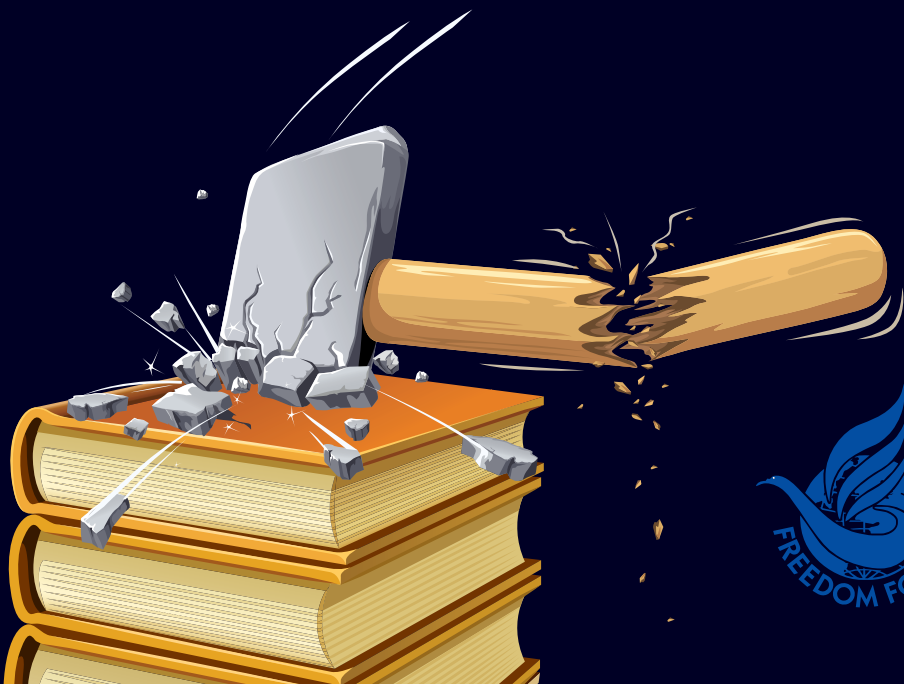


TOWARDS OPEN GOVERNMENT IN NEPAL

EXPERIENCES WITH THE RIGHT TO INFORMATION



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TOWARDS OPEN GOVERNMENT IN NEPAL

EXPERIENCES WITH THE RIGHT TO INFORMATION

Strengthening the Right to Information Regime in Nepal
First National Convention on the Right to Information
Thematic Papers and Proceedings

MARCH 28-29, 2011 • KATHMANDU, NEPAL



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ACKNOWLEDGEMENTS

Nepal enacted the its Right to Information (RTI) Act in July 2007. In doing so, it became the third country in South Asia, after Pakistan (2002) and India (2005), to adopt such a law. It was, however, the first country in the region to have formal constitutional recognition of the Right to Information. Bangladesh adopted its RTI law in 2009. Afghanistan, Bhutan and the Maldives are drafting their laws.

On March 28-29, 2011, Freedom Forum, in collaboration with the World Bank, organized Nepal's first National Convention on the Right to Information in Kathmandu in an effort to draw high level attention to issues affecting implementation of the RTI law and to build broad consensus to strengthen the RTI regime. The convention brought together over 150 practitioners, including senior Government of Nepal officials, members of the Constituent Assembly, and civil society leaders. Nearly a dozen eminent RTI champions and scholars from South Asia also served as expert resource persons at the various sessions of the convention. The thrust of the National Convention was to inject new energy and create an enabling environment for RTI practitioners to activate both the demand and supply sides of implementation, after four sluggish years following the enactment of the RTI law.

Following two days of lively debate, the highlight of the convention was the adoption of the Kathmandu Declaration, a 48 point charter that includes practical measures to strengthen the RTI regime as a tool to improve governance and accountability.

Many people contributed to the success of the convention. We at Freedom Forum extend our deep gratitude to Dr. Ram Baran Yadav, Honourable President of Nepal, for inaugurating the different and sharing his insightful thoughts. We also thank Mr. Krishna Bahadur Mahara, Honourable Deputy Prime Minister and Minister for Information and Communications, for addressing the inaugural session.

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Tara Nath Dahal

Chairperson

Freedom Forum, Nepal

RTI INITIATIVES IN NEPAL: A BACKGROUND NOTE

Tara Nath Dahal and Chiranjibi Kafle

INTRODUCTION

Right to Information or Freedom of Information is regarded as a fundamental human right. The United Nations, in its very first General Assembly in 1946, adopted a resolution [59.1] stating that "freedom of information is a fundamental human right and ... the touch-stone of all the freedoms on which the United Nations is consecrated."

The Right to Information (RTI) underscores the fact that all citizens have the right to access official documents held by government and other public bodies. In general, 'RTI' laws define a legal process by which government information is made available to the public.

The Right to Information is also a foundational building block for democracy and participation, as well as a key tool for holding the government to account, and checking corruption. It is recognised in international law, as well as the laws and constitutions of more than 85 countries world-wide.

Nepal adopted Right to Information Act in July 2007. It was the third country in South Asia, after Pakistan (2002) and India (2005), to adopt such a law. It was, however, the first country in the region to have formal a constitutional recognition of the Right to Information, as this right was explicitly guaranteed in Article 16 of the 1990 Constitution. The Interim Constitution also guarantees the RTI in Article 27.

The Nepalese Legislature-Parliament endorsed the Right to Information Act acknowledging several points. The Act's Preamble says that the law was adopted because a legal arrangement for RTI is desirable "in order that the state functioning [mechanism] is made open and transparent in line with the democratic polity so as to make it accountable and responsible towards the citizen; in order to ease the general public's access to information of pub-

lic interest; in order to protect sensitive information that could be damaging to the interests of nation as well as citizens; and in order to protect and implement citizen's Right to Information." In fact, Right to Information movements emphasise the principle of "maximum disclosure" which presumes that all information held by public bodies can be accessed by members of the public and that any restrictions should apply in very limited circumstances."¹

BACKGROUND TO THE RTI MOVEMENT IN NEPAL

The Constitution of the Kingdom of Nepal 1990 guaranteed the Right to Information as a fundamental right for the first time, which set the ground for an RTI Act. The Federation of Nepalese Journalists (FNJ) lobbied for an RTI law considering it an important tool for journalists to get information on all public bodies and check wrongdoings in public authorities. Although the government showed little interest in the formulation of an Act in the 1990s, the judiciary played an important role in the interpretation of the Right to Information and the development of RTI jurisprudence in Nepal.

In 1991, some citizens approached the Supreme Court (SC) seeking information in connection with a dispute about the use of water resource of two rivers in Nepal. The first dispute was related to the unilateral construction of the Tanakpur dam by India on the Mahakali River. In this case, the SC issued orders to make public the Memorandum of Understanding (MOU) inked between the Prime Ministers of both countries on this issue.

The second case was related to the comprehensive feasibility study carried out for the implementation of a hydropower project on the Arun River in Eastern Nepal where details of the study

¹ Puddephatt, A. (2004). Right to Information: A Practical Guidance Note, UNDP, Bureau for Development Policy, Democratic Governance Group.

and the project were sought by citizens in public interest.² In 1993, the SC gave a verdict that the government was to disclose all information on this matter. In the same judgment, the SC described the importance of the RTI and directed the government to enact an RTI law as soon as possible. Further, the court also set out an eight-point procedure to provide copies of documents by public agencies until such a law was enacted.³ The government neither reacted nor complied with the ruling.

In 1993, the government had tabled a Bill on the RTI in the Parliament but it was rejected by a Parliamentary Committee as some stakeholders including the media opposed that bill, blaming it for its tilt towards "concealing" rather than "disclosing" information.⁴

In 1997, media organisations took the initiative to get a new draft bill tabled. A seven-member independent RTI law drafting team, comprising of media experts, lawyers and Members of Parliament was formed to prepare this draft bill. The Bill was finally tabled in the Parliament in 2002 but it went into oblivion due to political bickering and the dissolution of the parliament. Further, the Maoist insurgency and the Royal Palace massacre led to stagnation in all areas of development, and RTI was no exception.

The RTI campaign gained momentum again after the restoration of the Parliament following the successful popular movement also known as the April Uprising (2006). A High Level Media Commission formed by the government submitted a report in September 2006 recommending the adoption of a Right to Information law to give effect to this constitutionally protected right.

² *Advocate Gopal Sivakoti 'Chintan' et al v. Ministry of Finance and others*, Writ Petition 2049/050.

³ The petitioners had asked for the copies of the project document of World Bank financed Arun III hydropower project. Ironically, while the court set the procedures for obtaining information it did not issue orders for producing documents in this case as demanded by the petitioners.

⁴ Interview with Mr. Homnath Dahal, then Chairperson of the Nepal Journalist Association, and later Member of Parliament, Nepali Congress.

A group of civil society organisations, including Freedom Forum, an organisation working for the freedom of expression and media rights, FNJ, an umbrella organisation of Nepalese journalists, and Nepal Press Institute, an NGO working for the promotion of media rights, got involved in a nationwide advocacy campaign to spread awareness on RTI.

In September 2007, the government finally formed a taskforce to draft a Bill on the Right to Information for the second time. The seven-member taskforce was headed by Kashi Raj Dahal, former Secretary of the Judicial Council, while the members of the taskforce were mostly career journalists and representatives of media unions and consisted of both government and non-government members.

The RTI laws and practices of South Africa, India and Thailand provided inspiration to the drafting committee. The thematic exposure to these countries remained an impetus in drafting the RTI laws for Nepal. Wide debates were held between the members of the taskforce and representatives of different groups such as the media, CSOs, NGOs, legal practitioners, parliamentarians, bureaucrats, the private sector, security agencies, and so on. There were some concerns on provisions related to proactive disclosure and the definition of 'information', but these were eventually resolved. No substantial dissent arose since this process was taking place immediately after the popular movement. The government had reservations on the Bill prepared by the Taskforce and made certain amendments before tabling it in the Parliament.

The Parliament endorsed the RTI bill with some amendments on 18 July 2007 and the Act came into force on 19 August 2007.

RTI AND THE CONSTITUTION

Article 27 of the Interim Constitution of Nepal, adopted by the House of Representatives in January 2007 guarantees the Right to

Information. Previously, the Constitution of 1990 also guaranteed this right (Article 16).⁵ The Interim Constitution 2007 has expanded this right over personal information.

The Right to Information, which has been considered as a part of the right to freedom of expression by international human rights courts in recent years, is protected by international instruments to which Nepal is a party. The International Covenant on Civil and Political Rights (ICCPR)⁶ protects the right to freedom of expression and inter alia the Right to Information under Article 19. Such international instruments are part of the Nepalese legal system according to the Nepal Treaty Act.⁷

Scope

The RTI Act 2007 has a number of progressive features. It guarantees the Right to Information as fundamental right subject to exceptions, contains a broad definition of public bodies, and mandates the establishment of the National Information Commission (NIC). At the same time, the Act suffers from some weaknesses such as a regime of exemptions that appear to promote the withholding of information. In essence, the provisions of the RTI legislation should prevail or override all other provisions with regard to the question of giving information.

The RTI Act 2007 deals with three dimensions: bodies with an obligation to respond to requests for information, types of materials included in the definition of “information”, and parties entitled to exercise the Right to Information.

⁵ Article 16 of the Constitution of Kingdom of Nepal, 1990 provides that “Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance. Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.”

⁶ Nepal ratified the ICCPR on 14 May 1991.

⁷ Article 9 of the Nepal Treaty Act 1991 states that, “If any provision of the treaty of which His Majesty’s Government or the Kingdom of Nepal is party, after such treaty is ratified, acceded or approved, is inconsistent with any law in force, such law to the extent of such inconsistency, shall be void and the provision of the treaty shall come into force as law of Nepal.”

The RTI Act applies to ‘public agencies’, a term which is defined in Article 2(a). The definition covers constitutional and statutory bodies, agencies established by law to render services to the public, or agencies operating with government funding or controlled by the government. It also covers political parties and organisations, and non-governmental organisations (NGOs) which operate with funds obtained directly or indirectly from the Nepal government, a foreign government, or an international organisation.

The Act has defined ‘information’ as any written document, material or information related to the functions, proceedings thereof or decisions of public importance made or to be made by public agencies.⁸ The term ‘written document’ includes any kind of scripted documents and any audio visual materials collected and updated through any medium that can be printed and retrieved.

Article 3 of the Act provides that the Right to Information is a right of ‘every Nepali citizen’ and accordingly, every Nepali citizen shall have access to information held by public agencies.

Exemptions

The Act provides reasons that could justify a refusal to disclose information. The list includes national security, information affecting the harmonious relationship among various castes and communities, privacy and others.⁹ A public body may only invoke these exemptions if there is an “appropriate and adequate reason”.

In a situation when a request is made for a record which contains some information that can be released and other information to which an exception applies, the law provides that the concerned information officer has to provide the requested information after separating it from the information that cannot be released.¹⁰

⁸ Article 11(1)-(4).

⁹ Article 3(3).

¹⁰ Article 3(4).

Application Process

Each public body must appoint an Information Officer (IO) who is responsible for dealing with information requests. A Nepali citizen who wishes to obtain information must submit an application to the relevant IO mentioning the reason.¹¹ The IO is obliged to provide information immediately or within 15 days, or provide notice to the applicant of the reasons for any delay.¹² The IO shall provide requested information within 24 hours of the request in case the information is related to the safety of the life of any person.¹³

Appeals against Denials

The Act includes a detailed provision on appeals against refusal to provide information, as well as other failures to comply with the RTI Act.¹⁴ An applicant may appeal to the head of the public agency within seven days in case he or she is not provided with the information or partial information. In the Act, this appeal has been referred as a 'complaint'.¹⁵ After investigating such a complaint, the head shall order the IO to provide information as demanded by the applicant if it is found that the information was denied or partially provided or wrong information was provided, or a decision made that information cannot be provided.¹⁶ In the latter case, he or she has to provide a notice stating reasons for denial to the applicant.¹⁷ In case of dissatisfaction over the decision made by the head, the requester may file an appeal to the National Information Commission (NIC) within 15 days. The NIC may summon the IO or the concerned head of agency and take their statement, review evidence and inspect any document held by the public body. The Commission shall have to reach a decision within 60 days. The decision can be appealed to the appellate court within 35 days.¹⁸

¹¹Article 7(1).

¹²Article 7(3).

¹³Article 7(4).

¹⁴Article 9 and 10.

¹⁵Article 9 (1).

¹⁶Article 9 (2). There is no specific timeframe imposed on the head to make his decision.

¹⁷Article 9 (4).

¹⁸Article 34.

Article 32 and 33 provide for compensation and other remedies where the Commission finds that a head of the public body or an IO processed a request improperly.

Proactive disclosure

Public bodies under the RTI Act are obliged to classify, update and disclose information on a regular basis.¹⁹ The Act provides for a list of information that is mandatory for public bodies to disclose proactively. However it has failed to provide guidelines about the process of making information public.²⁰ The concerned provision simply states that public bodies may use different national languages and mass media while publishing, broadcasting or making information public.²¹

National Information Commission (NIC)

The Act provides for an Information Commission, a permanent mechanism to hear complaints in cases related to the Right to Information. The Commission comprises three members headed by a Chief Information Commissioner. Members of the Commission are appointed by the Government on the recommendation of a committee. The committee consists of the Minister for Information and Communications, the President of the Federation of Nepalese Journalists and the Speaker (of Parliament), with the latter acting as chair.²²

The Commission has various mandates. The RTI Act outlines a broad role for NIC as a promoter and protector of the Right to Information. The recognition and execution of this role by the Commission is indispensable for the successful implementation and the fulfillment of the objectives of the RTI Act. Apart from its major responsibility of adjudication of cases, it may issue orders to public

¹⁹ Article 4(2)(a).

