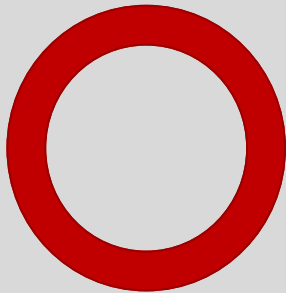
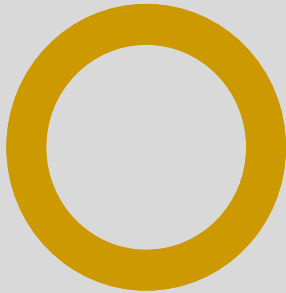


THE
CARTER CENTER



Pilot Findings from Select Agencies: BANGLADESH

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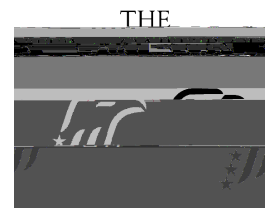


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findings of the IAT serve to identify areas in which access to information implementation has been insufficient or is faltering and that it can focus efforts and resources to ensure full and effective implementation, thus advancing the ability of the Bangladeshi people



The right of access to information is a powerful tool in the fight against corruption and in achieving good governance and development. It serves both government and its citizens by increasing citizen confidence as governments become more transparent and accountable. It enables citizens to participate more fully in public life, understand public policies, and help determine public priorities. Citizens also can use the information to exercise their fundamental human rights and to hold their government accountable for responding to their needs and providing high-quality service delivery.

With approximately 100 countries with statutory legislation, more than 5 billion people around the globe are afforded some legal rights to information. However, many of these countries are failing to fully implement their access to information laws, and

Developing the IAT

The Carter Center designed and created the IAT through desk research, consultant support, and periodic peer reviews. As a first step, the Center engaged in considerable research to identify the breadth of national and subnational implementation plans and to evaluate the commonalities. Remarkably, we found very few available national or agency-specific access to information implementation plans. Additionally, we did an extensive literature review related to access to information implementation and public policy and administration; again, there were relatively few articles or studies. Based on the initial research and our experience, we developed a preliminary draft matrix of similarities and unique/innovative approaches to implementation.

Following the research phase, The Carter Center convened a group of renowned experts to consider the value and efficacy of an implementation assessment instrument and to provide input into its basic design. This first meeting considered both the key issues in implementation and prospective indicators and the means by which to measure them. It was agreed that a major goal of the IAT was to create a tool that would be useful for governments, allowing them to assess the breadth and quality of their implementation efforts, rather than as a more punitive ranking or “hammer.”

During this initial consultation, we modified our original design, in which we had considered implementation in a series of phases.² The two days of robust discussion established the importance of the IAT but also highlighted a number of potential problems and risks associated with an implementation assessment. Underlying both days of discussion were the following questions:

1. How do we make the study replicable and portable across varying countries?

2. How do we ensure that the tool also assesses quality of the implementation rather than simply falling into a “check the box” exercise showing that an input/activity occurred but not demonstrating whether it was done well?

In order to assure the tool’s portability across countries and diverse legislative contexts—and to avoid substantiating a law that does not rise to the international norms—we agreed that the tool could not be an assessment of compliance with a specific law and would not directly engage the particulars of national legislation. Rather, the tool’s framing question should be, “To what extent is the agency capacitated and prepared to provide information and respond to requests?”

Perhaps the most challenging aspect in developing the IAT was the lack of clearly agreed-upon universal best practices for access to information legislation implementation. This concern signaled the need for an increased emphasis on developing key elements for full and effective implementation and good practices and required additional time to vet these determinations with expert colleagues from government, civil society, and academia. We also were aware that the tool should work equally well when used in a mature system (where the law

and guidelines; the issuance of plans/instructions for the implementation and institutionalization of the ac-



To assure the efficacy and value of the IAT, the Center decided to apply the tool in a phased approach in more than 10 countries. Pilot phase I assessed three countries, pilot phase II assessed four countries and pilot phase III assessed an additional four countries. While the initial intent was to assess each country once, we decided to include the initial countries in the subsequent phases in light of the modifications of the indicators following each phase. In pilot phase III, we applied the revised indicators in all 11 countries.

