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PILDAT Preliminary RTI Scorecard

**Right to Information and its Implementation
and promotion - A Comparative Assessment
of 4 Provinces and the Centre**

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PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

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Preface

The **PIL DAT Scorecard On RTI And Its Implementation And Promotion: A Comparative Assessment Of 4 Provinces And Centre** is the first-of-its kind indigenous publication which provides a comparative analysis on the state of RTI legislation and implementation and enforcement in Pakistan

Pakistan was the first country in South Asia to pass the legislation guaranteeing Right to information (RTI) in south Asian region with an enactment of Freedom of Information Ordinance (FOIO) 2002. Subsequently, Balochistan and Sindh passed near-identical freedom of information (FOI) in 2005 and 2006, respectively. Encouragingly, modern RTI laws have been in effect within the provinces of Khyber Pakhtunkhwa (KP) and Punjab since November 04, 2013 and December 14, 2013 respectively. However, concomitant efforts to assess the current state of RTI at the Federal level and within Balochistan, Sindh, KP and Punjab have been scattered and narrowly focused. PILDAT seeks to address this gap with the publication of this Comparative Scorecard.

The Assessment Framework of preliminary comparative scorecard was developed by PILDAT in-house, based on consultations with key stakeholders responsible for implementation and promotion of RTI legislation in Pakistan, including the Punjab information commission and KP right to information commission. Scoring in these areas was conducted by PILDAT based upon publicly-available data relating to implementation and promotion of RTI legislation within the federation and four provinces and, including KP, Punjab, Sindh and Balochistan. A number of key findings emerged as a result of this scoring exercise.

Acknowledgements

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Disclaimer

PILDAT has made every effort to ensure accuracy of the publicly-available data within this Scorecard and the analyses and Scoring based on it. Any omission, or error, therefore, is not deliberate. The scores and analyses in this Scorecard do not necessarily represent the views of the Development Alternatives Inc. (DAI)

Islamabad
October 2015

Introduction

Pakistan was the first country in South Asia to pass legislation guaranteeing the Right to Information (RTI) in the South Asian Region with the enactment of the Freedom of Information Ordinance (FOIO) 2002. Subsequently, Balochistan and Sindh passed near-identical Freedom of Information (FOI) laws in 2005 and 2006, respectively. Many years have passed since these laws came into effect; however, previous studies on the subject have revealed that their state of implementation has been poor. Additionally, the FOIO 2002 fares poorly on the Centre for Law and Democracy's (CLD's) Global RTI Rating 2015 in which it has been ranked the 83rd best law in the world out of a total of 102 countries with RTI legislation. Encouragingly, modern RTI laws have been in effect within the Provinces of Khyber Pukhtunkhwa (KP) and Punjab since November 04, 2013 and December 14, 2013, respectively. These laws have established independent statutory bodies for implementation and enforcement of RTI at different levels of government, unlike the outdated set of laws at the Centre and within Sindh and Balochistan, which do not have dedicated agencies for implementation and enforcement of RTI.

With the passage of the 18th Constitutional Amendment, which guarantees the right to information under Article 19A, efforts to legislate, implement and enforce modern Right to Information (RTI) laws in Pakistan have started to gain significant traction. However, concomitant efforts to assess the current state of RTI at the Federal level and within Balochistan, Sindh, KP and Punjab have been scattered and narrowly focused. Some studies have emerged assessing the comparative situation of RTI legislation at the Federal and Provincial levels, while others have delved into the specifics of certain implementation

measures like proactive disclosure. However, comparative studies on the state of RTI legislation and its implementation and enforcement have yet to be published within Pakistan. PILDAT seeks to address this gap with the publication of this Comparative Scorecard, which incorporates key performance indicators in four thematic areas:

1. Strength of the RTI law
2. RTI Implementation through Information Commissions/Departments
3. RTI promotion by Information Commission/Ombudsman
4. Infrastructure and Resources of Information Commission/Department/Ombudsman

The Assessment Framework of this Scorecard was developed in consultation with representatives of key agencies implementing and/or enforcing RTI at the Federal and Provincial levels. Scores have been assigned according to findings within these consultations and in accordance with publicly available data on the activities and achievements of the different agencies tasked with implementation and enforcement of RTI at the Federal and Provincial levels. Due to differences between the first set of RTI laws passed at the Centre, and within Sindh and Balochistan, and the second set of RTI laws passed in Punjab and KP, the totals upon which Scores were awarded will vary between the first and second set of Pakistani RTI laws. The first set of Pakistani RTI laws and their implementing agencies were scored out of a total 239 points, as many Assessment Areas could not be fairly applied to these laws or agencies. However, the modern RTI laws in Punjab and KP have been scored on all Assessment Areas within this Scorecard. The table below gives the results of the Scoring Exercise conducted for the Centre and within Four Provinces.