²⁰ The Act is silent whether such disclosure is made through publishing documents or uploading information on the website of concerned public bodies, or by disseminating through media, or simply by posting the information on the notice board of the office.

²¹ Article 4(3).

²² Article 11(1)-(4).

agencies, provide recommendations and suggestions to the government and other public bodies and prescribe timeframes to public bodies to provide information.

The Commission's budget is provided by the government.²³ An annual report of the Commission's activities must be published and submitted to the Parliament every year.²⁴

Protection to whistleblowers

The Act provides protection to whistleblowers affirming the responsibility of employees within public agencies to provide information proactively on any ongoing or probable "corruption or irregularities" or on any deed constituting an offence under prevailing laws.²⁵ Further, it is forbidden to cause harm to or punish a whistleblower for such disclosure and whistleblowers may complain to the Commission and demand compensation in cases where they are penalised.

RTI regulation 2008

The Regulation was adopted pursuant to Article 38 of the RTI Act 2007. Among other things, it provides the schedule of fees to obtain information, elaborates the list of information to be disclosed by public agencies proactively, describes the procedures for an appeal to the Commission and gives the template of filing an appeal. It also sets the time limit for the head of public agencies to respond to the complaint made by an applicant, thereby filling a gap existing in the Act.

Obligations

The RTI Act places obligations on a number of actors, including the Government and public bodies. Key obligations include:

- To honor and uphold the citizen's Right to Information (RTI Act: 4.2)
- To maintain updated records of information, at least up to 20 years before the enactment of the Act (RTI Act 5.2).

²³ Article 23.

²⁴ Article 25.

²⁵ Article 29.

- To appoint information officers and ensure that the IO is furnished with all information concerning the office (RTI Act: 6)
- To review classification of information (public or confidential) every ten years (RTI Act: 27.6).
- To make rules to implement the Act (RTI Act: 38).

The government, through a classification committee, adopted a set of rather general guidelines on classification of information, the bulk of which consists of a list of types of documents, broken down by public body, which will not be disclosed. It also adopted Regulations for implementation of the RTI Act in 2009.

The government has not, however, appointed a nodal agency or body within the government to be responsible for promoting the implementation of the Act. Similarly, there is no central body or nodal point which is responsible for monitoring and enforcing compliance by public bodies with their obligations under the Act. In the absence of such a nodal agency, implementation of the RTI Act across public bodies is likely to be tough.

There are also other obligations for public bodies:

- To train one's staff on RTI (section 4(2)).
- To publish information proactively (section 5(3) and Rule 3).
- To process complaints against refusals to provide information, through the head of the body (section 9(1)).
- To take departmental action, through the head of the body, against Information Officers who intentionally obstruct access to information (section 9(3)).
- To protect information of a personal nature (section 28).
- To provide information regarding public positions to officials holding those posts (section 30).
- To take departmental action against Information Officers or the heads of public bodies where appropriate (section 32(3)).
- To correct wrong information (section 35).

The Act also imposes an obligation on employees to provide information on wrongdoing (section 29(1)).

CURRENT STATUS

Several achievements have taken place in Nepal after the adoption of the RTI Act in 2007. Notably, the Information Commission was formed, an RTI Regulation issued, and some efforts were made to spread awareness among people to highlight the significance of the RTI. However, the country has not witnessed any substantive progress regarding the implementation of RTI legislation.

It is nearly four years after the Act was adopted, but the volume of requests for information is very low and, also no effective mechanism has yet been developed to monitor the requests filed for information. Compliance with the proactive publication rules in the RTI Act is also limited.

Sadly, neither the demand side nor the supply side (that collectively includes the government, public bodies, civil society, the oversight body, the media, as well as the general public) are very actively engaged with this issue in Nepal.

RTI is a tool to bring about a multiplier effect in people's livelihoods in terms of development and economic and social well-being. It promotes openness and an information-sharing culture. But most stakeholders have failed to acknowledge this fact.

Civil society organisations and NGOs in particular, are expected to drive the demand for information. So far, this has not happened in Nepal, despite the fact that there are some 27,000 formally registered civil society groups in the country.

It appears that only a few steps have formally been taken to implement the RTI Act. Approximately 400 public bodies, out of a

total of 5000-6000, have appointed information officers (IOs), as required by Section 6 of the Act. Although central government ministries and departments have largely complied with this obligation, local governments including DDCs and VDCs have not been able to follow suit.

Many IOs appear to be appointed from among the ranks of department spokespersons. There seems to be a contradiction and conflict of interest here as the spokesperson is supposed to provide information to depict the body in a positive light, while the IO is supposed to release all information, good or bad.

Public bodies have very little or no training whatsoever on the Right to Information. Tailored capacity-building efforts for IOs are necessary. It is also unclear what measures have been taken to classify and update information, as required by the Act.

Public bodies in Nepal provide a lot of information on a proactive basis, and this appears to be an area where important progress has been made in recent years. For example, the Ministry of Education informed us that they hold a student census twice a year to ensure updated information.

Despite this, it would seem that very few, if any, public bodies have undertaken specific measures to ensure that they are meeting the proactive disclosure obligations set out in Section 5 of the RTI Act and Rule 3. According to a World Bank study, senior officials did not seem to be aware of these obligations or were under the impression that their existing proactive dissemination efforts were sufficient.

Some public bodies, such as the Ministries of Health and Education, have put in place Management Information Systems. At the same time, the general consensus seemed to be that, overall, record management was poor and that this was a serious challenge for Nepal. Even NGOs do not appear to have taken any formal steps to implement their obligations under the Act.

Constraints for RTI implementation

Several factors have obstructed the effective implementation of the RTI Act (or better practice of the Right to Information) in Nepal. Major factors can be outlined as follows:

- ***Slow pace of political transition***

The state has not been able to focus attention or plan concrete actions towards the implementation of the Act since the government has needed to focus its efforts on the constitution drafting process through the Constituent Assembly (CA). and managing the political transition. Ironically, the government has failed to come up with any institutional design to implement the Act since it felt that its responsibility was over with the promulgation of the Act.

- ***Weak political commitment***

It has been shown by international experience that the RTI could be an effective public tool to foster an open and transparent society, create an informed citizenry and promote accountability in government functioning. But the nation lacks sufficient political backing in the direction of effective enforcement of the RTI law. Clear political will is missing. No political party in Nepal has appointed a Public Information Officer to impart information as per the RTI Act as yet.

- ***Absence of monitoring mechanism***

The Act provides that every public agency should disclose information every three months in a proactive manner, but this has not yet materialised. The reason is there is neither a strong mechanism to enforce the law, nor any system to monitor whether or not the Act is being implemented in line with its objectives.

- ***Culture of secrecy in civil service/bureaucracy***

A culture of secrecy is still prevalent in the bureaucracy. Ironically, an employee's competence is often gauged on the basis of his/her capacity to maintain secrecy. This orientation of the employees is pervasive: The Civil Service Act, for example, does not encourage

authorities to provide information held by public agencies on demand. This culture has remained one of the main challenges in the implementation of the RTI Act.

- ***Limited civil society campaign***

Even though considerable time has elapsed following the enactment of the law, people are not using this law as a tool to check bad practices in the governance system or to utilise it to safeguard their interests. Civil society has an equally important role - as important as the government and the Information Commission - in raising awareness about the Act. But civil society organisations have not fulfilled their obligations to stimulate the demand side of the implementation of the RTI. Until and unless people realise the power of this tool, it will just remain a mere piece of paper. Additionally, civil society has to increase their monitoring role and devise coordinated and concerted efforts to help implement the RTI law.

- ***Lack of financial, administrative and infrastructural support***

Challenges to the RTI include the absence of human resources as well as financial and infrastructural constraints facing public agencies including the NIC. The RTI law requires public agencies to meet certain fundamental legal requirements such as the appointment of IOs, proactive disclosure and regular publication of reports. However, the government has not earmarked any funds or administrative support to ensure these requirements are met. This has resulted in difficulties for the implementation of the RTI (CCRI, *Needs Assessment Report*, August, 2010).

- ***Absence of nodal agency***

The government has not yet appointed a nodal agency or a body within the government to be responsible for promoting the implementation of the Act. Similarly, there is no central body or nodal point which is responsible for monitoring and enforcing compliance by public bodies to their obligations under the Act. This has

also hindered the implementation of the RTI Act in a satisfactory manner.

DELHI DECLARATION

In April 2010, a South Asian regional workshop on RTI was held in New Delhi under the aegis of the World Bank and the Indian Institute of Public Administration, which outlined Nepal's immediate priorities as follows:

- Providing feedback to the constitution drafting process for including the RTI as a fundamental right in tune with international standards.
- Strengthening and empowering the National Information Commission.
- Reforming the RTI regulations in collaboration with civil society organisations.
- Ensuring that the Government proactively strengthens the capacity of public authorities, including local government bodies, to implement the RTI Act.
- Ensuring effective collaboration between civil society and the media for awareness raising, modeling RTI usage, capacity building of CSOs and monitoring compliance with the RTI Act.

In late January 2011, the World Bank prepared a status report on RTI along with a set of recommendations for the government, parliament, public bodies, civil society, international community and the National Information Commission of Nepal (see chapter two, this volume). The report 'Implementation of the Right to Information in Nepal: Status Report and Recommendations' was prepared by international consultant Toby Mendel. The recommendations, which also reflected the status of RTI implementation in the country, included the following suggestions.

Government

- Appoint a senior nodal agency in the Office of the Prime Minister and Council of Ministers (OPMCM) to provide central leadership and resources on RTI implementation, in particular in the areas of proactive disclosure, processing of requests, record management, model transparency pilot projects and enforcement of NIC decisions.
- Provide dedicated training on an urgent basis to IOs through the Nepal Administrative Staff College, with training for all officials to be provided in due course.
- Introduce RTI into the school curriculum for students of 13-16 years.
- Have the Ministry of General Administration recognise a special career track for IOs, along with a bonus system and necessary physical infrastructure.
- Provide a central web portal to support RTI including by facilitating proactive disclosure and, in due course, by receiving requests.
- Undertake a programme of public awareness raising about RTI.
- Adopt new regulations to, among other things, enhance the independence of NIC, promote better record management, and enhance reporting on implementation by public bodies.

Parliament

- Identify a committee to oversee implementation of the RTI Act.

Public bodies

- Provide annual reports on what they have done to implement their obligations under the RTI Act.

Civil society

- Undertake programmes to build demand for information.
- Undertake public awareness raising programmes, including through the media.

The international community

- Support a baseline survey on demand for information.
- Host an international conference to discuss ways forward in terms of implementing the RTI Act.

NIC

- Meet its own openness obligations under the RTI Act, including by appointing an IO, undertaking proactive publication and putting in place procedures for processing requests.
- Meet its other obligations by adopting a Code of Conduct for Commissioners and procedures for handling appeals, and by continuing to produce annual reports.
- Enhance its operations by adopting guidelines on mediation and imposing sanctions, by producing a report on secrecy provisions in other laws, by reviewing the classification guidelines adopted by government, and by developing more formal relations with other entities promoting implementation, such as Parliament and the nodal agency.
- Build the capacity of its staff, including its legal officer, through training and providing incentives for good performance.
- Promote better implementation by public bodies through developing guidelines on exceptions and a guidance note for NGOs, and by monitoring and reporting on implementation.
- Raise public demand for RTI through the media, brochures, documentaries, International Right to Know Day activities and training for NGOs.
- Pilot a programme of RTI Friends in about 10 different public bodies, to create and publicise model implementation practices.

FREEDOM FORUM AND THE RIGHT TO INFORMATION

Freedom Forum has been engaged in the cause of the Right to Information in Nepal ever since its inception. Its involvement in

preparing the groundwork for the drafting of the RTI bill, and the sustained advocacy thereafter has remained crucial for the developments leading to the endorsement of the Bill by the Parliament and subsequent Regulations for implementing the RTI Act.

Pre-RTI campaign

In 2005, as part of its lobbying for an RTI Act, Freedom Forum launched a nationwide campaign and joined hands with Citizens' Campaign for Right to Information (CCRI) - a loose network of civil society organisations, activists, and international and inter-governmental organisations including Action Aid and The International Centre for Integrated Mountain Development (ICIMOD).

Freedom Forum, in association with ICIMOD, took initiatives to take the RTI campaign beyond the Kathmandu Valley. Inputs were provided by other civil society organisations and the media fraternity on the issues to be included in the nationwide campaign.

The initiative taken in 2007 included a number of activities, including the production of simple publicity materials and using them in workshops and seminars in all five development regions of the country. Two-day regional workshops on the Right to Information were held in all five development regions followed by a national seminar in Kathmandu. The initiative sought to spread awareness on the Right to Information and collected recommendations from opinion leaders throughout the country.

Freedom Forum has since hosted several programs deliberating the issue on various occasions such as 'International Day on Right to Know' (September 28) and International Press Freedom Day (May 3.) Its periodic publications such as Free Expression and the Voice of Freedom provide space to promote the cause of the RTI.

Assessment, evaluation and cases of requests for information

The Forum in association with Article 19 and Federation of Nepali Journalists (FNJ) released their analysis on the RTI Act 2007 in February 2008, furnishing several recommendations to bring the law in line with international standards and practices. The recommendations were massively disseminated among journalists, rights activists and organisations working for media rights. Under the campaign of promoting information culture in Nepal, Freedom Forum facilitated a process of registering applications to seek information from public bodies.

Keeping in mind that the RTI Act grants every Nepali citizen the right of access to information held by public bodies, Taranath Dahal on behalf of Freedom Forum filed a writ application in the Supreme Court on 11 January 2008, seeking a *mandamus* intervention when the Election Commission denied details about the amount of assistance provided by the government and donor agencies in carrying out the Constituent Assembly (CA) elections, as well as information on applications from political parties with signatures of over 10,000 voters needed for the registration of a political party not represented in the Parliament. A single judge bench of the Supreme Court (SC), Damodar Sharma, issued a show cause order in the name of the EC to furnish a reply to the SC within 15 days. Advocates Shambhu Thapa, Sher Bahadur KC, Bhimarjun Acharya, and Tikaram Bhattarai among others pleaded on behalf of Freedom Forum.

In a similar vein, Rishee Ram Ghimire and Krishna Pokharel filed an application in the Office of Prime Minister and Council of Ministers on 5 September 2008 on behalf of the Forum demanding that the report of the Commission formed to probe the killing of CPN-UML candidate from Surkhet district, Rishi Prasad Sharma, be made public. The government had formed the Probe Commission under the leadership of a Judge of the Surkhet District Court, Pu-

rusottam Parajuli, to investigate into the incident that had taken place in the run-up to the CA elections.

In line with the RTI Act 2008, Clause 2(e), Ghimire and Pokharel filed an application in the Office of Prime Minister and Council of Ministers on the same day on behalf of Freedom Forum demanding a copy of the report of the Probe Commission formed to investigate the killings of seven people in Lamahi, Dang district, on 10 April - the CA election day. The Probe Commission headed by Govinda Kumar Shrestha, a Judge of the Appellate Court, Rajbiraj, submitted the report to the then Prime Minister on 6 August. But both the reports have not yet been made public.

Similarly, Freedom Forum facilitated Gyanendra Raj Aran in the process of registering an application in the Defense Ministry, seeking official and digital copies of details of the killings of Nepali Army (NA) personnel during the Maoist insurgency. Information seeker Aran registered an application on 24 January 2008.

Biswomitra Khanal, a stringer for Nepal Television, also took assistance from the Forum while demanding information about a decision of the NTV management regarding his remuneration as a journalist. Khanal registered his application on 10 October 2007.