Select on of Countries/Agencies

In preparation for selecting the pilot countries to test the IAT, The Carter Center created a list of criteria and variables. For the pilot selection, we considered the following conditions:

- Regional diversity
- Variety in length of time that the ATI law/regulation has been in effect
- Distinct legal system/framework (common law versus civil);
- Types of civil service (professionalized versus more partisan)
- Development status/income level
- Availability of social scientists/civil society leaders to undertake the study
- Existing data sets or studies related to access to information
- Political will/interest
- Divergent participation in the Open Government Partnership

Bangladesh, Mexico, and South Africa were chosen as pilot phase I countries, while Chile, Indonesia, Scotland, and Uganda served as the pilot phase II countries. Pilot phase III included all of the above countries as well as Georgia, Jordan, Guatemala, and the United States.

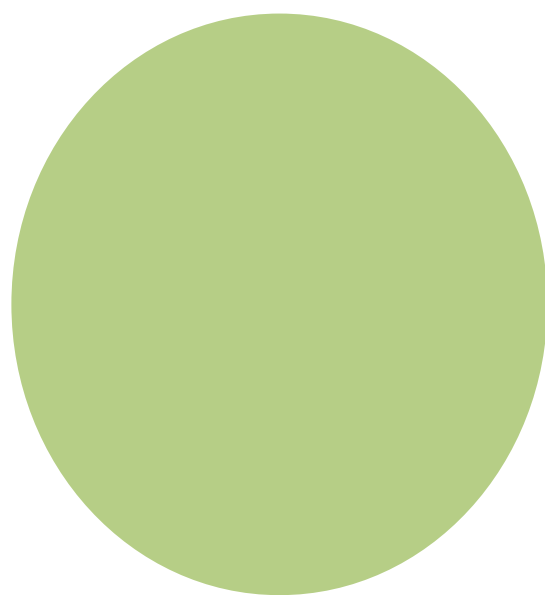
The IAT was applied in seven ministries and/or agencies in each country. For uniformity, we decided to engage the same ministries/agencies in each of the countries. Criteria used in determining the specific ministries/agencies included:

- Those agencies that held information critical for fundamental human and socioeconomic rights
- Ministries and agencies that play a role in poverty reduction and in fulfillment of the Millennium Development Goals
- Ministries and agencies that are key in the overseeing or promoting the ATI regime
- A mix of ministries and agencies, in particular public agencies of varying size and resources

Ultimately, the ministries/agencies selected were: Finance, Education, Health, Justice, Agriculture, Customs, and, Statistics (or another small/less-resourced agency). In some cases, the specified ministry did not exist or was combined with another ministry or agency. In those cases, we substituted an equivalent ministry/agency.

Pilot Phases

In 2011, The Carter Center completed pilot phase I of the tool in three countries—Bangladesh, Mexico, and South Africa, followed by an expert review and extensive modifications to the methodology and indicators. Pilot phase II was completed in the spring of 2013 and included application of the indicators in the original three countries as well as Chile, Indonesia, Scotland, and Uganda. Once again, The Carter Center conducted a review meeting to refine the tool and methodology. In the fall of 2013, pilot phase III commenced and included four new countries: Georgia, Jordan, Guatemala, and the United States. The researchers in these





The Constitution of Bangladesh (1972) recognizes freedom of thought, conscience, and speech as fundamental rights (Article 39). The right of access to information is an inalienable part of these rights, but it was not until October 2008 that Bangladesh approved a statute specifically recognizing a citizen's right to information and providing a procedure for its implementation.

In 1975, Bangladesh's short-lived experience with democracy—following its independence in 1971—ended as nationwide famine resulted in instability. Ultimately, the government fell into military rule—which would continue until 1990 when the country reverted back to parliamentary democracy. During the 1990s several prominent figures in civil society and the media began a conversation about the right of access to information, citing its importance in good government and sound development, but no substantive progress was made.⁵ In 2006, the government was again facing challenges. The national elections had been canceled following the resignation of the Bangladesh Nationalist Party (BNP) and the subsequent withdrawal of the Awami League from the mandated election to be held within 90 days. Again, the military felt compelled to intervene and it installed a continuing, neutral, caretaker government to prosecute acts of corruption and usher in anti-corruption reform in preparation for the reinstallation of competent, transparent, and effective democratic government.

