of impunity in violence against women.
- Strengthen the role of women in the security sector and judicial structures.
- Effect gender-related reforms in the security and justice sectors.
- Involve men and boys in the fight against all forms of violence against women.
- Increase awareness among women of their rights and their role in preventing violence and resolving conflict.

## Relief and Recovery

- Provide relief and recovery services for women affected by conflict, internal displacement and women survivors of violence.
- Increase rural women's economic security through increased employment opportunities.
- Consider women's social and economic needs in the design, implementation, and evaluation of relief and recovery programs.
- Implement the policy provisions of UNSCR 1325 for the internally displaced persons (IDPs).

## Implementation

The implementation occurs in two phases of four years each: 2015-2018 and 2018-2022.

The implementing agencies have been divided into two categories lead (governmental) and support (civil society). All lead and supporting implementing agencies will be responsible for reporting on their assigned activities on an annual basis to the DHRWIA-MoFA. The DHRWIA is responsible for compiling the reports and submitting them to the Steering Committee for approval and subsequent submission to the President Office, the National Assembly, and the international community. The annual reporting will address the extent of activities implemented and financing allocated, disbursed and spent, progress made, challenges encountered, and suggestions to improve the implementation.

## Steering Committee

The Steering Committee was established on April 14, 2012, under Presidential Order No 434, and is an overarching body to advise and direct the NAP development process. The Steering Committee is comprised of relevant government agencies as well as a representative from civil society. Following the adoption of the NAP, the Steering Committee will continue to have a central role in the implementation, monitoring and evaluation of the NAP.

## Steering Committee Members

Institution	Role
1. Minister of Foreign Affairs Chairperson Member	Chair, Member
2. Deputy Minister (Policy) of MoD	Member
3. Deputy Minister (Security) of the MoIA	Member
4. Deputy Minister of Public Health (Healthcare Services)	Member
5. Deputy Minister (Admin and Finance) of MoRR	Member
6. Deputy Minister (Technical and Policy) of MoWA	Member
7. Senior Advisor of MoJ	Member
8. Director of DHRWIA of MoFA	Member
9. Deputy Director of NDS	Member
10. Women's Rights Commissioner of the AIHRC	Member
11. Representative of Civil Society	Member
12. Director of International Relations of the Office of Administrative Affairs and Secretariat of Ministers' Council	Member

## Monitoring and Evaluation

The Monitoring and Evaluation Plan consists of annual, mid-term (after two years) and final review in the fourth year. The Plan includes tracking and monitoring of financing for NAP 1325 to ensure

transparent and effective implementation under the oversight and responsibility of the Steering Committee. The government recognizes the important role of civil society as an independent oversight body for the successful implementation of the NAP 1325.

## Links to Key International Documents

Convention on the Elimination of All Forms of Discrimination against Women (1979), Available from:  
<http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>

Convention on Political Rights of Women (1952), Available from:  
[http://www.un.org.ua/images/Convention\\_on\\_the\\_Political\\_Rights\\_of\\_Women\\_eng1.pdf](http://www.un.org.ua/images/Convention_on_the_Political_Rights_of_Women_eng1.pdf)

Declaration on the Elimination of All Forms of Discrimination against Women (1967)  
<http://www.un-documents.net/a22r2263.htm>  
International Covenant on Civil and Political Rights (1953)  
<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

Declaration on the Elimination of Violence against Women (1993)  
<http://www.un.org/documents/ga/res/48/a48r104.htm>

Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974)  
[http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19\\_declaration%20protection%20women%20armed%20conflict.pdf](http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19_declaration%20protection%20women%20armed%20conflict.pdf)

International Covenant on Economic, Social, and Cultural Rights (1966)  
<http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)  
<http://www2.ohchr.org/english/law/pdf/cedaw-one.pdf>

Universal Declaration on Democracy (1997), Available from:  
<http://www.ipu.org/cnl-e/161-dem.htm>

Universal Declaration of Human Rights (1948), Available from:  
[http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

United Nations Security Council Resolutions 1325, 1820, 1888, 1889, 1960, and 2122, Available from:  
<http://www.un.org/en/peacekeeping/issues/women/wps.shtml>