The government responded positively when it released a report on minimum wages for journalists. Journalist Ram Prasad Dahal on behalf of Freedom Forum submitted an application to the Ministry of Information and Communication for its public release on 5 September. The Committee submitted the report to the Government on 28 August.

Publications

Freedom Forum has published a number of materials on the issue of Right to Information in Nepal. They include:

- Memorandum on the Right to Information Act of the State of Nepal, January 2008 (in association with Article 19 & FNJ)
- International Standards on Freedom of Expression: A Compilation, January 2008 (in association with Article 19 & FNJ)
- Information and Media: Compilation of Selected Verdicts of the Apex Court
- Compilation of Court decisions on the cases of libel and slander against newspapers
- *Suchanako Hak Hamro Adhikar* (Access to Information is Our Right) (RTI awareness booklet containing details of draft RTI Bill before the law was endorsed in 2007)
- Quarterly Newsletter *Free Expression*
- Quarterly journal Voice of Freedom
- Posters and pamphlets on RTI
- Several audio-visual programs (public service announcements) aired by national radio and some community/FM stations across the country

NATIONAL CONVENTION ON THE RTI

The National Convention on the RTI, held over 28-29 March 2011, aimed to contribute towards creating a positive atmosphere towards the effective implementation of the RTI by discussing various thematic areas that the RTI could influence and benefit from.

The thrust of the convention was to develop a workable national strategic plan to define the specific roles of stakeholders and to sensitise state actors, non-state actors and political parties for the effective practice and implementation of the RTI in Nepal. Several papers were presented and discussed assessing and highlighting the role of the government, the NIC, civil society organisations, political parties, and other stakeholders. The convention thus pre-

sented the strengths, weaknesses, opportunities and threats facing RTI initiatives in Nepal. Further, it developed a comprehensive set of recommendations for different sectors towards better practices related to the RTI law.

The convention also aimed to bolster political will and support from stakeholders to enable an environment where access to information would be easy and prompt. Panel discussions were held on different aspects of the RTI including the sharing of national and international practices.

Objectives of the convention

The National convention on the RTI had the objective of strengthening the environment for improved access to information in Nepal by developing an implementation strategy to which all major players (government, civil society, and the media) could subscribe, as well as fostering a greater understanding of how the RTI could promote public accountability and civic empowerment. The Convention also sought to explore ways to enhance greater coordination and consensus among all stakeholders interested in promoting the RTI and create a durable mechanism to implement the RTI across government.

The convention focused on the discussion of key issues affecting the RTI in Nepal. These discussions were anchored in a series of thematic papers prepared for the Convention focusing on the challenges facing the NIC, public agencies, and information officers in implementing the new law; the role of the press, citizens, and local government in activating the demand for information across society; the legal regime governing the RTI particularly the classification and exemptions regime and the nature of the constitutional guarantee for RTI; and the role of RTI in curbing corruption and democratising political parties. These papers constitute

the centre-piece of this volume, which we hope will become an essential reference for anyone interested in the evolution of the RTI in Nepal.

IMPLEMENTATION OF THE RIGHT TO INFORMATION IN NEPAL: STATUS REPORT AND RECOMMENDATIONS

Toby Mendel

EXECUTIVE SUMMARY

Implementation of the Right to Information (RTI) in Nepal – where the right has been guaranteed both in the Constitution since 1990 and by an act of Parliament since 2007 – has so far been weak. On the supply side, public bodies have done little to meet their extensive obligations under the law: many have not even appointed dedicated information officers and most of the information subject to proactive disclosure under the law remains unpublished. On the demand side, the number of requests from both civil society groups and the general public has been low and there has been little pressure on public bodies to be more open. The National Information Commission (NIC), formed in 2008, has until recently been under-staffed and under-resourced, although that is starting to change.

There is no question that this is a challenging time for Nepal to be implementing the RTI. The political attention of the country is on the breakdown in governance, with the country operating under a caretaker government since the end of June 2010, and on the new constitution, slated to be completed by mid-April 2011. These challenges are compounded by the security situation in the Terai region, under-development and a strong culture of secrecy within government. Another challenge is that the law classifies most NGOs as public bodies, which is likely part of the reason this sector, often a key driver for the RTI, has done so little to implement it in Nepal.

A World Bank team undertook a mission to Nepal from 7-19 July 2010 to study the situation regarding implementation of the RTI Act and to make recommendations to improve it. The mission concluded that urgent action is needed from a number of stakeholders for the RTI to be respected in Nepal. In a follow-up mission from January 24 to 28, 2011, the team had an opportunity to discuss the draft report with key stakeholders, including the Gov-

ernment of Nepal, the National Information Commission (NIC), and civil society groups. This report highlights the situation in Nepal and the recommendations of the World Bank team. The key recommendations are as follows:

Government

- Appoint a senior nodal agency in the Office of the Prime Minister and Council of Ministers (OPMCM) to provide central leadership and resources on RTI implementation, in particular in the areas of proactive disclosure, processing of requests, record management, model transparency pilot projects and enforcement of NIC decisions.
- Provide dedicated training on an urgent basis to information officers (IOs) through the Nepal Administrative Staff College, with training for all officials to be provided in due course.
- Introduce the RTI into the school curriculum for students of 13-16 years.
- Have the Ministry of General Administration recognise a special career track for IOs, along with a bonus system and necessary physical infrastructure.
- Provide a central web portal to support the RTI including by facilitating proactive disclosure and, in due course, by receiving requests.
- Undertake a programme of public awareness raising about the RTI.
- Adopt new regulations to, among other things, enhance the independence of the NIC, promote better record management, and enhance reporting on implementation by public bodies.

Parliament

- Identify a committee to oversee implementation of the RTI Act.

Public bodies

- Provide annual reports on what they have done to implement their obligations under the RTI Act.

Civil society

- Undertake programmes to build demand for information.
- Undertake public awareness raising programmes, including through the media.

The international community

- Support a baseline survey on demand for information.
- Host an international conference to discuss ways forward in terms of implementing the RTI Act.

NIC

- Meet its own openness obligations under the RTI Act, including by appointing an IO, undertaking proactive publication and putting in place procedures for processing requests.
- Meet its other obligations by adopting a Code of Conduct for Commissioners and procedures for handling appeals, and by continuing to produce annual reports.
- Enhance its operations by adopting guidelines on mediation and imposing sanctions, by producing a report on secrecy provisions in other laws, by reviewing the classification guidelines adopted by government, and by developing more formal relations with other entities promoting implementation, such as Parliament and the nodal agency.
- Build the capacity of its staff, including its legal officer, through training and providing incentives for good performance.
- Promote better implementation by public bodies through developing guidelines on exceptions and a guidance note for NGOs, and by monitoring and reporting on implementation.
- Raise public demand for RTI through the media, brochures, documentaries, International Right to Know Day activities and training for NGOs.
- Pilot a programme of RTI Friends at about 10 different public bodies, to create and publicise model implementation practices.

INTRODUCTION

The Right to Information, defined as the right to access information held by public authorities, is widely recognised as a fundamental human right. It is also a foundational building block for democracy and participation, as well as a key tool for holding government to account and rooting out corruption. It is recognised in international law, as well as the laws and constitutions of more than 80 countries world-wide.

Nepal adopted its Right to Information Act, 2064 B.S. (RTI Act) in July 2007. In doing so, it became the third country in South Asia, after Pakistan (2002) and India (2005), to adopt such a law. It was, however, the first country in the region to have formal constitutional recognition of the Right to Information, as this right was explicitly guaranteed at Article 16 of the 1990 Constitution and is now found at Article 27 of the 2007 Interim Constitution.

Despite these important achievements, implementation of the Right to Information in Nepal, whether pursuant to the direct constitutional guarantee or the RTI Act, can at best be described as modest. Three years after the Act was adopted, the volume of requests for information is low, while compliance with the proactive publication rules in the RTI Act is similarly limited. None of the actors usually associated with implementation of the Right to Information, whether from the demand or supply side – the government, public bodies, civil society, the oversight body, the media, the general public – is very actively engaged on this issue in Nepal.

To assist in building capacity on this issue, in particular for implementation of the RTI Act, a World Bank team undertook a mission to Nepal from 7-19 July 2010. The team consisted of Vikram Chand, Senior Public Sector Management Specialist, World Bank, New Delhi, Toby Mendel, Executive Director, Centre for Law and Democracy, Canada, consultant to the World Bank, and Rajib

Upadhyaya, Senior External Affairs Officer, World Bank, Kathmandu. The draft report was discussed in a follow-up visit by the team from 24-28 January 2011 with the Government of Nepal, the NIC, and some civil society groups.

The team met with a wide range of stakeholders from different sectors, including politicians, senior and middle-ranking officials, media representatives, legal experts, members and staff of NIC, and civil society representatives. The meetings included individual interviews, small group meetings and larger roundtable-style meetings, allowing for a full canvassing of views and perspectives. A list of those met is attached in Annex-1.

The discussions during these meetings focused on issues relevant to implementation of the Right to Information, such as the legal framework for the right, the role of different actors, activities undertaken so far, gaps and needs in implementation and possible future activities by different actors. Over the course of the mission, the team was able to gain a good idea of the range of perspectives held by different local actors about the overall framework for the Right to Information in Nepal, what has been done so far, and future needs.

The first two parts of this report provide an overview of the context in which the Right to Information is being implemented in Nepal, as well as the activities undertaken so far to implement the Right to Information Act. The next part makes a number of recommendations regarding implementation activities that might be undertaken by a range of different actors, including the government, Parliament, public bodies, civil society and the international community. The last part provides a detailed analysis and set of recommendations for implementation by NIC.

The material in this Report is drawn most importantly from information obtained during two World Bank missions to Nepal to

discuss RTI issues. Other information sources include official documents, including relevant legal documents and reports by NIC, academic papers and other publications, for example by NGOs, media reports and supplementary information provided by email.

BACKGROUND AND CONTEXT

Wider political and developmental context

Implementation of the Right to Information comes at a difficult time for Nepal (one of the interviewees during the mission said that this was the ‘wrong time’ for the Right to Information). The political attention of the country is focused on the major and troubled task of moving forward to adopt a new constitution, to replace the 2007 Interim Constitution. This was due to be completed by 28 May 2010, but the timetable for this has been moved by one year, to mid-April 2011. Underlying the delay are deep-seated disagreements about key constitutional issues, along with a lack of trust among the different political parties.

Recent political developments have been tumultuous, by any standard. A period popularly known as the Royal Coup came to an end in April 2006, due to widespread street protests. Negotiations began almost immediately with the Maoists, who had been engaged in a military struggle since 1996, a key goal of which was to remove the monarchy. An agreement to hold elections was reached in December 2007, and the Maoists won the largest number of seats in the elections in April 2008. The monarchy was formally done away with the next month. The Maoist-led coalition lasted only a year, and was replaced in May 2009 by another coalition which did not include the Maoists. Another political crisis unfolded on 30 June 2010, when the Prime Minister resigned, leaving the country without a political rudder, a situation which continues at the time of writing (the country is operating under a caretaker government).

Nepal also faces huge development challenges. The 2009 UNDP Human Development Report ranks Nepal 144th out of a total of 177 countries, with an average GDP per capita, in PPP terms, of just over USD 1,000, an average life expectancy of just over 66 years and an adult literacy rate of just 56.5 percent. In its 2001 Report, the UNDP ranked Nepal 129th out of 162 countries, still 13th from the bottom, so there has been no relative progress.

These challenges are further compounded by the difficult political and security situation in the southern Terai region, the traditional homeland of the Madhesi people. There has been considerable violence and disruption in the south, along with threats of secession. Views about just how serious the situation is differ, but one interviewee stated bluntly that “the State does not function” in the south.

Politically, Nepal remains a unitary state, although agreement has in principle been reached that it will be transformed into a federal state with the new constitution. Pursuant to the Local Self-Governance Act, 2055 (1999), considerable powers have been devolved to the 75 districts and over 4,000 villages, each run by Development Committees (DDCs and VDCs). Despite considerable powers residing at these levels, the political situation has meant that it has not been possible to conduct local elections, leading to a power vacuum which has largely been occupied by political parties.

Regional context

Implementation of the Right to Information in Nepal is taking place in a wider regional context. Within the region, three other countries now have Right to Information laws: Pakistan (2002), India (2005) and Bangladesh (2008). Of these, implementation in both Pakistan and Bangladesh remains weak. In India, however, which is the most important external point of reference for Nepal, implementation has been extremely strong at a number of levels. There is, in particular, a very powerful grassroots narrative around the Right to Information as a tool for combating corrup-

tion, for extracting accountability and for ensuring the delivery of entitlements and services.

The Indian experience represents huge potential for Nepal in a number of ways, including as a source of inspiration, examples and expertise. At the same time, there are potential drawbacks if Nepal attempts to follow the Indian trajectory too closely, as it lacks the much more robust structures and popular base of support that pertains in India. The Indian influence can be seen in some of the appeal cases in Nepal – for example relating to access to exam answer sheets and judicial records – which parallel high-profile cases in India. Unfortunately, these examples relate to elite requesters while the powerful grassroots experiences from India do not seem to have translated to Nepal.

Formal developments

In terms of the Right to Information, the first formal development was, as noted, the inclusion of the Right to Information in Article 16 of the 1990 Constitution, and later its incorporation in identical form in Article 27 of the 2007 Interim Constitution. These guarantees protect the right of citizens to access information relating to them or on matters “of public importance”. However, information does not need to be provided regarding “any matter about which secrecy is to be maintained by law”.

After a gap of some 17 years, the Right to Information Act was adopted in 2007 and, in accordance with its provisions, came into force in August 2007. The Act is a fairly standard Right to Information law, establishing a presumption of openness, subject to a set of exceptions, providing for the proactive disclosure of certain key categories of information, setting out procedures for making requests for information and establishing an oversight body, the NIC.

NIC was formally established a year later, in June 2008, and so has now been in operation for just over two years. Finally, the Right to

Information Rule, 2065 B.S. (the Rules) was adopted in 2009. The adoption of the rules has facilitated implementation, clarifying issues such as the fees that may be charged for providing access to information, the way in which appeals are to be processed, the benefits allocated to members of NIC, and the role of the Secretary to NIC.

Challenges

Specific implementation activities, broken down by actors, are described in some detail in the next section of this report. Overall, however, it would appear that very limited efforts have been undertaken – both by those subject to disclosure obligations under the RTI Act (supply side) and by those who are granted rights under the RTI Act (demand side) – to implement the law.

As noted, NIC has been in operation for just over two years. It has undertaken a number of activities, described below, but these were described to us by several interviewees as modest. One of the challenges facing NIC has been to recruit and retain a Secretary. At the time of the mission, it had in place a Senior Secretary, appointed in April 2010. However, NIC is now on its third Secretary and has spent about one-half of its two years of existence without one.

NIC also suffered in the early days from small budget and staff allocations. However, it does now have a decent budget allocation and a staff complement of 29, including thirteen professionals and one lawyer (staff is provided through the Ministry of General Administration (MOGA)). There is still a capacity issue, as the staff allocated to the NIC by MOGA are not specialists in the area of the Right to Information. The NIC has to some extent addressed this by relying upon external experts, but it clearly needs its own in-house expertise.

Few formal steps to implement the law appear to have been taken by public bodies, apart from appointing Information Officers. Part

of the reason for this is that demand is extremely low. Indeed, none of the public bodies we talked to had received more than a handful of requests. While this does not absolve them of their primary obligations under the law, it does at least render their weak performance understandable, given the lack of external interest, and competing priorities.