With this intention, the right of access to information was first specifically established as an ordinance during the 2006-2008 interim caretaker government. In March of 2009, the newly elected government ratified the ordinance in the National Parliament, thus transforming the ordinance into a legislative act. The Right to Information Law (RTI) came into effect on July 1, 2009, and granted the right of access to information in the hands of government

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of 2009.⁹ Several NGOs also have held training sessions on RTI that help people connect information their own lives. The RTI-focused NGO, Article 19, has even developed several songs that explain the RTI Act to the tune of local folk tunes.¹⁰

Unfortunately, as has been the case elsewhere, a major barrier to establishing the necessary political will to effectively implement the law has been the ongoing culture of secrecy, which is further reinforced by the continued existence of the Official Secrets Act and the Government Services Conduct Rule of 1979.

Use of the Law

Some stakeholders have lamented that as the Bangladeshi RTI was not produced through grassroots movements, but rather the passage of the law was supported by well-intentioned elites in government and civil society, that many citizens do not feel ownership of the right. Yet, without a doubt, the RTI Act has had concretely positive influences in the lives of many Bangladeshis.

For example, in January 2011, Ekota Youth Network, a group focused on participatory local government became aware that several severely impoverished women in their community had been left off of the list of Vulnerable Group Development (VGD) beneficiaries for the fiscal year 2011-2012. The youth group used RTI to request the list of individuals slated to receive VGD funds so that they could verify that the criteria for eligibility had been followed when the beneficiaries were selected. The group's request met with resistance from the local government official and they did not initially receive a satisfactory answer to their request. However, when the chief officer of the local upazila (sub-district government unit) learned of their request, he formed an investigation team and found several people on the list that should not have qualified for VGD benefits. Four

poor women from the local community were also moved onto the list. A month and a half after submitting their request, the youths received the full list—with the four impoverished women now included—and were able to verify that all recipients were chosen according to the established criteria.¹¹

The RTI Act in Bangladesh has empowered citizens to learn about the country's social safety nets and to provide a check on whether they are being distributed properly. Nevertheless, many access to information advocates still stress that awareness of the RTI Act remains very limited.

There are also disparities among Bangladeshis in terms of accessing proactively published information. About five percent of the population has access to the internet, meaning that the vast majority of Bangladeshis must visit the offices for proactively published information and/or make requests in person. Approximately 31.5 percent of the population lives in poverty, and women in particular are less likely to be literate.¹² These problems have become less severe over time but continue to impose substantial barriers for many Bangladeshis to employing their right of access to information.

Enforcement of the Law

A common critique of Bangladesh's RTI law is that it lacks a strong internal, proactive enforcement mechanism to push for adherence to regulations and automatic publication requirements. However, the Information Commission, as a binding appellate body, has consistently upheld the right of access to information for citizens.

In August 2010, for instance, Mr. Saud Khan, a leader from a nomadic Bede community, learned of a government program meant to provide financial assistance for impoverished farmers. Mr. Khan feared that the reason he had not heard of the program sooner was because the Bede community is often ostra-

Elemental functions: Rules for writing a word

The diagram illustrates the elemental functions of writing a word. It shows a sequence of steps from a blank page to a completed word, with various colored boxes and arrows indicating the process. The diagram includes a grid of letters, a list of words, and a flowchart of the writing process.

Over the document detailing instructions for ATU...
A new browser system...
The program...
The program...
The program...

The diagram shows a sequence of steps for writing a word, with a grid of letters and a flowchart of the writing process. The steps are numbered 1 through 10, and the letters are arranged in a grid. The flowchart shows the sequence of steps from a blank page to a completed word.

1. The first step is to write the letter 'a'.
2. The second step is to write the letter 'b'.
3. The third step is to write the letter 'c'.
4. The fourth step is to write the letter 'd'.
5. The fifth step is to write the letter 'e'.
6. The sixth step is to write the letter 'f'.
7. The seventh step is to write the letter 'g'.
8. The eighth step is to write the letter 'h'.
9. The ninth step is to write the letter 'i'.
10. The tenth step is to write the letter 'j'.