Table 1: Comparative Score Card on RTI on Implementation and Promotion

No.	Area of Assessment/ (Total Scores)	Key Aspects Assessed	Scores				
			<i>Fed.</i>	<i>Bal.</i>	<i>Sindh</i>	<i>KP</i>	<i>Punj.</i>
		<i>Scope of law (40)</i>	20	15	15	36	38
1	Strength of the law and Rules (100)	<i>Exemptions within law (30)</i>	10	10	10	30	30
		<i>Rules & Procedures of providing information (30)</i>	20	15	15	27	29

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<i>Sub-total</i>		50/100	40/100	40/100	93/100	97/100	
2	Implementation of RTI Law within Government Public Bodies (100)	<i>Processing of Requests (25)</i>	n/a	n/a	n/a	0	0
		<i>Proactive Disclosure (25)</i>	2	2	2	5	5
		<i>Record Maintenance & Indexing (25)</i>	12	2	2	5	5
		<i>Appointment & training of Information Officers (25)</i>	n/a	n/a	n/a	10	12
<i>Sub-total</i>		14/50	4/50	4/50	20/100	22/100	
3	Promotion of RTI law by Information Commission/Department (100)	<i>Annual Reporting (40)</i>	n/a	n/a	n/a	0	0
		<i>Processing of complaints (30)</i>	5	0	0	20	10
		<i>Promotion of public usage of RTI (30)</i>	n/a	n/a	n/a	15	10
<i>Sub-total</i>		5/30	0/30	0/30	35/100	20/100	
4	Infrastructure and Resources of Information Commission/Department/ Ombudsman	<i>Budgetary Allocation (25)</i>	n/a	n/a	n/a	0	20
		<i>Expenditures (25)</i>	n/a	n/a	n/a	0	10
		<i>Staffing (25)</i>	n/a	n/a	n/a	15	10
		<i>Website (25)</i>	0	0	0	15	12
<i>Sub-total</i>		0/25	0/25	0/25	30/100	52/100	
<i>Grand Total</i>		69/240	44/240	44/240	178/400	191/400	
<i>Percentage (rounded-off to one decimal place)</i>		28.8%	18.3%	18.3%	44.5%	47.8%	

1. Strength of the law

RTI laws in effect at the Federal level and within Sindh and Balochistan are near-identical, and therefore in the Assessment Area of **Strength of Law** they have received similar/identical scores.

Scope

Federal, Sindh and Balochistan

In terms of scope, these have received almost similar scores. Points on this parameter were deducted because these laws exclude many key categories of information, such as government proposals and intermediary decisions, file notings and meeting minutes, while also granting broad discretionary powers to the government to exempt further categories of records from disclosure. Further points were deducted because these laws have not been granted overriding effect over other laws governing the disclosure of information held by government, such as the Official Secrets Act 1923. Finally, while these laws provide the right of appeal to citizens against refusal of their information requests, they also place undue restrictions on this right when compared with more modern laws in effect within KP and Punjab. Further, the right to appeal has not been extended to Information Officers seeking redressal against decisions of the Ombudsman on information request they have handled. The Federal law, however, was given 4 extra points over its counterparts in Sindh and Balochistan, because under the Islamabad Local Government Act 2015, local government bodies have also been included under the ambit of RTI.

KP and Punjab

RTI laws in Punjab and KP have received similar scores in the Area of Scope. They have comprehensive definitions of the term public record, and do not exclude categories of records based on type. They also have overriding effect over other laws governing information disclosure. Further, they provide a right of appeal to both information requesters and information officers against decisions on a complaint made by the respective Information Commission, and do not restrict this right of appeal to particular circumstances. Both laws apply to local and provincial government bodies; however, 2 points have been deducted from KP because it has excluded the Peshawar High Court from information disclosure obligation, while in Punjab the law extends to all legislative, judicial and executive branches of government.