At the same time, there are probably some less salutary reasons for the poor performance of many public bodies in implementing the Act. In some cases, officials might wish to hide corruption, which is reportedly a very serious problem in Nepal. More generally, an entrenched culture of secrecy militates against openness. Finally, capacity constraints probably undermine efforts to implement the Act.

In most countries, especially during the early stages of implementation of a Right to Information law, civil society organisations, and NGOs in particular, represent an important demand driver. So far, this has not happened in Nepal, despite the fact that there are some 27,000 formally registered civil society groups in the country.

Part of the explanation for this may lie in the fact that the RTI Act treats NGOs as public bodies, where they operate with funding provided directly or indirectly by the Government of Nepal, or foreign governments or international organisations. It would appear that NGOs are almost entirely unprepared to meet their obligations under the Act. According to the information we received, almost no NGOs, or perhaps none, have taken any concrete implementation steps, including NGOs which were active in advocating for the Act and which have promoted its implementation.

It seems likely that the vast majority of NGOs are completely unaware of their obligations under the RTI Act. However, others, who are aware of them, expressed various concerns to us about these obligations. Some had a general concern that the Act could

somehow be used as a political or perhaps social weapon against them, by their opponents and competitors. Others were concerned that opening themselves up might expose them to criminal activity, such as threats of extortion.

Another complication is that since the law effectively puts NGOs in the same position as government vis-à-vis openness, there is a natural reluctance on the part of NGOs to press too heavily for recognition of government obligations, since these will also apply to them. Also, NGOs lack the moral authority to push for government openness while they are themselves in breach of their own obligations.

The structure of the NGO community in Nepal may also militate against Right to Information activism. Unlike in some countries, but similar to Bangladesh, NGOs in Nepal mainly focus on delivering services, largely in parallel to government, instead of focusing more heavily on advocacy work. There are, of course, many exceptions, but this is an overall tendency. This means that NGOs are not only in a similar position to government in relation to the law, but also in terms of the nature of their activities. So, while NGOs in many countries use the Right to Information to hold government accountable for service delivery, in Nepal the Act might logically be put to the same use vis-à-vis NGOs.

The media are in a different position inasmuch as the RTI Act would appear to be a natural tool for them, and they do not bear any obligations under it. Furthermore, there is a general perception that the law is mainly for the media, which may in part be fuelled by the fact that pursuant to section 12(3) of the RTI Act, the committee which appoints the members of the NIC is made up of the Speaker, the Minister for Information and Communication, and the President of the Federation of Nepali Journalists (FNJ), the leading media workers association.

The media, and the FNJ in particular, have been involved in activities to implement the law, for example by assisting the NIC to conduct training programmes. However, it does not appear that many journalists are using the Act to facilitate their role as purveyors of information (i.e. making requests to access information to publish as part of their reporting).

Finally, on the demand side, there also seems to be very little direct demand coming from the public. The reasons for this are unclear, although high levels of illiteracy combined with somewhat limited public outreach activities around the law are no doubt part of the picture.

Some other reasons for weak implementation of the law suggested to the World Bank team included the following:

- The wider context in Nepal of a lack of the rule of law, so that public bodies and others do not generally take implementation of laws seriously.
- The issue of impunity in Nepal for breach of the law, again undermining any sense that the RTI Act is legally binding and must therefore be implemented.
- Related to the above is a sense that the law is unduly onerous, so that implementation is impractical. Section 5, in particular, is quoted as being unreasonable as it requires information up to 20 years old to be kept updated, a long list of categories of information to be made available on a proactive basis, and this information to be updated on a quarterly basis.
- An underlying culture of secrecy whereby even if much information is somehow public, it remains unattributed. Thus, we were told that journalists can always get the story, but they cannot put a name to it.
- The sense that donors impose enough transparency and accountability rules and that additional measures are not needed.
- Confusion about where the proper lines between openness and confidentiality lie (i.e. a lack of capacity to interpret the exceptions).

OBLIGATIONS AND ACTIVITIES

The government and public bodies

The RTI Act places obligations on a number of actors, including the Government of Nepal and its public bodies. Such obligations include the following:

- To maintain contact with the NIC through the Ministry of Information and Communication (section 26).
- To establish a classification committee and to inform NIC about the number of years information should be kept confidential (sections 27(1) and (2)).
- To review classification every 10 years (section 27(6)).
- To make rules to implement the Act (section 38).

The government does maintain contact with NIC through the Ministry of Information and Communications (MOIC), the official reporting body. The government has also provided NIC with a budget and staff, as noted.

The government established the classification committee and adopted a set of rather general guidelines on classification of information, the bulk of which consists of a list of types of documents, broken down by public body, which will not be disclosed. Also, as noted above, the rules for implementation of the Act were adopted in 2009.

The government has not, however, appointed a nodal agency or body within government to be responsible for promoting implementation of the Act. Similarly, there is no central body or nodal point which is responsible for monitoring and enforcing compliance by public bodies with their obligations under the Act. In the absence of such a nodal agency, implementation of the RTI Act across public bodies is likely to remain an uphill task.

The act and rules create a long list of obligations for public bodies, as follows:

- To respect and protect the Right to Information (section 4(1)).
- To classify and update information going back 20 years (sections 4(2) and 5(1)-(3)).
- To train their staff (section 4(2)).
- To publish information proactively (section 5(3) and Rule 3).
- To appoint an Information Officer and establish an Information Section (section 6).
- To process complaints against refusals to provide information, through the head of the body (section 9(1)).
- To take departmental action, through the head of the body, against Information Officers who intentionally obstruct access (section 9(3)).
- To protect information of a personal nature (section 28).
- To provide information regarding public positions to the officials holding those posts (section 30).
- To take departmental action against Information Officers or the heads of public bodies where appropriate (section 32(3)).
- To correct wrong information (section 35).

The Act also imposes an obligation on employees to provide information on wrongdoing (section 29(1)).

It would appear that only a few steps have formally been taken to implement the RTI Act. Approximately 400 public bodies, out of a total of some 5000-6000, have appointed information officers (IOs), as required by Section 6 of the Act. There appears to be somewhat of an urban-rural divide on this issue, with central government ministries and departments having largely complied with this obligation, while their rural counterparts, including DDCs and VDCs, having done so only partially.

Many IOs appear to be appointed from among the ranks of department spokespersons, even those these could be said to be inconsistent tasks, inasmuch as the spokesperson is supposed to paint the body in a positive light and the IO is supposed to release all information, good or bad. Furthermore, in all cases surveyed, the IO role was an add-on job, in addition to the person's main responsibilities. On the other hand, IOs were in many cases senior staff, with access to all or most of the information held by the public body.

None of the public bodies we canvassed had put in place formal rules for processing requests. It is unclear how much training on the Right to Information has been provided to officials, but it would seem to be relatively little. There is an urgent need for tailored capacity-building efforts for IOs. It is also unclear what measures have been taken to classify and update information, as required by the Act.

Public bodies in Nepal provide a lot of information on a proactive basis, and this appears to be an area where important progress has been made in recent years. For example, the Ministry of Education informed us that they hold a student census twice yearly to ensure updated information is available. Despite this, it would seem that very few, if any, public bodies have undertaken specific measures to ensure that they are meeting the proactive disclosure obligations set out in section 5 of the RTI Act and Rule 3. Indeed, in most cases, senior officials did not seem to be aware of these obligations or were under the impression that their existing proactive dissemination efforts were sufficient.

Some public bodies, such as the Ministries of Health and Education, have put in place Management Information Systems. At the same time, the general consensus seemed to be that, overall, record management was poor and that this was a serious challenge for Nepal.

As noted above, formally, NGOs which receive public funding from either the Government of Nepal or foreign governments are treated as public bodies under the RTI Act, meaning that they have the same obligations. In some cases, the obligations do not appear to apply well to NGOs. This is the case, for example, for the obligations to take departmental action against IOs and heads (sections 9(3) and 32(3)), to provide information regarding public positions to those holding them (section 30), and to classify and update information (sections 4(2) and 5(1)-(3)). Regardless, and as noted above, very few if any NGOs appear to have taken any formal steps to implement their obligations under the Act.

The National Information Commission

The Act creates the National Information Commission (section 11), and, along with the Rules, imposes the following obligations and bestows the following powers on it:

- To process appeals against decisions of the head of a public body who refuses to provide information (section 9).
- To review the records held by public bodies (section 19).
- To order public bodies to maintain orderly lists of the information they hold (section 19).
- To order public bodies to release information and to take other actions to fulfil their obligations under the law (section 19).
- To make recommendations to government regarding the Right to Information (section 19).
- To issue appropriate orders regarding the protection, promotion and exercise of the Right to Information (section 19).
- To submit an Annual Report on its activities to the legislature (section 25).
- To maintain contact with the government through the MOIC (section 26).
- To decide appeals against classification of information by the classification committee (section 27(3)).
- To decide complaints regarding sanctions against whistle-

blowers (section 29(4) and (5)).

- To decide complaints about the misuse of information lodged by public bodies ((section 31).
- To fine Information Officers or the heads of public bodies for unlawfully withholding information and to request departmental action in appropriate cases (section 32(1)).
- To fine persons found to be misusing information (section 32(4)).
- To fine persons for failing to obey its orders (section 32(5)).
- To hear appeals for compensation for harm due to a failure to provide information (section 33).
- To adopt a procedure for deciding appeals (Rule 7).
- To adopt a code of conduct for Commissioners (Rule 16).
- To adopt the necessary directives to carry out its activities smoothly (Rule 25).

One of the key functions of NIC is to hear appeals of various types – against refusals to provide information, against wrongful classification of information, where individuals have been wrongly sanctioned for blowing the whistle, for misuse of information by individuals and regarding claims of compensation for failure to provide information. During the first two years of its existence, NIC has received approximately 37 such cases, of which one involved a whistleblower who was wrongly sanctioned, one was in relation to the wrongful classification of information, a number were for compensation and the rest were about refusals to provide access to information.

Pursuant to these appeals, or of its own volition, NIC has imposed sanctions in at least two cases, including the case of the whistleblower. NIC has also undertaken monitoring of public bodies, along with a survey, to assess how well they are meeting their obligations under the Act. In its second year, this monitoring was extended to cover at least 35 different public bodies. NIC presented its first Annual Report to the legislature in October 2009, and it is due to present its second report in October or November of 2010.

It would appear that the main focus of the work of NIC has, however, been outside of its formal obligations under the Act, in the areas of training and public outreach. It has, working with the FNJ, conducted numerous training exercises, focusing in its first year on the supply side (i.e. officials) and in its second year more on demand (i.e. civil society). It has, over the two years, conducted at least 40 training programmes and provided training of trainer programmes to at least 60 people. NIC has also been active in terms of public outreach and awareness raising campaigns, including through placing public service announcements (PSAs) in the media, and conducting discussion programmes and interviews (also in the media).

NIC is also a public body under the law, since it is a body established by statute. It does not, however, appear to have taken any steps to discharge its obligations in this area, even to the extent of appointing an Information Officer.

Other information tools

In addition to the formal information systems established by the RTI Act, there are a number of other information dissemination tools that have been developed and applied in Nepal in recent years, in some cases backed up by laws. For example, section 212 of the Local Self-Governance Act, B.S. 2005 (1999) states:

There shall be one information and records centre in each District Development Committee to identify the real situation of the district and enhance the planned development process.

It goes on to provide a long list of the types of information that should be displayed at these centres. We were informed about notice boards at the district level, as well as bulletin boards for specific projects, such as road building projects. We were also informed that over 300 ICT centres have been established throughout the country.

In terms of the types of information being disseminated, a lot of work appears to have been done in terms of raising citizen awareness about entitlements. For example, the Ministry of Health has issued a number of public service announcements and used other means to disseminate information about the large number of free health services. Citizens' Charters are widespread, listing services provided by a public body such as a municipality or DDC, along with the applicable charges and other relevant information (such as how long one might expect it to take to process an application).

PRIORITY RECOMMENDATIONS FOR THE GOVERNMENT, PUBLIC BODIES, AND CIVIL SOCIETY

A number of different stakeholders have an interest in the Right to Information, including members of the general public. In most countries, a few key stakeholders are responsible for the main activities in support of implementation. In addition to the oversight body (i.e. the NIC), these include the government, parliament, public bodies, civil society and the international community. This section of the Report outlines some of the priority actions that these different actors might consider in the context of Nepal.

The government and public bodies

Formally, the RTI Act places few obligations on the government, as such, regarding implementation, over and above maintaining contact with NIC, adopting classification rules and reviewing classification, and adopting regulations. However, the government also bears overall responsibility for the implementation, by all public bodies, of their obligations, including a general obligation to respect and promote the RTI. In addition, the government is always under an obligation to promote the law, particularly where this supports human rights.

Achieving the Right to Information cannot be done simply by enforcing rules; it also requires leadership, encouragement, moni-

toring, policy/standard-setting and support. To some extent, NIC should and does fulfil these roles. But the primary responsibility for this lies with government and public bodies. It makes sense, from a practical and efficiency perspective, for government to centralise, or to provide central guidance and coordination, for many of the obligations on public bodies.

Despite this, the government has done little actively to promote implementation of the RTI Act. There seems to be something of a feeling in Nepal that it is enough for the government to establish and fund NIC, and then expect it to take the lead on implementing the law. However, structural factors such as limitations on the power of NIC over public bodies, the fact that NIC is outside of government and capacity constraints, limit its ability to fulfil all of these roles.

The experience of other countries suggests that implementation of the Right to Information can only be successful where the government plays an active role. This role should include providing leadership, standard setting, central guidance and, at least in some areas, central institutional structures for delivery. Key issues for central government involvement include record management, training, *suo moto* or proactive disclosure, and various procedural systems (such as processing requests and enforcing NIC decisions).

Creating a nodal agency for RTI

In some countries, a central nodal agency within government provides central leadership and direction on a number of RTI implementation tasks. This has proven to be an effective means of ensuring strong and consistent implementation of this right within government. The existence of such an agency sends a clear signal that there is strong political will to implement the Act and provides coherent internal leadership on this issue. The nodal agency needs to have the authority, both formally but also in practice, to set and enforce standards for the whole of the civil service. Within

Nepal, it may be appropriate to situate such an agency within the office of the Prime Minister and Council of Ministers (OPMCM).

The primary role of a central nodal agency would be to set and enforce clear internal standards in various areas, including in relation to proactive publication, record management, the processing of requests and the internal structures that are necessary to support them. The agency would monitor compliance with these standards, and would ideally have the power to address failures to meet them. The agency would also play a promotional role within government, and serve to highlight the government's commitment to the Right to Information.

The nodal agency could provide leadership on the difficult issue of proactive publication, setting and then monitoring the implementation of standards. Given the challenges associated with meeting all of the proactive publication obligations at once, the agency could set priorities for sequencing implementation of these obligations. In due course, tailored guidance on proactive publication could be developed for different types of public bodies (central ministries/departments, DDCs and VDCs, State owned enterprises, NGOs and so on). To support the achievement of proactive publication obligations, a simple off-the-shelf website design for public bodies to use to disseminate this information could be developed.

A second area where a nodal agency could assist is in terms of setting internal rules for the processing of requests. Having these rules set centrally is far more efficient than leaving each public body to do it individually, and it also helps ensure consistency and good practice. This task could be undertaken in cooperation with NIC, based on its own internal rules, or with other public bodies which have made progress in this area.

An effective approach to improving record management, widely agreed to be a serious problem in most public bodies in Nepal,

is to have minimum standards set centrally, and also to provide central monitoring and enforcement. As noted above, a few public bodies have put in place their own information management systems, but there are several benefits to be gained from this being done centrally. These include the fact that the rules will apply to all, not just a few, public bodies, consistency of standards across the civil service, efficiency in terms of centralising expertise and the benefits of having a body with responsibility for oversight.