Table 5. Ministry of Education

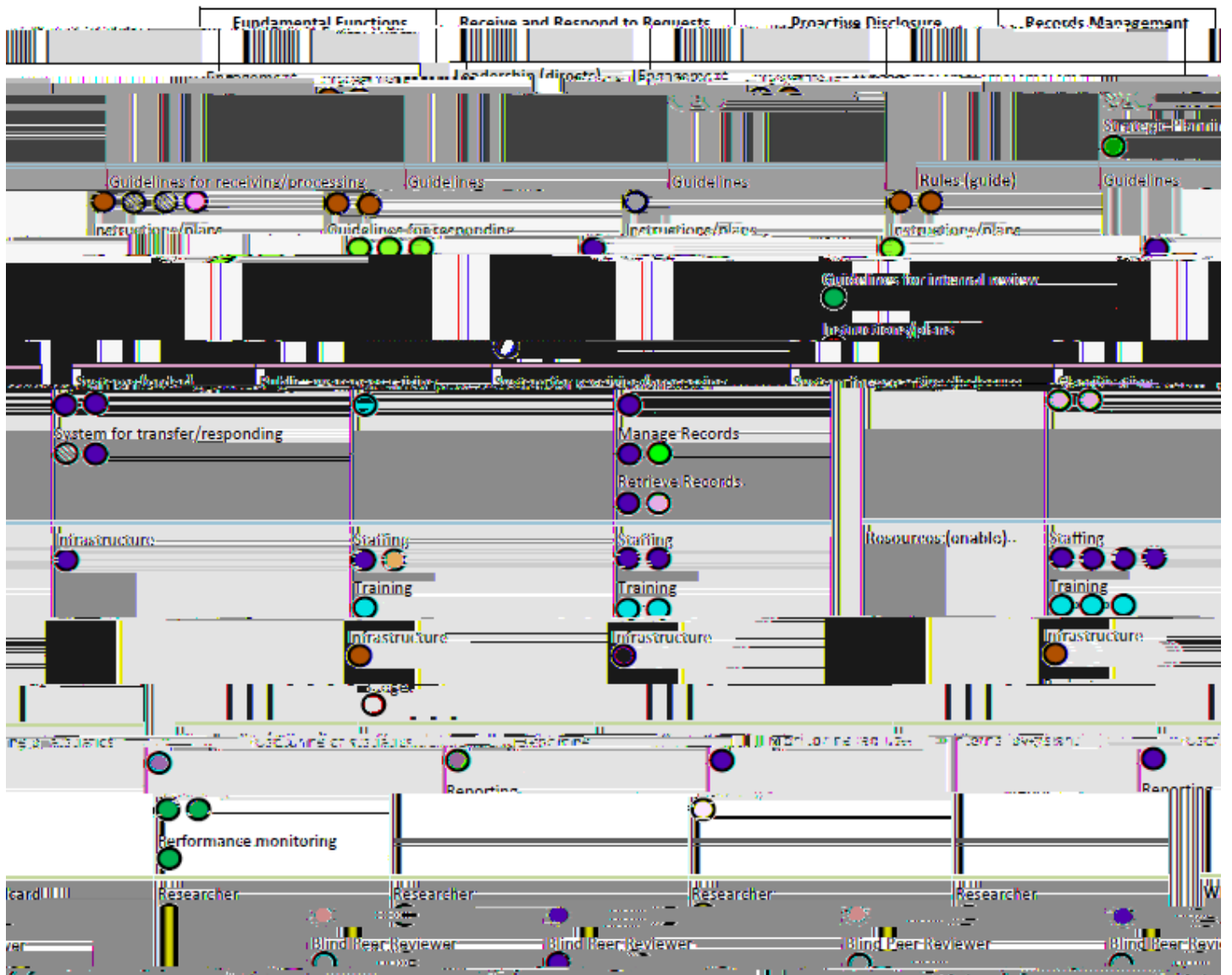


Table 6. Ministry of Finance