Exemptions

Federal, Sindh and Balochistan

These laws have revealed identical scores on this parameter. 8 points were awarded for including a minimal and clearly defined list of exemptions, such as national security and foreign relations of the State, which limits the discretion of the government in preventing disclosure of most categories of information. However, these laws do not contain any limitations on the applicability of these exemptions: for example, there are no provisions requiring disclosure of exempted information if such disclosure is in the overall interest of the public, such as in cases of corruption or wrongdoing. Further, these exemptions are framed to apply in perpetuity, whereas modern RTI laws contain clauses which limit the time for which a certain record can be exempt from disclosure, for example, in the interest of national security. Therefore, the remaining points on this parameter have been deducted.

KP and Punjab

Both of these laws have scored maximum points on this parameter. They contain a minimal and clearly defined list of exemptions, but importantly, they also restrict the applicability of exemptions in line with international standards. For example, they require disclosure of records otherwise exempted if such disclosure is in the public interest. Further, they also mandate disclosure of a redacted copy an exempted record if only part of it is covered under a particular exemption. Finally, RTI laws in KP and Punjab require the disclosure of exempted records after the passage of a particular period of time.

Rule & Procedures of providing information

Federal, Sindh and Balochistan

This set of RTI laws has received similar scores on this parameter. The Federal law has scored higher than its counterparts in Sindh and Balochistan because it is supplemented by Rules of Business, whereas the latter two laws are not. These laws have been awarded the same number of points for the publication of a Schedule of Costs which imposes fees on the submission of an information request. However, by modern standards these fees may deter low-income requesters from submitting requests, as they exceed the actual costs of retrieval and reproduction of records, and place flat fees on submission of each request (regardless of length or size) and an additional fee on each page of the record requested. These laws have also been awarded points the same number of points for defining the timeline under which information sought should be provided to a requester. However, points

have also been deducted because these laws lack provisions requiring expeditious disclosure in cases where the information sought pertains to the life and liberty of the requester. These laws have also been awarded points for containing provisions requiring information officers to assist requesters; however, these duties have not been clearly defined. Points have also been deducted from these laws for imposing undue requirements on information requesters by requiring them to file requests in a particular form. This is likely to limit access of illiterate or differently abled requesters.

KP and Punjab

Both of these laws have received high scores on this parameter. They have published Schedule of Costs which do not exceed the actual costs of retrieval and reproduction of records or information. They have also defined timelines for responding to information – however the timeline defined in the KP RTI law is 10 working days, whereas the same in Punjab is 14 working days, thus explaining the slight difference in overall scores on this parameter. These laws also score highly in terms of imposing clear duties on information officers for assisting information requesters. They have also scored highly for having flexible procedures for submission of an information request i.e. there is no particular form for filing a request, which can be submitted in written or verbal form as well. However, the law in KP is less inclusive in terms of providing access to marginalized groups because it requires information requesters to provide a copy of their NIC to be able to submit an information request. In this regard, the law in Punjab only requires an NIC copy to be provided along with an information request if there is reasonable doubt that the requester is not a registered citizen of Pakistan. Finally, the law in Punjab has scored higher than KP because it is supplemented by the publication of Rules of Business.

2. Implementation of RTI law within Government Public Bodies

This Area of Assessment gauges the performance of the relevant Government Departments or Commissions responsible for implementation of RTI law. These include:

- i. Federal Ministry of Information, Broadcasting & National Heritage (for Proactive disclosure)
- ii. Federal Ministry of Information Technology and Telecommunication (for Record Maintenance & indexing)
- iii. Federal Ombudsman of Pakistan (for Processing

of Complaints)

- iv. Sindh Information and Archives Department
- v. Provincial Ombudsman of Sindh (for Processing of Complaints)
- vi. Balochistan Information Department
- vii. Provincial Ombudsman of Sindh (for Processing of Complaints)
- viii. KP Right to Information Commission
- ix. Punjab Information Commission

Processing of requests

Federal, Sindh and Balochistan

No scoring could be conducted on this parameter as the law within these jurisdictions does not mandate either public bodies or a relevant implementing agency to keep track of how many information requests have been received and processed.

KP and Punjab

Both KP and Punjab have received a score of 0 on this parameter, as they have not been able to keep track of information requests processed within public bodies under their purview. This is due to weaknesses in the monitoring mechanisms for RTI implementation within each of these Provinces.