The nodal agency could work with other expert bodies, including the Nepal National Archives and NIC, to develop a set of minimum record management standards for public bodies. For now, these should probably be understood as guidance to public bodies, although over time, they might, by regulation, be given a more authoritative and binding status. At the same time, it should be recognised that the challenges associated with improving record management are huge and that this is a long-term task. It might make sense to start by focusing on proper management of new records, addressing historic records only later.

One way of addressing the huge challenges of implementation of the Right to Information, which has been tried in some countries, is to use certain major new projects as model transparency pilots. For these projects, up-to-date information management can be combined with strong proactive disclosure and a commitment to respond quickly to requests for information. These practices can then be extended to cover a wider range of government activities. The nodal agency could identify appropriate projects for such a pilot.

The agency also needs a certain degree of expertise to carry out these functions. This is always a challenge in the early stages of implementation of the Right to Information, almost by definition because this is a new area of engagement. At the same time, this is one of the drivers for having a central nodal agency, so that expertise can be concentrated and the benefits available widely, rather than developing this in an ad hoc way in different public bodies.

The agency will have to find ways to develop the expertise of its staff, which can include training and exposure visits to other countries which are further along in terms of implementation of the Right to Information. The agency should also liaise closely with NIC, which is the other locus of expertise on this issue in Nepal. Finally, external expertise may need to be brought in to assist with various tasks (for example, international experts on record management).

Training and education

The most important short-term training need is to provide dedicated training to IOs, so that they can then start to build better practices within the public bodies they work in. The logical means to provide such training is through the Nepal Administrative Staff College (NASC), which is responsible for providing central training to officials.

Over time, all public officials should receive some training on the Right to Information. A module could be developed to be incorporated into the general training provided to civil servants at the beginning of their careers. This module could also be used in ongoing training and professional upgrading activities aimed at existing civil service staff, so as to ensure that over time everyone receives training.

Such training should address a range of issues, including the importance and underlying rationale for the Right to Information, the basic systems put in place by the Act to deliver the Right to Information (including both proactive disclosure and request driven systems), obligations relating to classification, updating and managing information, the internal systems needed in each public body to deliver on its obligations, what each individual official needs to do to make these systems work, and the responsibility of officials for failures to meet their obligations.

To help NASC deliver such training, assistance could be provided by NIC and external experts. A training of trainer course could be provided to NASC staff and others, and a training manual could be developed, with a view to building sustainable capacity into the system to continue these courses.

As noted above, true socialisation of the Right to Information over time can best be done by incorporating it into the school curriculum. This implies that a simple module on this issue be developed by the Ministry of Education and added to the existing curriculum, preferably for students in the 13-16 year old range. Teachers would need to be trained on how to deliver the module, although it could be developed in a largely self-explanatory manner.

Support for IOs

Information officers are at the heart of an effective Right to Information system. They not only receive and process requests for information from the public, but they also serve as a central locus of responsibility for implementation of the rules within each public body. It is therefore important to provide support to IOs and to create conditions under which strong civil service staff will be attracted to this position.

In some countries, IOs are formally recognised as a career track within the civil service and they are required to be certified through a formal course. As noted above, in India, an online certification course is available, which could either be used directly or adapted to the Nepali context.

Other forms of support could be provided to IOs. A bonus system could be put in place, measured against clear performance targets, to attract good people to these positions. Support could also be provided in the form of physical infrastructure, such as ensuring IOs have computers and extra funds for using mobile phones. A network of IOs could be established, to facilitate internal commu-

nication among them, and to facilitate discussion and sharing experiences and lessons learned.

Given its role in providing staff to the whole civil service in Nepal, MOGA would be the logical body to take these ideas forward.

Enforcing NIC decisions

Pursuant to the RTI Act, NIC has the power to make a number of decisions. These include, among others, to make orders regarding refusals to provide information, in respect of the classification of information, fining IOs or the heads of public bodies for obstructing access to information, and fining individuals for misusing information.

Although these decisions are formally binding, NIC has no means at its disposal to actually enforce them, or even to monitor whether or not they have been implemented. A system needs to be put in place to enforce NIC decisions. Under many Right to Information laws, these decisions may be registered with the courts and a failure to respect them then becomes a form of contempt of court.

The nodal agency could perhaps take responsibility for ensuring that at least ministries do respect NIC decisions. As part of this, public bodies could be required to provide feedback to NIC regarding the actions they have taken in response to an NIC decision, including where NIC has imposed a fine on an official or information user, or made an order for compensation. In many countries, public bodies are required to report back to the oversight body within established timelines on their actions.

Website tools

A central web portal for proactive disclosure would greatly assist public bodies in meeting their obligations in this area. It

could link through to the individual websites of public bodies or operate as a free-standing information resource. It could be supplemented by the provision of a standardised website design for public bodies aimed at facilitating the proactive disclosure of information. Over time, a central web portal could be extended to allow for requests to be made centrally, and in electronic form. A central system, either through the web portal or separately, could also be used to collect overall tracking data on implementation of the Right to Information, including on requests. NIC could perhaps work with the Ministry of Science and Technology to implement this.

Communications plan

There is also a need for a central strategic communications plan for the public on the Right to Information. Individual public bodies may wish to communicate key messages or with key constituencies, but overall awareness raising about the right needs to be done centrally to be effective. NIC clearly has a role here, and it is undertaking and will presumably continue to undertake a number of activities in this area. But there remains an important role for government in raising public awareness. This requires funding, but also the identification of a central locus of responsibility. This could lie with the nodal agency mentioned above, or it could be allocated to a ministry, such as the Ministry of Information.

Amending the regulations

The Rules adopted just last year put in place various systems for implementing the RTI Act. They clarify certain procedures and systems well. At the same time, a number of other issues have come up that need to be addressed through regulation. It is common in many countries for a number of regulations on implementation of the Right to Information law to be adopted over time. Any exercise to adopt a new set of regulations should be consultative and gather ideas and suggestions from all inter-

ested stakeholders. This could be a process that the nodal agency would lead on.

A few issues that could usefully be addressed by regulation may be noted:

- Granting NIC the power to appoint at least some of its staff directly.
- Making detailed record management standards developed by NIC and the Nepal National Archives mandatory.
- Making it compulsory to provide school-level education on the Right to Information.
- Enforcing NIC decisions.
- Standardising the websites of public bodies.
- Putting in place mandatory systems for public bodies to report back to NIC actions they have taken in response to its decisions.
- Imposing reporting obligations on all public bodies in respect of their activities to implement the RTI Act (see below).
- Consideration could be given to using regulations to create a career track for IOs.

Annual reports by individual public bodies

Public bodies are under a set of primary obligations under the RTI Act to promote the Right to Information. Their key tasks are to classify and manage information properly, to train their staff, to publish information proactively, to appoint IOs, to process requests for information, to put in place internal complaints systems for initial refusals to provide information, and to take action against officials who obstruct access to information. Many of the recommendations in this document are aimed at helping public bodies meet these obligations.

In many countries, all public bodies are required to produce detailed annual reports on their activities to implement the Right to Information law, including detailed statistics on their process-

ing of requests. Such information greatly facilitates formal oversight of implementation by NIC, nodal agencies and parliament, as well as informal oversight by civil society. It also provides an important source of tracking information about progress on this key right over time. Above, it was suggested that new regulations should be adopted placing an obligation on public bodies to produce such reports. In the meantime, public bodies should consider collecting and presenting such information on a voluntary basis as part of their commitment to good governance and the Right to Information. The nodal agency could also play a role here.

Civil society

In most countries, civil society plays a central role in promoting respect for the Right to Information, in addition to any responsibilities these organisations may have as public bodies (see above).

One of the main roles of civil society in many countries is to build the demand side of the Right to Information system. It is perhaps useful to distinguish between NGOs which focus directly on promoting the Right to Information as part of their work and other civil society organisations, which may use the Right to Information to facilitate their work. It would appear that neither group is making much use of the RTI Act at present and that, in particular, the rate of requests for information remains very low. There is thus an urgent need to build demand.

In most countries, civil society also plays an important role in raising public awareness about the Right to Information, thereby creating a different sort of demand, as individuals request information for personal reasons. The media clearly play an important role here, but other civil society organisations can also disseminate important messages about the Right to Information.

There is an almost unlimited variety of ways in which civil society can create demand and build awareness. Local groups need to design programmes which fit with their capacities, human and

financial, and other programmatic activities. However, a few general success factors may be identified:

- **Use existing networks:** There are 1000s of NGOs in Nepal and many belong to networks of one sort or another. These networks can play an important role in spreading information about the Right to Information to their members. Regional NGO centres and existing meetings can, for example, be used to host awareness sessions and to provide practical advice about how to use this right.
- **Work at the local level:** NGOs which work at the local level can be particularly important in raising awareness among sectors of the public that can be hard to reach in other ways. Furthermore, secretive practices and culture are often more entrenched at the local level, making the Right to Information all the more important.
- **Generate evocative success stories:** Success stories are always useful, but some are more useful than others. So far, in Nepal, many of the more high-profile stories around the Right to Information involve elites rather than grassroots requesters (medical students, judges, civil servants). In contrast, in India, powerful stories about the Right to Information being used to redress corruption against the poorest of the poor have created a massive groundswell of support for the right. Civil society groups in Nepal need to generate more stories along those lines.
- **Use innovative tools:** Linking the Right to Information to modern tools to promote good governance can create powerful synergies and facilitate vertical accountability. Tools such as citizen report cards and social audits, for example, have been used to great effect in conjunction with the Right to Information in many countries. Linking the Right to Information to participatory opportunities can also be very effective.

Parliament

The Parliament is an important stakeholder and oversight body for implementation of the Right to Information. The Parliament has an inherent responsibility to ensure that the legislation it passes is implemented properly and this is built into the RTI Act, for example through the fact that the NIC presents its Annual Report to the Parliament. To discharge this function effectively and consistently, parliament needs to identify a committee with dedicated responsibility for oversight of implementation of the RTI Act. This task could be allocated to one of the existing parliamentary committees.

The international community

The international community has an important role to play in promoting the Right to Information in Nepal. Beyond the obvious act of providing financial support, the international community can also mobilise political will, build enthusiasm, and be a source of expertise and experience. A good starting point would be for donors to fund a baseline survey on demand for information, with a view to mapping current practices and to identifying priority demand areas, which could then be targeted for support.

As a next step, it is proposed that a conference be hosted in Nepal, bringing together key local stakeholders and relevant members of the international community, to discuss how to take forward implementation of the Right to Information.

PRIORITY RECOMMENDATIONS FOR THE NEPAL INFORMATION COMMISSION (NIC)

This section outlines key priorities for the NIC over the next two years, along with some longer-term ideas. It is broken down into five primary sections – internal actions, supply side interventions, demand side/public education interventions, pilots and other activities. Table One outlines a work plan for NIC based on what it is already doing and what it would like to do, resources permitting.

Table One: NIC Work Plan

Internal Actions	Supply Side Interventions	Demand Side/Public Education Interventions	Pilots	Other Activities
<ul style="list-style-type: none"> • appoint IO • request procedure • proactive disclosure • Code of Conduct • mediation • appeal procedure • mobile bench • guidelines for sanctions / compensation • capacity building • legal and advocacy capacity • incentives for staff • annual report • library/website 	<ul style="list-style-type: none"> • general support to public bodies in discharging their obligations • guidelines on: <ul style="list-style-type: none"> – exceptions – NGOs 	<ul style="list-style-type: none"> • media outreach • brochures • RTK Day: prizes, essays, debate, scholarships, etc. • Documentary • RTI in schools • training for NGOs 	<ul style="list-style-type: none"> • RTI Friends • comprehensive <ul style="list-style-type: none"> – record management – IOs – request systems – proactive – training • publicity 	<ul style="list-style-type: none"> • review of other laws • review of classification guidelines • monitoring/survey • tracking requests • interact with parliament, others

This work plan is based on extensive discussions with members of the Commission. The work plan assumes the willingness of government and donors to step forward to adequately support it.

Possible internal changes in the working of the Nepal information commission (NIC).

There are a number of activities that NIC needs to undertake both to fulfil its own obligations as a public body, and to strengthen its capacity to deliver its other obligations under the Act.

The NIC as a public body

The NIC is a public body in terms of the RTI Act and, as such, is under certain obligations. Consistent with its role in overseeing and providing leadership on the Right to Information, it should aim to behave in an exemplary fashion in discharging its obligations under the Act.

NIC should appoint an Information Officer, who is a relatively senior member of staff. Training should be provided to this individual, as necessary to enable him or her to undertake his or her functions.

NIC should assess what information relating to it is subject to proactive publication, pursuant to section 5 of the Act, and then take the necessary steps to publish this information. In some cases, this may require it to create new records (for example, in relation to section 5(3)(a), information on its “structure and nature”). Once its website is up and running, this information could be made available on the website. In the interim, the information could be made available for inspection at the NIC office. Steps are currently underway to strengthen proactive disclosure by the NIC itself, but it will need support to improve its website.

NIC should also prepare itself to process requests for information directed to it. To this end, it should develop written procedures setting out how it will process such requests. These procedures

could, among other things, identify how a request may be made, along with an email address, and the specific internal steps to process that request. It could also discuss what types of information it might not be able to disclose, on the basis of the exceptions listed in section 3 of the Act, although consideration of whether or not to release a specific document should always be made at the time of a request (thus, for example, when dealing with private information, the NIC should always contact the individual concerned to ascertain whether or not they consent to the release of the information).

Doing business

NIC needs to establish certain rules and procedures for how it conducts its core business, to ensure that it does so efficiently, fairly and consistently. Pursuant to Rule 16 of the Rules, it is required to adopt a Code of Conduct for Commissioners. This Code should set out the ethical rules by which the Commissioners will function, as well as the overriding standards they will apply in their work (such as respecting equality, non-partisan decision-making, respecting the constitutional guarantee of the Right to Information, as well as other rights, and so on).

NIC could also adopt a number of other written guidelines and procedures to assist it in its work. It does not have formal mediation powers, and yet informal mediation has proved very effective in other countries in resolving information disputes where there is no need for a formal investigation or hearing. NIC could explore the idea of conducting mediation, and prepare guidelines on this. These could, for example, address questions such as when mediation is appropriate/likely to be effective, the steps to be taken when mediation is being attempted, and when an attempt at mediation is considered to have been successful or, alternatively, to have failed.

Rule 7 requires NIC to adopt written procedures for handling of appeals. It is not clear whether this is primarily directed at ap-

peals against refusals to provide information, or it also covers the other types of appeals it is empowered to decide, namely appeals against classification of information, about sanctions imposed on whistleblowers, for compensation or about misuse of information. Regardless, in line with good practice, NIC should develop a set of written procedures for all of these appeals. The procedures could clarify that appeals may be heard by one or more Commissioners, and that it may establish a mobile bench, with Commissioners travelling to different parts of the country to hear appeals. NIC is expected to have written procedures for handling appeals shortly.

Imposing sanctions on officials and providing compensation to requesters for harm caused by a refusal to provide information will always be controversial and subject to close scrutiny, and often protest, by external stakeholders. Officials and public bodies will always be sensitive to this sort of pecuniary remedy, while the wider public will be tempted to try to take sometimes unwarranted advantage of it. It is very important that NIC approach such tasks with scrupulous regard to fairness and consistency. To this end, it could adopt clear guidelines about when such remedies are appropriate and about the size of any sanctions or compensation awards.