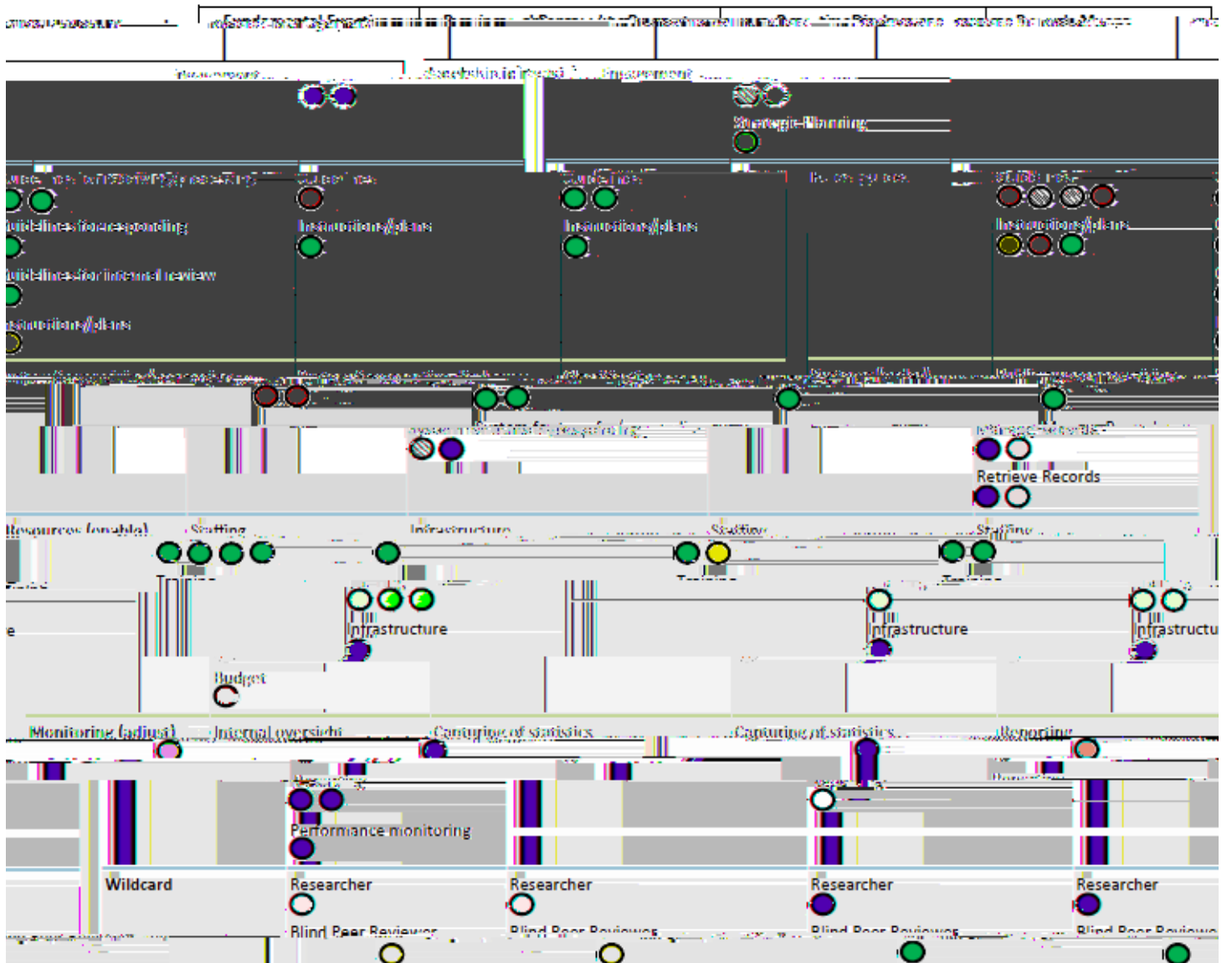
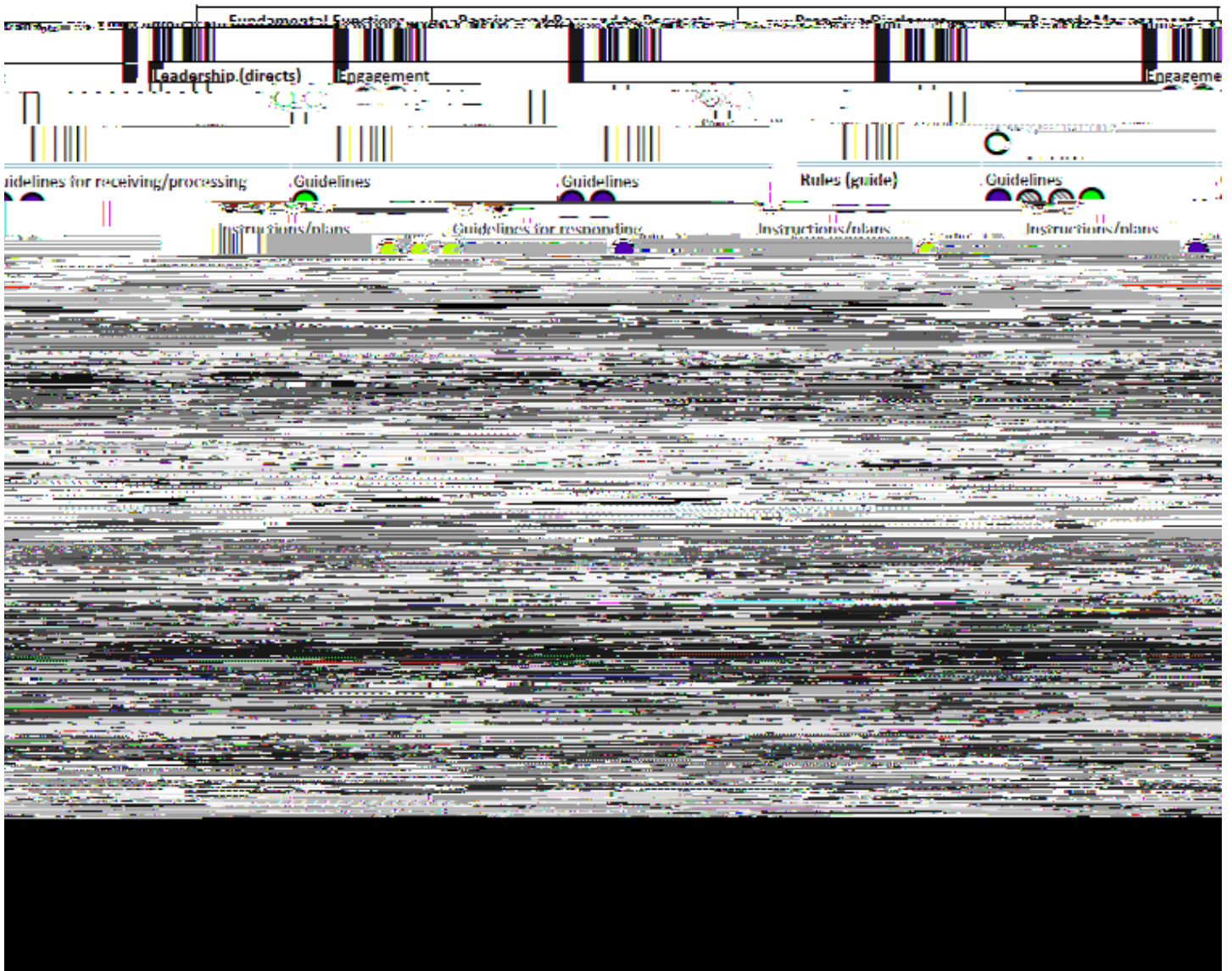