Proactive Disclosure

Federal, Sindh and Balochistan

The relevant Departments responsible for implementation of have been awarded only 2 points on this parameter. This is because while the laws within these jurisdictions require proactive disclosure of certain categories of information, these requirements have not been clearly defined. Two points have been awarded on this parameter because the Federal Government and Provincial Governments of Sindh and Balochistan have designated the monitoring of proactive disclosure to relevant implementing Departments. However, since the law does not require these Departments to produce annual reports on implementation within the public bodies under their purview, there is no publicly available data on how many of these public bodies have been fulfilling the requirements of proactive disclosure imposed in law.

KP and Punjab

The KP RTI Commission and Punjab Information Commission have received only 5 points on this parameter. The laws within KP and Punjab clearly require and define proactive disclosure of certain categories of information by all public bodies. These laws also require public bodies to submit Annual Reports to the relevant Commission detailing how they have met the requirements of Proactive Disclosure.

However, broadly speaking, only a small number of public bodies have submitted these reports to the Commissions for FY 2013/14 and 2014/15. This is why there is no publicly available data to assess this parameter.

Record Maintenance & Indexing Federal, Sindh and Balochistan

RTI laws within these jurisdictions require the computerized maintenance and indexing of records held by all public bodies. Additionally, the Federal Government and the Provincial Governments of Sindh and Balochistan have designated the monitoring of record maintenance and indexing to relevant Departments within the overall governance structure; however, no notifications on the minimum requirements of public record management have been issued within either Sindh or Balochistan, or even at the Federal level. However, only the Federal Government has been able to take action in this regard, with the piloting and official of an E-office system by the Ministry of Information Technology and Telecommunications in 2015. No such measures have been taken by either the Provincial Governments of Sindh or Balochistan.

KP and Punjab

RTI laws within these jurisdictions require the computerized maintenance and indexing of records held by all public bodies. Additionally, the monitoring of record management within these public bodies falls under the relevant Provincial Commissions, which have issued both general and public body-specific notifications on the minimum standards of public record management. This is why the KP RTI Commission and Punjab Information Commission, have been awarded 3 more points than their counterpart implementing agencies in both Sindh and Balochistan. However, the Commissions in KP and Punjab have not been able to pilot or launch an E-office system as it exists in the Federal Government. Additionally, because of delays in reporting by public bodies to the Commission, no data is available on the implementation progress within KP and Punjab with regards to Record Indexing and Maintenance.

Appointment and Training of Information Officers Federal, Sindh and Balochistan

No scoring of the relevant implementing agencies could be conducted on this parameter. While the law in these jurisdictions require appointment of Information Officers within all public bodies notified under law, it is not clear whether these public bodies are reporting to the relevant implementing agencies about total number

of Information Officers appointed. Further, it is unclear whether any implementing agency has been tasked with training these Information Officers within the above-mentioned jurisdictions.

KP and Punjab

A total of 588 Information Officers have been appointed in KP Province, according to the KP RTI Commission website's Directory of Information Officers. According to the same Directory on the Punjab Information Commission website, only 101 Information Officers have been appointed. Given that Punjab's population dwarfs the population of KP, this is a relatively low number of Information Officers for the Province. However, in terms of Training of Information Officers, the Punjab Information Commission has performed better than KP – training 286 officers by holding 15 2-day training sessions and 1 one-day training session between 2014 and 2015. On the other hand, KP has only been able to hold 4 one-day training sessions in the same time period, in which 90 Information Officers were trained. Punjab has also been able to produce a Training Manual for Information Officers, whereas KP has not.

3. Promotion of implementation of RTI law by Information Commission /Ombudsman

Annual Reporting

Federal, Sindh and Balochistan

No scoring could be conducted on the parameter of Annual Reporting within these jurisdictions, as the law does not require public bodies to submit annual reports to the relevant implementing agencies detailing the overall implementation progress of RTI. Similarly, the relevant implementing agencies are also not required to submit Annual Reports on the overall implementation progress within their jurisdictions to a higher statutory authority, such as the legislature.

KP and Punjab

Both the KP RTI Commission and the Punjab Information Commission have only collected and verified a negligible number of Annual Reports on implementation of RTI within public bodies under their respective jurisdictions. This had led to their failure to submit Annual Reports to the relevant legislatures on overall implementation progress of RTI within their jurisdictions. Annual Reports for FY 2013/14 and 2014/15 have not been published within either Province.