Capacity issues

The staff of NIC are all relatively new to the job. This means that there is an imperative need to build the capacity of these staff in relation to the Right to Information. This could involve exchange visits, more formal training (including online training, such as the Online Certification Course on RTI, developed by the Indian Government's Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions), and on-the-job learning, including by having less experienced officers work alongside more experienced ones.

There is a particular need to provide capacity-building support to the legal officer of NIC, as currently the organisation relies heav-

ily on external expertise in this area. This officer should conduct the Online Certification Course on RTI noted above (or something similar) and perhaps also undertake an exchange visit, preferably with an organisation or body which focuses heavily on legal issues regarding the Right to Information. While the legal officer has received some training, NIC lacks the necessary funds to obtain quality legal advice to further its work.

A challenge for NIC is attracting good staff, as presently it is not necessarily seen as an optimal career option for civil servants, which is the pool from which MOGA allocates NIC staff. This is in part a wider issue of the status of this issue within government, and the need for recognition of a special career track in this area (i.e. for IOs and NIC staff). Hopefully, over time the credibility and track record of the NIC will help address this problem. A more short-term solution, however, would be to provide targeted **incentives** to officials working for NIC, an approach which has been applied with some success in other parts of the civil service. This basically consists of setting up a system of bonuses measured against performance for staff working in a certain sector. NIC could discuss the possibility of putting in place a system of incentives for its staff with MOGA. In the longer term, the idea of creating a specific career path linked to expertise on the Right to Information could be explored.

At present, the RTI Law stipulates that the staff of NIC shall be provided by the government (section 22(2)). There are, however, certain advantages to NIC being able to hire at least some of its own staff directly, including that it can try to ensure that its staff meet its needs. NIC could explore the possibility of hiring its own staff, in consultation with MOGA.

Other issues

NIC is required to produce an annual report each year. It produced its first annual report in October 2009. It should continue to do this, producing an annual report each October/November. As

a resource for its staff, and for the general public, NIC could establish a dedicated library with materials on the Right to Information at its offices. This could include both local and international materials, such as relevant legal documents, books, official reports and NGO publications.

Supply side interventions

The RTI Act places a number of obligations on public bodies, as outlined above. In almost all cases, public bodies are struggling to meet these obligations due to the lack of capacity of their staff, as well as the need to develop the necessary systems and tools. NIC, as a key locus of expertise on the Right to Information in Nepal, could provide general support and assistance to the public bodies taking the lead in terms of training of officials, setting rules for processing requests, helping with proactive disclosure and putting in place record management systems.

NIC could also take the lead on developing a couple of key tools for public bodies. Achieving the proper balance between making information available and protecting legitimate confidentiality interests is probably the greatest challenge for public bodies seeking to apply Right to Information rules. Decision-making around exceptions is at the heart of the Right to Information, since this is how the lines between openness and secrecy are drawn. Furthermore, very often requests for information raise new and sometimes difficult openness versus secrecy issues.

Providing support to public bodies, and information officers in particular, on this issue is therefore an important service. NIC could develop a set of guidelines setting out the factors to be taken into account when considering the different exceptions set out in the RTI Act, along with examples of requests which should be granted and refused. This could be supplemented with a dedicated section of the website addressing exceptions, containing, for example, local court decisions as well as leading decisions from other jurisdictions and other useful materials.

Another area where guidance from NIC is very important is in relation to NGOs. As noted, NGOs are, to the extent that they receive funding from the Government of Nepal or foreign governments, under the same obligations as public bodies to disclose information. However, many NGOs do not understand what these obligations are, or how to go about meeting them. NIC could produce a dedicated guidance note for NGOs, addressing such issues as proactive publication, processing requests and also basic record management issues.

Demand side/public education interventions

A key problem with implementation of the RTI Act in Nepal is the low volume of requests for information from civil society and the general public. There are various reasons for this, including a lack of awareness among the general public and many civil society groups about this key democratic right and the inability of many civil society groups to understand how important the Right to Information is to helping them achieve their core issues. NIC could undertake a range of activities to help address these problems.

The NIC could continue to use the media to reach out to the general public with messages about the Right to Information. To date, it has made use of public service announcements (PSAs) to publicise the Right to Information, along with commissioners participating in discussion programmes and doing interviews. It could continue these efforts but it could also hold discussions with the media with a view to them increasing the level of reporting on the Right to Information as part of their mainstream work, as well as to encourage journalists to use the RTI Act as a source for their reporting work. NIC could also explore other ways to enhance media reporting on the Right to Information, over and above cases where it is paid to do so as a form of advertising.

NIC could employ a number of other tools to reach out to the wider public with messages about the Right to Information. It

could publish and disseminate brochures in different national languages describing the nature of the right, why it is important (using appropriate local examples), and how to exercise it. It could produce a documentary on the Right to Information aimed at the general public, with the same sort of messages that are contained in the brochures.

28 September is International Right to Know Day, celebrated in countries around the world. NIC could conduct a number of activities on that day, and possibly also at other times, to raise the profile of the Right to Information, and to enhance public engagement on this issue, including by attracting media coverage. Possible activities include awarding prizes to public bodies which have performed well in terms of implementation of the RTI Act (and possibly also negative prizes or brickbats for poor performers), running essay writing and debating competitions, to get students and others to think more seriously about the right, and awarding Right to Information scholarships to try to promote the idea of more in-depth study of this issue.

As noted, civil society engagement on the demand side remains weak in Nepal. NIC has conducted a number of training sessions for NGOs to raise awareness about the law and its benefits, and to build their capacity to use the law to further their work in the different sectors that they work in. This work could be continued and expanded.

Encouraging the use of pilots

Pilots have proven to be a very effective means of advancing the Right to Information in different countries. They allow for experience to be gained with this right, and yet do so in way that is minimally threatening to public bodies which may have concerns

about the implications of opening up. There are different ways of conducting pilots but NIC could focus on a comprehensive programme of support to approximately ten “RTI Friends”. These could be public bodies at different levels of government – regional bodies, DDCs, municipalities – which demonstrate a positive attitude towards openness and which are ready to work with NIC to become role models of openness.

The pilot could involve providing comprehensive counselling to the RTI Friends in all areas of openness – record management, appointing and training information officers and other officials, putting in place good systems for processing requests for information, ensuring active proactive publication of information and so on – so that these bodies become exemplary models of openness. NIC could provide support in terms of training and advice, as well as making sure that these bodies have access to all available tools to facilitate openness. Consideration could be given to ensuring ongoing provision of advice, so as to help these bodies overcome problems they encounter along the way (for example, regarding the interpretation of exceptions or deciding whether certain information is subject to proactive disclosure).

Once these RTI Friends have achieved significant levels of openness, and are fully compliant with their obligations under the RTI Act, it would be useful to conduct a range of activities to publicise their achievements. This could involve showcasing them at appropriate opportunities (including International Right to Know Day and other events), attracting media coverage of their work and sending representatives from these bodies around to other similar public bodies as openness ambassadors.

Other possible activities

NIC could conduct a number of other activities to promote the Right to Information. There is some lack of clarity in the legal framework regarding the relationship between the RTI Act and other laws which provide for secrecy. Formally, the RTI Act only

recognises the confidentiality interests it provides for (specifically, in sections 3(3) and 28). However, the Constitution protects the Right to Information only insofar as information is not rendered secret by another law.

This situation has led to some confusion about the proper relationship between the RTI Act and other laws and, in particular, to requests for information being refused on the basis that release of the information is prohibited by another law. Ultimately, this needs to be resolved by the courts, and there are some legal cases pending which may help clarify the situation. However, to contribute to a proper understanding of the nature and scope of the problem, NIC could produce a study describing, comprehensively, all of the secrecy provisions found in Nepali laws, highlighting the scope of the problem, and indicating which secrecy provisions are inconsistent with the confidentiality provisions of the RTI Act.

Section 27 of the RTI Act calls for the creation of a classification committee to establish policy in the area of classification, in accordance with section 3(3) of the Act. This has been done and the committee has released a set of guidelines on classification of information which, as noted, is mostly a list of types of documents, broken down by public body, which will not be disclosed.

It is the responsibility of the NIC to decide appeals against these classification guidelines, or against specific information deemed by the guidelines to be confidential (section 27(3) of the Act). To minimise the number of such appeals, the NIC could review the classification guidelines with a view to identifying potential problems and to resolving them in dialogue with members of the classification committee.

Pursuant to section 19 of the RTI Act, NIC has a responsibility to review the information held by public bodies and to order the public release of information, as appropriate. It has an established practice of monitoring the performance of public bodies, partic-

ularly in relation to the proactive publication of information. It included a survey of the findings in its first annual report. The following year, it monitored at least 35 public bodies and it will again include the results in its annual report.

NIC could continue to monitor the performance of public bodies in terms of meeting their obligations under the RTI Act, including by assessing whether or not they have appointed IOs, the extent of their proactive publication efforts, their information management efforts, and their handling of requests for information. It is particularly important to generate more information about the handling of requests, with a view to ensuring that this is proceeding in accordance with the Act.

NIC presents its Annual Report to parliament and it is parliament that is ultimately responsible for ensuring that the legislation it has adopted is respected. NIC could explore the possibility of developing more formal relations with parliament or a committee thereof. This will allow for a more fluid exchange of views and information on the Right to Information, and hopefully enhance oversight of the system by parliament, including by promoting the status and profile of this key right among parliamentarians. Ideally, a standing committee of parliament would be given responsibility for oversight of the Right to Information.

NIC could also explore the idea of establishing more formal relations with other groups. For example, if the government sets up a nodal agency with responsibilities in this area, it would be useful to have clear lines of communication between NIC and this nodal agency.

ANNEX 1:**List of people met (7 -19 July 2010; 24-28 January 2011)**

1. Acharya, Nilambar, Chairman, Constitution Committee, CA
2. Acharya, Shree, Commissioner, National Information Commission
3. Adhikari, Bipin, Foundation for Constitutional Development
4. Adhikari, Radheshyam, Member of CA
5. Aryal, Ram Hari, Secretary, Ministry of Science and Technology
6. Aryal, Tanka, CCRI
7. Bhandary, Savita, Commissioner, National Information Commission
8. Dahal, Khem Prasad, Acting Auditor General, Office of the Auditor General
9. Dahal, Taranath, Freedom Forum
10. Dhungel, Surya, Advisor to President and Foundation for Constitutional Development
11. Gautam, Shree Dhar, Director General, Department of Information
12. Ghimire, Madhav Prasad, Chief Secretary
13. Ghimire, Sushil, Secretary, Ministry of Information and Communication
14. Gyawali, Krishna, Secretary, Ministry of Local Development
15. Hada, Brinda, Secretary, National Planning Commission
16. Jha, Dharmendra, Federation of Nepalese Journalists
17. Joshi, Ganesh Raj, Secretary, Ministry of Environment
18. Kadariya, Purna, Secretary, Roads, Ministry of Physical Planning and Works
19. Kasajoo, Vinaya, Chief Information Commissioner, National Information Commission
20. K.C., Tarak Bahadur, Nepal Administrative Staff College
21. Khadka, Kedar, Pro Public
22. Lamichhane, Hem Raj, Association of District Development Committee of Nepal (ADDCN)
23. Nepal, Rajendra, Joint Secretary (Legal), Ministry of Information & Communications

24. Neupane, Basu Dev, Samuhik Abhiyan
25. Pandey, Shankar Prasad, Secretary, Ministry of Education
26. Pathak, Yek Raj, RSS (National News Agency)
27. Pokharel, Gokul, Nepal Press Institute
28. Poudel, Balananda, Secretary, Ministry of General Administration
29. Poudel, Lila Mani, Secretary, OPMCM
30. Rajbhandari, Shankar Raj, Director, Nepal Administrative Staff College
31. Regmi, Raghav, IRRA
32. Sapkota, Khem Raj, VDRC- Nepal
33. Shah, Ram Kumar Prasad, Hon. Justice, Supreme Court of Nepal
34. Sharma, Prem, Hon. Justice, Supreme Court of Nepal
35. Sharma, Sudha, Secretary, Ministry of Health
36. Shwalha, Bishnu Pukar, Campaign for Human Rights and Social Transformation
37. Sigdel, Santosh, CCRI
38. Singh, Ram Chandra Man, Secretary, PMO
39. Staff (various), National Information Commission
40. Subedi, Som Lal, Joint Secretary, Ministry of Local Development
41. Thapa, Ashish, Transparency International/Nepal
42. Thapa, Hari Bahadur, Kantipur
43. Thapa, Som Bahadur, Secretary, Public Accounts Committee
44. Timalaena, Ram Krishna, Registrar, Supreme Court of Nepal
45. Timilsina, Netra, NGO Federation of Nepal
46. Upadhyay, Parshuram, Association of Village Development Committees (NAVIN)
47. Vaidya, Bal Gopal, Federation of Democratic NGOs (FEDEN)

ANNEX 2:

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**IMPLEMENTING THE
RTI LAW IN NEPAL:
EXPERIENCE,
CHALLENGES AND
FUTURE STRATEGIES
OF THE NATIONAL
INFORMATION
COMMISSION**

Vinaya Kumar Kasajoo

BACKGROUND

The Interim Constitution of Nepal has guaranteed all citizens the Right to Information with an expanded right to personal information. The Parliament passed the RTI draft bill on 18 July 2007. The Speaker of the Parliament approved the Act on 21 July 2007 and the Act came into effect on 20 August 2007. The government issued the Right to Information Regulations on 9 February 2009.

National information commission (NIC)

The government decided to form the National Information Commission and finalised the names of the Commissioners on 4 May 2008. Information Commissioners were formally appointed on 6 June 2008. They took the oath of office administered by the Prime Minister on 13 June 2008.

Functions, duties and powers of NIC

In addition to those stated elsewhere in the Act, the functions, duties and powers of the Commission are as follows:

- To inspect and study the records and documents of public importance held by public bodies;
- To ensure the orderly maintenance of lists of document and records held by such bodies;
- To ensure that public bodies make relevant information public;
- To prescribe timeframes and ensure that public bodies provide requested information within such timeframes;
- To ensure that concerned parties fulfill their obligations in accordance with this Act;
- To provide necessary suggestions and recommendations to the Government of Nepal and various other bodies regarding the protection and maintenance of the Right to Information; and
- To issue any other appropriate orders regarding the protection, promotion and exercise of the Right to Information.

LEGAL FRAMEWORK

Objectives of the RTI Act

According to the Preamble of the RTI Act, its objectives are as follows:

- To make the functions of the state open and transparent in accordance with the democratic system;
- To make state institutions responsible and accountable to the citizen;
- To make citizens' access to information held by public bodies simple and easy;
- To protect sensitive information from being made public and thus prevent adverse impacts on the interests of the nation and citizens; and
- To legally protect the right of citizens to be well-informed and support this in practice.

According to the RTI Act, the 'right to information' means:

- The right to request and obtain information of public importance held by public bodies;
- The right to study or inspect any written document or material held by a public body, including the proceedings of such a body;
- To obtain verified copies of such documents;
- To visit or inspect sites where any construction of public importance takes place, and to obtain verified samples of any material used there; or
- To obtain information held by a public body in any type of machine.

Wide coverage of the Act

The RTI Act of Nepal covers a wide range of public bodies, including local level non-governmental organisations, national level organisations, as well as political parties.

According to the RTI act a 'public body' means:

1. A body under the Constitution;
2. A body established by the Act;
3. A body formed by the Government of Nepal;
4. An institution providing any kind of public service, or a foundation established by law;
5. A political party or organisation registered under prevailing laws;
6. An organised institution under the full or partial ownership or under the control of the Government of Nepal, or an organised body receiving grants from the Government of Nepal;
7. An organised institution formed by a body established by the Government of Nepal or by entering into an agreement;
8. A non-governmental organisation / institution funded directly or indirectly by the Government of Nepal, or by a foreign government or international organisations / institutions; and
9. Any body or institution prescribed as a public body by the Government of Nepal through the publication of a notice in the government gazette.