Table 7. Ministry of Health

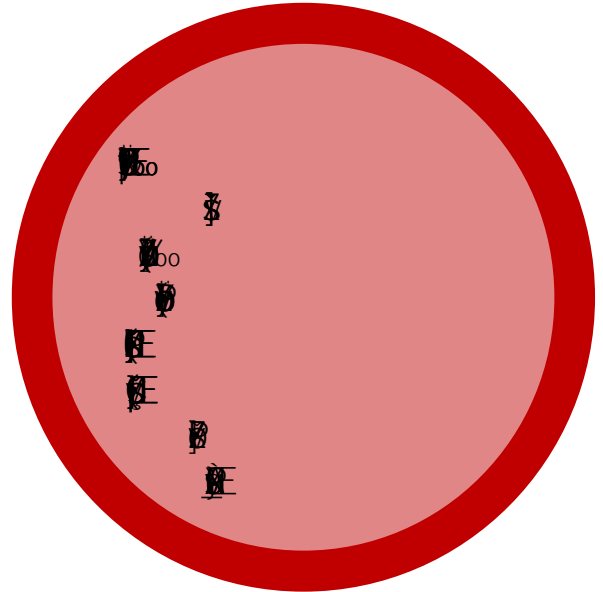


Table 8. Ministry of Justice



data readiness. Very few public officials are aware about RTI and records are managed manually. As a result, at least one activist received inconsistent information on the same issue from two government agencies. Moreover, local agencies are facing logistical constraints to preserve records in traditional manner.

Focal group participants indicated that implementation of RTI legislation has fallen short of its goal to break the culture of secrecy in the Bangladeshi government. Therefore, CSO members provided a number of relevant suggestions to support the government in fulfilling its RTI mandates effectively and comprehensively. The participants recommended that the government identify a select number of ministries as models for RTI implementation; establish advanced and repeated trainings for DIOs, proactive disclosure officials and authorities to focus their mindset on information transparency; and, provide financial support to agencies to help them collect information with the purpose of disclosure. In terms of raising awareness about the right to information, it was suggested that more emphasis be placed on informing citizens about RTI by having ministries display their DIO's name and contacts on their website; take advantage of the promotional role of center executive agencies such as Cabinet Division and Ministry of Public Administration; and, engage the media to publish stories related to non-response.