Processing of Complaints**Federal, Sindh and Balochistan**

The Federal Ombudsman has not been updating the Proceedings and Orders on Complaints on its website through its Annual Report, which only contains general information on total complaints received, without specifying how many were RTI-related. The same holds true for the Annual Reports of both the Sindh and Balochistan Ombudsman. However, Studies conducted in 2014-15 have revealed that out of 3 RTI-related complaints received, none received a response; however, two of these complaints resulted in disclosure of information upon the directives of the Federal Ombudsman. Only 2 information complaints were received by the Provincial Ombudsman of Sindh in the same period, of which none received a response or resulted in information disclosure, despite the directives of the Sindh Ombudsman. In Balochistan, 2 information complaints submitted in 2014-15 did not receive a response or result in disclosure, despite the directives of the Balochistan Ombudsman.

KP and Punjab

Between 2014 and 2015 the KP RTI Commission received 1025 RTI-related complaints, of which 718 have been closed, while the remaining are pending. This amounts to a disposal rate of around 70%. However, there is no compilation of data on how many complaints were closed in the time-period specified in law. In the same time period the Punjab Information Commission received 1500 complaints of which only 700 have been disposed, amounting to a disclosure rate of around 47%. As in KP, there is no data available on how many of these requests were closed within the time period specified in law.

Promotion of public usage of RTI**Federal, Sindh and Balochistan**

No scoring could be conducted on the parameter of Promotion within these jurisdictions, as the law does not require the relevant implementing agencies to promote public usage of RTI through various means, such as production of RTI User Manuals/Guides or Mass RTI Awareness Campaigns.

KP and Punjab

The KP RTI Commission and the Punjab Information Commission have been mandated under law to promote public usage of RTI through publishing of RTI User Manuals/Guides, and information required for proper submission of information requests and complaints, such as Directory of PIOs and Schedule of Departments notified under RTI law. Both Commissions have successfully published RTI User

Manuals/Guides and a Directory of PIOs notified under law within their relevant jurisdictions. However, neither Commission has been able to publish a Schedule of Departments notified under law. Additionally, the law mandates both Commissions to publicize and promote RTI usage through Mass RTI Awareness Campaigns through various channels of communication. However, in this regard, the KP RTI Commission has scored higher than its counterpart in Punjab. The former has been able to release RTI-related advertisements through both radio and television, whereas the latter has only been able to launch advertisements through radio, primary because of delays in release of the Budget allocated for Promotion.

4. Infrastructure and Resources of Information Commission /Department /Ombudsman**Budgetary Allocation, Expenditure and Staffing****Federal, Sindh and Balochistan**

No scoring could be conducted within these jurisdictions on the 3 parameters listed above. This is because the Budget of the relevant Ombudsman Offices and Information Departments do not specify allocations for or expenditures on RTI-related activities and functions. In fact, it is still unclear whether any such allocations have been made, or whether any such expenditures have been incurred. This is primarily because the relevant laws within these jurisdictions do not mandate the allocation and release of adequate resources for RTI-related activities and functions.

KP and Punjab

Relevant laws within these jurisdictions contain provisions mandating the allocation and release of adequate resources to Information Commissions to duly undertake their specified functions. However, KP has scored no points on the parameters of Budgetary Allocations and Expenditures, as it has not provided this information on its website or in any other form. On the other hand, Punjab has scored higher on both these parameters, as it has published its Budgetary Allocation and details of its Expenditures online. However, the Province has lost points on the parameter of Expenditures due to consistent delays in the release of its Budget. In terms of Staffing, however, KP has scored higher than Punjab, as the KP RTI Commission has published a complete organogram and details of all its employees online. Punjab Information Commission has only been able to publish its organogram, but not actual details of its staff online. It has also been unable

to fill 42 out of 43 sanctioned positions once again due to delays in release of Budget.

Website

Federal, Sindh and Balochistan

Zero points have been awarded to implementing and enforcement agencies within these jurisdictions, as their websites contain no details of RTI-related activities or actions taken in relation to RTI-related functions.

KP and Punjab

KP RTI Commission's website contains a greater wealth of information on its activities when compared to the website of the Punjab Information Commission, which lacks details on its Staffing and Complaints Proceedings. Therefore, the KP RTI Commission has scored more points than the latter. 5 points were deducted from the maximum points awarded on this parameter for the KP RTI Commission, which does not include its Budget on the website.



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