The RTI Act has defined the responsibilities of public bodies as follows:

- To respect and protect the Right to Information of citizens;
- To make citizens' access to information simple and easy;
- To conduct its functions openly and transparently;
- To provide appropriate training and orientation to its staff;
- To regularly classify and update information, and make it public through publications and broadcasting. It may use dif-

ferent national languages and mass media while publishing, broadcasting or making information public;

- To make accessible information that is up to 20 years old from the commencement of the Act;
- To update information within three months from the date of commencement of the Act, and every three months thereafter;

Public bodies are obliged to update the following information every three months:

- Structure and nature;
- Duties, responsibilities and powers;
- Number of employees, and details of their work;
- Details of services provided;
- Details of branches and names of responsible officers;
- Fees and time limits for services offered;
- Details of decision-making processes;
- Name of appellate authority;
- Description of functions performed;
- Name and designation of Chief, as well as Information Officer;
- List of acts, rules, bylaws or guidelines;
- Description of income and expenditures, and financial transactions;
- Details of programmes or projects carried out in the last fiscal year, if any;
- Details of website, if any; and
- Any other prescribed particulars.

Every public body must have an Information Officer. According to the RTI Act:

- Each public body must appoint an Information Officer (IO) for the purpose of disseminating information held in its office.

- The head of the public body must regularly provide information held in the office to the Information Officer.
- Each public body must set up an Information Section for the purpose of disseminating information as necessary.

Distinct procedures for acquiring information from public bodies have been outlined in Section 7 of the RTI Act.

Details of prescribed fees for acquiring information are as follows:

- No fee required for application
- No fee for up to five pages (A4 size) of information
- Rs. 5 per page for more than five pages (A4 size)
- Rs. 10 per page for pages larger than A4 size
- Rs. 50 per CD or DVD

For the study or inspection of any document, or to visit a public construction site, the fees are as follows:

- No Fee applied for first half hour
- Rs. 50 per person for each hour thereafter

Exemption from disclosure

According to section 3(3) of the RTI Act, the following information is exempt from disclosure:

- Information likely to seriously jeopardise the sovereignty, integrity, national security, public peace, stability or international relations of Nepal;
- Information likely to directly affect the investigation of, inquiry into or prosecution of crimes;
- Information likely to have a serious impact on economic, trade or monetary interests, or intellectual property and banking;

- Information likely to jeopardise communal and racial harmony; and
- Information likely to interfere with individual privacy, or the security of life, property or health of a person.

However, public bodies must not refrain from the responsibility of releasing information without appropriate and adequate reasons.

Complaint against denial of request or incomplete information

- An individual who is not satisfied with the decision of the head of the relevant public body can appeal before NIC within 35 days of the receipt of the decision
- The Commission should follow legal procedures while investigating and deciding upon the appeal.
- In the process of investigation and announcing its decision on the appeal, the Commission shall do the following:
 - It may order the concerned head of the relevant public body to provide information to the appellant without a fee, if the appeal is found reasonable.
 - It may dismiss the appeal if it is found to be unreasonable.
- The Commission must give a final verdict on the appeal within 60 days of its submission.

PENALTIES

The commission can impose following penalties on the concerned authorities:

- A fine between Rs. 1,000 and Rs. 25,000 for an unreasonable refusal to provide information, along with departmental action against relevant officers;
- A fine of Rs. 200 per day for each day's delay in providing information;

- A fine between Rs. 5000 and Rs. 25000 on the applicant if s/he misuses the information acquired from a public body; and
- A fine of up to Rs. 10,000 on the relevant person in the event that the Commission's decision is not acted upon.

Appeal against penalties

- Any person not satisfied with the decision rendered by the Commission may appeal before the Appellate Court within 35 days of the receipt of the decision.

Compensation

- If a person incurs any losses or damages as a result of the non-provision of information, denial of information, provision of partial or incorrect information, or destruction of information by the head or Information Officer of a public body, s/he may appeal to the Commission within three months.
- After investigating the case, the Commission may order the concerned public body to compensate the complainant with a reasonable amount.

Protection of information

- Public bodies must protect information of a personal nature to prevent its unauthorised publication and broadcasting.
- Personal information held by public bodies cannot be used without the written consent of the concerned person, except in the following situations:
- If it would prevent a serious threat to life and body of any person, or in the interest of public health or security.
 - If its disclosure is required in accordance with prevailing laws.
 - If it is related to the investigation of corruption.

Protection of whistleblowers

- Employees of public bodies have the responsibility to provide information related to ongoing or probable corruption or irregularities, or any act that could be an offence under prevailing laws.
- The recipient of information has the duty to keep the identity of whistleblowers confidential.
- No harm or punishment can be visited upon a whistleblower for providing information.
- If a whistleblower is punished or harmed in any way, he/she may complain and demand compensation before the Commission, and also request the annulment of any adverse decisions.
- The Commission may order:
 - The cancellation of a decision or removal from the office if relevant; and
 - Provide compensation for any damages incurred by the whistleblower.

CHALLENGES IN THE IMPLEMENTATION OF THE RTI ACT

Absence of an implementing body or mechanism to implement the act in government bodies

The main objective of the RTI act is to make the government transparent towards which it is obliged to carry out various activities as provided in the Act. Appointing IOs and providing facilities to carry out his/her job is one of the basic provisions of the Act. The voluntary disclosure of information related to the government office every three months is another obligation of the government.

To carry out these basic activities and other duties as mentioned in the Act, all government offices need resources and training, as well as a proper information management and documentation system.

To manage and monitor these activities, a strong and well-resourced body or mechanism within the government is needed that can oversee the appointments of IOs, and manage trainings and budgets. This element is missing in the implementation of the RTI Act, and this may be a reason why the Act has not been effective even after three years of its implementation.

NIC has repeatedly requested the Ministry of Finance to provide resources to every ministry for the implementation of the RTI Act. However, this has not been done.

As the World Bank's status report on the implementation of the RTI Act in Nepal rightly observes: "Despite this, the government has done little to actively promote implementation of the RTI Act. There seems to be something of a feeling in Nepal that it is enough for the government to establish and fund NIC, and then expect it to take the lead on implementing the law. However, structural factors such as limitations on the power of NIC over public bodies, the fact that NIC is outside of government and capacity constraints, limit the ability of NIC to fulfill all of these roles."

It is obvious that without a strong organisational setup, adequate resources, the appointment of IOs, their training, and provision of facilities, we cannot expect the RTI Act to be implemented effectively in government offices.

Legal and administrative constraints

In the RTI Act, there are some exemptions for disclosure of information held by public bodies. However, other existing laws have long lists prohibiting disclosure. Civil servants mainly follow the Civil Service Act and Regulations which has many provisions allowing civil servants to work in secrecy. Although NIC is working to promote the idea that the RTI Act supersedes all other laws, this has not been very successful yet as this is not clearly defined in the Act. In addition, many responsible officers take the RTI Act as an extra burden upon themselves.

Government offices and the bureaucracy have been used to working in an environment of secrecy for a long time. Thus, a culture of secrecy has developed not only in the bureaucracy but also in society. Therefore, both the demand from and the provision of information by government offices is uncommon.

Political impediments

Nepal is passing through a period of political transition – from a situation of internal conflict to one of constitution making. There is no political stability in the country. Governments are changing frequently. The implementation of the rule of law is very weak. Hence neither political parties nor civil society has given any attention to the proper implementation of the RTI Act. Further, the issue of guaranteeing the Right to Information in the new constitution has not yet been thoroughly discussed.

One reason for the absence of active support of political parties in implementing the RTI Act may be the fact that they are also covered by the RTI Act and are therefore obliged to be more open as demanded by the Act.

Reluctance of civil society/NGOs

In many countries civil society organisations and NGOs play an important role in promoting the RTI through efforts like raising awareness and inspiring citizens to demand information from public bodies. Some also work to strengthen the supply side by conducting training, producing guide books and organising trainings. Such activities are lacking in Nepal as only a few (not more than half a dozen) NGOs are working in the RTI sector.

It is obvious that without creating a strong demand within citizens, the supply side is not going to provide information. In a country like Nepal where corruption is widespread, there are many reasons for demanding information. However, the lack of awareness and education among common citizens requires that

civil society, NGOs, and the media create a demand for information on behalf of ordinary people.

So far, this has not happened in Nepal, despite the fact that there are about 27,000 registered NGOs in the country. This may be due to the fact that the RTI Act also covers NGOs in its ambit and many may not be prepared to meet their obligations under the Act. Hence they do not have the moral authority to advocate openness in government bodies.

The Federation of Nepalese Journalists has played an important role in lobbying for and drafting the RTI law. It has also played an important role in the formation and constitution of NIC according to section 12(3) of the RTI Act.

It is important for a country like Nepal that journalists play a leading role in promoting RTI. There is an impression that the RTI Act in Nepal is meant only for use by journalists. At the same time, journalists are not using the Act to the extent that was expected. There seems to be a reluctance amongst journalists themselves in using the RTI Act.

Cooperation and support from the government and other stakeholders

NIC communicates with the government through the Ministry of Information and Communication (MOIC). It also receives its budget through this ministry. There are no large impediments as far as communication with the government through MOIC is concerned. However, the fact that the NIC budget is linked to the MOIC one creates problems. For example, the funds come in the name of MOIC. This makes the total budget of the ministry look quite large, which creates problems for other ministries, including the Ministry of Finance. Therefore there should be a separate allocation of funds to the Commission.

The responsibility of classifying government-held information as 'secret' or not rests with a committee headed by the Chief Secretary to the Government. NIC has the authority to test specific classified documents, and it is not satisfied with the method of classifying information as carried out by the Classification Committee. NIC has received some complaints and it has written to the Chief Secretary for the revision of the classification system. However, NIC has the right only to review individual complaints, and it cannot review the overall classification system. Hence it would have been better if the overall classification system had been challenged in the Supreme Court through a writ petition by a civil society organisation. If the present classification system is not changed and applied as it is, this will certainly limit the effectiveness of the RTI Act.

Secretary and staff

For more than a year NIC has only had a small budget and limited staff. In addition, there have been frequent transfers of the Secretary and within a short period of time NIC now has its fourth Secretary (and 19 staff). The Ministry of General Administration allocates staff to NIC. However, the staff allocated by the ministry is not specialised in RTI related matters and therefore it has to rely on external experts in particular cases. At the same time, it does not have the independence to hire experts.

Complaints and appeal hearing

Recently NIC formulated procedures and developed standard documents for hearing appeals and filing applications. Procedures have also been developed for conducting meetings at NIC. There is a separate section in the Commission which deals with appeals, complaints and applications.

Appeals, complaints and applications demanding information

NIC received 12 cases in the first year. In the second year the Commission received 39 cases. This year, the Commission has received 28

cases over nine months. Till date the total number of cases related to the demand for information is 79.

Nature of major cases

Most of the demands for information dealt with personal information, such as the appointment of school teachers, the judicial status and procedures of cases pending in court, and the performance evaluation of government employees. There are a few cases where information related to development projects and activities which have a wider effect in the public life have been demanded.

The Commission has received only one case of information demanded by a journalist. Similarly there are individual cases of requests for information related to the protection of whistleblowers, a report of an enquiry commission of the Judicial Council, and a report of a judicial enquiry commission on a riot, which was classified as confidential.

An important case in which the Commission ruled in favour of the applicant is related to making public the answer sheets of university students. However, the Controller of Examinations has filed a writ petition in the Supreme Court against this judgement.

Similarly, there are two cases related to the performance evaluation marks of government and corporation employees, which are pending in the Supreme Court as the concerned ministry and the corporation have filed writ petitions.

Following are brief descriptions of the few important cases, which may give an idea of the state of the supply side and the implementation of the RTI Act in Nepal.

1. Whistleblower protection in the RTI Act

NIC has received only one case regarding the protection of whistleblowers.

A school teacher in Kailali district in the Far Western Development Region was transferred to another school without her consent by the Managing Committee for disclosing some wrongdoings at the school to the media. Dalit students of the school were being discriminated against. They were not being given access to drinking water in the school compound. Also, teachers were giving marks in answer sheets without actually checking them. Dalit students were also being deprived of other facilities and were being kept out of the social activities of the school.

The school where the teacher was transferred to did not accept her. The District Education Office (DEO) did not take any appropriate action to place her in any other school in the district. She then filed a case against the chief of the DEO for protection under section 29 of the RTI Act, which is meant for the protection of whistleblowers.

The Commission ordered the chief of the DEO to pay her salary and place her in the school to which she was assigned. For some time, the DEO paid her salary. However it failed to install her in her job. The Commission repeatedly ordered the chief of the DEO to do so, but as he did not follow the order, he was fined a sum of Rs. 5000.

The Commission took this case to the Chief Secretary of the Government who took care of the case and instructed the Ministry of Education to take appropriate action. The MOE appointed a Committee to investigate the case. The Committee went to the district and met with the concerned officers and teacher. The Commission has found out that the Committee is taking positive action in favour of the teacher, and the MOE is taking appropriate action to reinstate the teacher.

2. The judicial council provided documents

A district judge was removed from his post for alleged misconduct based on the report of an investigation committee appointed

by the Judicial Council (JC). He wanted true copies of the report of the investigation committee to file a case against his removal.

When the JC did not provide the documents, he appealed to the Commission. The Commission asked it JC to either provide the demanded information, or to provide reasons for its denial.

The JC wrote to the Commission saying that the documents could not be given without mentioning appropriate cause. The Commission then called the Secretary of the JC to be present at the Commission but he declined to do so. The JC wrote a letter to the Commission which stated that since the case was in the Supreme Court, and the JC needed the documents for production in the Court, these could not be given to the Commission. The JC also mentioned in the letter that it is not required by law to provide documents to the Commission.

The Commission then sent a 15-day notice to the Secretary to provide all the information demanded by the applicant to the Commission. In response, the JC provided only some of the documents. The Commission asked the JC to provide all the documents demanded by the applicant. The Commission received the remaining documents six months later. It took 364 days from the date of the filing of the appeal at the Commission to get information from the JC.

3. Ministry of home affairs provided a classified report

There was a communal riot in the Tarai which affected three districts. Some people were killed, many were injured, and there was significant loss of property and damage to vehicles. An investigation commission headed by a district judge was formed to recommend actions including compensation for loss of physical property and vehicles.

One of the victims of the riot, who was not given proper compensation as recommended by the investigation commission, request-

ed the Ministry of Home Affairs (MoHA) to provide a true copy of the report of the investigation commission. However, the Ministry neither provided the report, nor gave any reasons for not giving it.

When the MoHA did not give any reasons for not supplying the demanded document to the victim, he appealed to NIC. The Commission asked the Secretary of MoHA to clarify why the Ministry did not give any reasons for denying the document. However, the Ministry did not provide any reasons.

Since the nature of the report seemed sensitive as it was related to communal harmony, the Commission desired to first study the report. Hence the Commission issued orders for the report to be submitted to it for further study by the Commissioners.

The Secretary of MoHA then appeared before the Commission and expressed his inability to provide the report to the Commission. At the same time the Ministry asked the Chief Secretary for his suggestions in the matter.

The matter was discussed at the office of the Chief Secretary, who told the representatives of MoHA present that since the Commission is a part of the government, there is no cause for mistrust. The Act also states that even secret documents can be studied by the members of the Commission. He suggested that MoHA provide reasons for keeping the report as a secret document, and also provide the report to the Commission. However, MoHA did not provide the report to the Commission.