Despite the passage of five years since the enactment of right to information legislation, public agencies in Bangladesh do not appear to consider its implementation as part of their mainstream functions. Based on the findings from the IAT application in six public agencies in Bangladesh, including the Ministry of Agriculture, Ministry of Education, Finance Division, Ministry of Health, Law and Justice Division and the Customs Agency, it appears that the agencies have not made significant progress in implementing and operationalizing the Act. Their preparedness in terms of demonstrating policy commitment, formulating detailed operational procedures, creating public awareness within and outside the agencies, setting internal mechanisms and mainstreaming records management procedures is insufficient for the effective fulfillment of its RTI mandates. As a result, in many agencies their current practices seem to closely resemble those from before the enactment of RTI legislation.

Leadership and Guidance

Information policy is necessary in order for governments to demonstrate their commitment to transparency. However, these agencies do not have the authority to issue such policy. As per the Rules of Business, 1996—a policy document which distributes functions among ministries—this authority lies only with the Ministry of Information, which has not issued any information policy. Nonetheless, the agencies could show their commitment to RTI implementation by including transparency provisions and/or RTI in respective strategic planning documents and guiding RTI related officials through the process of disclosing information. Unfortunately, of all the agencies assessed, only Customs has set any strategic goal on information disclosure. Its strategic planning document titled "Outline of Modernization Plan

(2011–16)" proposed an efficient, integrated national tax accounting network that will correctly account for, reconcile, and record tax payment information . . . and make visible this information in real time basis to taxpayers and to all stakeholders. The Plan also incorporated disclosure under the title of 'Strategic Communication and Taxpayer Outreach, Education and Assistance.' This type of strategic declaration helps the agency to promote information transparency in the public sector.

Since administrative set-up within ministries is

management policies and guidelines properly in their respective agencies.

Rules and Guidelines

Together, the 2009 Right to Information Act, the RTI Rules framed by the Ministry of Information, and a set of regulations promulgated by the Information Commission dictate the mandates and procedures of information disclosures. As such, agencies are obliged to adopt, rather than create rules in the case of receiving, processing and responding to requests. All of the assessed agencies have adopted these general rules, and most have at least partially implemented RTI regulations regarding pro-active disclosures.

While the agencies do not have authority to revisit these rules or regulations, they can issue separate disclosure guidelines by contextualizing the RTI Act, rules and regulations. RTI law, rules and regulations have generally outlined information disclosures and do not take into consideration the variations found in agencies. DIOs would benefit from the development of agency-specific guidelines that explain what type of requests should be approved and rejected. To date, no such initiatives have been undertaken by the piloted agencies; notably, the Anti-Corruption Commission (an agency not assessed) has prepared its own unique RTI guidelines.

Most of the assessed agencies did not incorporate RTI in their operational plans, namely, 'Job description of the Ministry,' 'List of work distribution,' and 'citizen charter.' The only exception is the Finance Division, which added request-driven provision of information in its 'List of Work Distribution' document. This agency also distributed this document internally and posted it to their website, which resulted in easier identification of the official(s) responsible for RTI implementation by the other agency officials and the general population.

In contrast, responsibility for publication schemes and website management has been specified in work distribution planning documents. For example, System Managers/Analysts are delegated to look after website maintenance.

Systems

Systems for RTI legislation implementation include three main components: the agency's public outreach regarding RTI procedures, methods of responding to requests and making pro-active disclosures, and tracking the agency's rate of response. Despite the fact that each agency has systems for public outreach including periodic publications and a website, none include a RTI component.

In response to requests for information, the relevant DIO collects requested information/documents and delivers them in the applicant's preferred method (email or hard copy), or sends the applicant a denial notice. Bangladeshi RTI law does not allow the transfer of requests. The agencies appear to have sufficient systems in place for organizing and tracking requests, with all FOI-related activities recorded in files and compiled by each agency's RTI unit. Each file has a specific number with which anyone can track requests and responses.

With respect to proactive disclosures, the ministries place their documents and decisions in the public domain through their websites, newspaper notifications and issue-based publications. For example, on the Ministry of Health's website, new documents and decisions are added and previously disclosed documents are archived. Among the piloted agencies, the Finance Division's website is the most updated and has the richest and most varied information. Proactive disclosure has improved in many of the assessed agencies. For example, ministry