MoHA then sent a letter as per the instructions of the Minister of Home Affairs to the Commission stating that the report could not be provided to the Commission as it falls under the classification section no. 2(12).

The Commission then issued a letter to the Secretary saying that the MoHA must either provide the report, or face legal action according to section 32 of the RTI Act.

After a few days of receiving the letter, the MoHA sent a copy of the report to the Commission. However, it took six months from the date of receiving the appeal to get this report from the Ministry.

4. Ministry of home affairs provides financial report of an investigation committee

When a journalist failed to get from the Ministry of Home Affairs the financial report of an inquiry commission formed to investigate the murder of a journalist, he appealed to NIC. At first the Ministry refused to provide the report saying that the accounts had not yet been audited. However, the Commission repeatedly asked the Ministry to provide the financial documents to the journalist, and he eventually got the information.

Disclosure of answer sheets to students

Providing answer sheets to students is an important case which has a wide impact on the education system of the country. However, universities are quite conservative in this matter. They have filed writ petitions against the decision of the Commission. The case is under consideration in the Supreme Court for more than a year.

Disclose performance evaluation marks

An employee of the Ministry of Agriculture and Cooperatives filed an appeal requesting his performance evaluation marks from the Ministry. NIC asked the Secretary of the Ministry to provide the requested information. When he failed to supply the information, the Commission proceeded to take legal action including imposing financial penalties and taking departmental action. At this point, the Secretary filed a writ petition in the Supreme Court against the decision of the Commission.

Similarly, the Nepal Telecom also has filed a writ petition against the decision of the Commission related to the supply of information regarding the release of the performance evaluation marks of an employee.

Decisions, directives and implementation

Apart from its routine activities of hearing appeals, complaints and applications, the NIC has issued several directives to public bodies in defence of public interest. It has issued directives to the Medical Council, the Medical Association and the Department of Management of Medicine on writing diagnoses and prescriptions. NIC has issued similar directives to municipalities regarding parking fees and to the Nepal Electricity Authority for providing information regarding load-shedding widely and regularly.

Promotional activities

NIC has started conducting promotional programmes, including a commitment programme involving Secretaries to various Ministries of the Government in which the Prime Minister, the Minister for Information and Communication, and the Chief Secretary gave their commitment to implement the RTI Act. The programme was followed by an interaction programme with all Secretaries to the Government. Since then the commission has been carrying out various types of promotional activities to promote the awareness and implementation of the RTI Act. These activities are aimed at both the demand and supply sides of information. Interaction programmes with government officers, civil society members and journalists were also jointly conducted with the committees of the Federation of Nepalese Journalists in several districts. The major promotional activities conducted by the Commission are as follows:

- Seminars, workshops and trainings for IOs and Chiefs of Public Bodies
- Regional workshops/interactions with regional officers in all five development regions

- District level workshops/interactions with government officers, journalists and representatives of civil society
- Publication of guidelines for IOs and Chiefs of offices
- Training of trainers for IOs. Over 75 trainers have been trained in five development regions. They can be used as trainers for district level training of IOs.
- Regular radio programmes through various FM radio stations
- Occasional TV programs on particular days
- Publication and distribution of “Right to Know” book
- Publication and distribution of “Why RTI?” pamphlet and stickers
- Seminars for stakeholders in districts. More than 50 districts have been covered till date.
- Interaction programs with civil society members
- Launching of Website: www.nic.gov.np
- Production of audio and audiovisual public service announcements for broadcast through radio and TV in five languages
- Scholarships to journalists for reporting and writing features on the state of implementation of the RTI Act
- Consultation meetings with RTI experts, activists, journalists and representatives of civil society

In addition to the Commission’s own programmes, the Commissioners have actively participated in RTI related public programmes, workshops, seminars and media events.

NIC has also started giving training to its own staff on effective implementation of the RTI Act.

Government preparation and weaknesses

On the completion of the first year of the implementation of the RTI Act, NIC had sent teams of experts to various districts to study the state of implementation of the RTI Act, identify problems and recommend measures for its effective implementation. In addition

NIC regularly sends its staff to district level government offices to monitor the state of RTI implementation. They also advise IOs on better implementation.

Studies carried out by these teams, as well as monitoring by NIC staff clearly indicate that the Act is not being implemented properly or adequately. A majority of government offices have not appointed IOs and quarterly disclosures are also not being carried out.

One important problem that has come out is that none of the government offices have kept a record of the information being demanded, partly because they are not obliged to do so. However NIC has suggested doing so in its guidelines. The lack of such a record has caused a grave flaw in the study of the implementation and effectiveness of the Act.

As far as the success of appeals, petitions and applications demanding information is concerned, there no big problem except in a few cases. High level government bodies, ministries, commissions and Judicial Council have so far been cooperative. However, the problem lies in the first instance of demand for information.

For the success of the RTI Act the demand for information must be met at the grassroots level. Information seekers at the grassroots level must be given information by IOs of local public bodies at the first step itself. People should not be compelled to appeal either to the chief of the office, or to the Commission.

Lessons and analysis

Regarding the effective implementation of the RTI in Nepal, various organisations including the World Bank, Freedom Forum and the Campaign for Citizen's Right to Information (CCRI) have conducted studies and research and they have come out with valuable findings and recommendations. This national convention (28-29 March) is also a historic milestone in this direction. All these

initiatives have their own value. However, it is now time to act and to implement these recommendations. A time-bound action plan with specific activities and defined responsibilities should be prepared so that all stakeholders – from political parties to civil society – act in this area with common vision.

CONCLUSION

The RTI Act in Nepal came as a result of a democratic movement and over a decade-long struggle by journalists and civil society activists. They understood the importance and role of the RTI in a democracy. However, very few stakeholders of RTI movement have a clear vision or a deep understanding and experience about its effect and the ways of implementing it. Most of them conceived the RTI an exclusive right of journalists. It is for this reason that the role of the RTI in curbing corruption, promoting good governance and strengthening democracy is taking so long to realise. Hence a majority of stakeholders, including the bureaucracy, political parties and NGOs, who have the primary obligation to implement RTI Act, now seem quite unenthusiastic to play their respective roles. The mere formulation of the Act and the formation of the Commission are not enough to mobilise and activate public bodies which have been used to working in an environment of secrecy for centuries.

For the effective implementation of the RTI Act in the country, we not only have a long way to go, but also a different way to go, because of the current period of political transition. We need a unified, time-bound and detailed plan of action with the allocation of adequate human and physical resources to encompass all initiatives for the effective implementation of the RTI Act.

RECOMMENDATIONS

- RTI should be emphasised in the new Constitution as a fundamental right.
- All laws that contravene with the RTI Act must be amended. The RTI Act should supersede all other laws. There should be supporting laws to help in the implementation of the RTI Act, for example laws related to data protection/preservation, and generation, preservation and retrieval of digital data, etc.
- NIC should have a more autonomous status. It should have the right to recruit its own staff and its annual budget should be allocated directly by the Parliament.
- The RTI Act should recognise the use of digital technologies for demanding, storing and receiving information in digital form. People must have access to the Internet with broadband capacity.
- The RTI must be put into practice at the top levels. All cabinet decisions should be open and placed on the web.
- National level political parties and non-governmental organisations should set examples of voluntary disclosure of information. The RTI Act cannot be implemented successfully without their active participation and intervention.
- The media should act as representatives of the people to access and disseminate information held by public bodies. They should focus more on information related to development activities and projects rather than concentrating on political issues.
- Citizens must be aware that seeking information is not only their fundamental right but is also their democratic duty, without which democracy cannot be sustained. For this, the RTI should be included in curricula of schools and colleges.
- NGOs should come forward and be models and champions of the Right to Information.
- Since the major obligation of implementing the RTI Act lies on government bodies, government staff must realise from the bottom of their hearts that information held by government

offices is public property and people have the right to request and receive information.

- Top level officers must commit to implementing the RTI Act in their respective ministries, departments and offices.
- The Civil Service Act and Regulations must be amended and made RTI friendly. Government officials should take the oath of transparency instead of secrecy.
- Government staff must receive RTI-related training or exposure at least once a year.
- A strong body responsible for implementing the RTI Act should exist in all government bodies. The proposed body should oversee the appointments of IOs and their capacity building, voluntary disclosure as prescribed by the Act and Regulations, and the provision of resources for information management.
- The present system/practice of classification of confidential information should strictly follow the spirit of the RTI Act and be made more transparent.
- It should be mandatory for every government office to keep a record of requests for information and action taken on such requests, and these records should be sent to the Commission regularly.

GOVERNMENT RESPONSIBILITIES IN THE RIGHT TO INFORMATION

Sushil Ghimire

INTRODUCTION

The Right to Information originates in the fundamental right of freedom of expression. As we trace its origins, the United Nations General Assembly (UNGA) in its very first session in 1946 adopted Resolution 59(1), stating that freedom of information was a fundamental human right and the touchstone of all other freedoms. The Universal Declaration of Human Rights 1948 also recognised freedom of expression (FoE) including freedom of information (FoI) and a free press as a fundamental human right.

On the basis of these global norms regarding FoE, FoI and a free press, Nepal provided for the Right to Information as a fundamental right for the first time in the Constitution of the Kingdom of Nepal 1990, which was the first initiative to formulate a Right to Information legislation.

Nepal adopted the Right to Information Act in 2007 and became the third country in South Asia to do so after Pakistan (2003) and India (2005).

The Right to Information (RTI) includes the right to get any material in any form including records, documents, e-mails, opinions, advice, press release circulars, contract documents, reports, data held in electronic or other forms related to any public authorities or private body which can be accessed by a public authority. It is important that access to information is recognised as a right because it:

- Accords sufficient importance to good governance and supports the realisation of all human rights;
- Becomes a part of the accepted international obligations of the state;
- Ensures that RTI is not limited to being an administrative measure, and information is not given by the government to the people only at its discretion;
- Underlines that information belongs to the public and they are its real owners;

- Sets a higher standard of accountability; and
- Gives citizens the legal power to acquire information.

The Right to Information here includes the right to inspect work, documents, records, samples of materials, and obtain information in different forms including print, digital, and audio visual. The RTI Act 2007 is predicated on the importance of information and its maximum disclosure.

IMPLEMENTATION ARRANGEMENTS FOR RTI IN NEPAL

Article 3 of the RTI Act clearly specifies that every citizen shall have the Right to Information, and every citizen shall have the access to information held by public bodies. It is thus clear that all citizens can access information held by public bodies. However, in Article 3(3), the Act defines exemptions. These are mostly related to:

- The sovereignty, integrity, national security, public peace, and international relations of Nepal;
- Information which directly affects the investigation, inquiry and prosecution of crimes;
- Information which may have a serious impact on the protection of economic, trade or monetary interests, intellectual property, or banking or trade privacy;
- Information that may jeopardise the harmonious relationship among various castes or communities; and
- Information that interferes with individual privacy and the security of the body, life, property or health of a person.

There is a provision to form a committee with the Chief Secretary as Chair, Secretary to the concerned Ministry as a member, and a subject matter expert as another member to classify and update information related to a public body.

The National Information Commission (NIC) must be informed about the classification of information. Further, the NIC may ask the information classification committee to revise and review the information that need not be kept confidential.

Thus the Government of Nepal has the legal basis and background to implement the RTI act for effecting maximum disclosure of information to the people of the country.

Nodal agency

There is no specific nodal agency to implement, promote and monitor the RTI. But if we think about the spirit and motives behind the RTI regulations, it is very obvious that all public bodies are responsible for disseminating information. The provision of an information officer (IO) in all public bodies to disseminate information is a procedural commitment of the government to implement the RTI Act and Regulations. In the regulations, the duties of the IO, the process to seek information, and the remedies available when information is not provided have been clearly mentioned.

Therefore, there is no confusion in the Act about its implementation and the responsibilities of public bodies with regard to the Act. However, there is no Nodal Agency which works at the central level to take the initiative, coordinate, and monitor activities related to the RTI Act.

Although it has not been mentioned as such in the relevant regulations, the Ministry of Information and Communications (MoIC) is acting as the nodal agency for RTI and is coordinating with all other ministries, departments and other public offices to appoint information officers (IOs). The MoIC has also organised workshops and orientation programmes for IOs to make them aware about the importance of the RTI and to ensure its effective implementation.

There are well designed procedural arrangements in the regulations to provide and seek information. The roles of the supply side

(information provider) and demand side (information seeker) are clear. The present need is to enhance the capacity of both the sides. Amendments could be made to the RTI regulations to assign MoIC or the Department of Information or any other organisation the role as the nodal agency for RTI.

Management of information

In the present context, governmental organisations (ministries, departments, and other offices), corporations and other public institutions are directly involved in supplying public services to people. These institutions are concerned with the people in their affairs from “womb to tomb”. These organisations are the major suppliers of information, and need capacity building. In most government offices record keeping is very poor, although records are the main source of information. The people working on record keeping are not motivated, and are not well qualified or skilled to prepare and manage information. Unfortunately record management is still not a priority area for government organisations.

RTI regulations have prioritised the role and value of both information supply and demand, but in practice the supply side has been neglected and more emphasis has been given to the demand side. The capacity development of these organisations, including the use of scientific methods for record keeping and filing systems, the use of ICT for data storage, and quick release of information is of utmost importance. Officials and IOs should be trained and familiarised with modern technologies and processes. To enhance the capacity and awareness in the demand side, there should be activities to publicise the provisions of the RTI regulations so that people are made more aware about it.

Information often has a cross-cutting dimension. Internal communications within an organisation from one section to another or one department to another is also important. Likewise, communication between and among organisations should also be strengthened. In such cases, the harmonisation of information

management among departments and organisations should also be considered.

Training and orientation

Although the concept of freedom of expression was the touchstone of RTI activities, and this was formulated in the Constitution of Nepal a while ago, Right to Information is still a new topic in Nepal. The RTI Act was promulgated in 2007, and it has already been three years since it has been in place. In the initial stages, the establishment of the NIC and the appointment of information officers took some time. It has therefore been in full swing for less than two years.

In this context, relevant officials at NIC, ministries, departments and other public organisations are still in a learning phase. They need strong and effective orientation and training to increase their capacities. The infrastructure, organisational set up and record-keeping mechanism is also poor. On the demand side, information seekers are also unaware of the procedures to request information, as well as the legal provisions of the RTI Act.

Citizens' access to information should be made simple and easy so that public bodies perform their functions in a more open and transparent way.

The orientation and training of government officials and officials of public bodies on the supply side, and information seekers on the demand side, should be given more attention. For the smooth implementation of the RTI regulations, the strengthening and empowering of the NIC is also important for it to be able to safeguard the RTI Act and rules.

Proactive Disclosure

The government has proposed the provision of proactive disclosure of information. Proactive disclosure is a process to disclose or disseminate information on a regular and periodic basis without it being asked for by the people. This process has been applied for

a decade in different forms. Some provisions have been included in the regulatory framework and some are decided by executive decisions.

Some common practices of proactive disclosure are citizens' charters, annual programmes, social audit systems, periodic (quarterly, half-yearly and annual) reports, websites, press bulletins, interviews of officials, regular press briefings, etc.

These practices of proactive disclosure are applied in one form or another depending upon the needs and the nature of the organisation. Some provisions mentioned above are mandatory and are practiced. But the sincerity and efficiency of these efforts is not satisfactory in most organisations. Publicising periodic reports and monthly financial statements are mandatory processes of proactive disclosure.

Classification of information

To protect and maintain the confidentiality of information which is not suitable for release, the RTI Act has provided for an Information Classification Committee. The composition of the committee is:

- Chief Secretary of the Government of Nepal - Chairperson
- Secretary of concerned ministry - Member
- Subject matter expert appointed by the chairperson - Member

The committee is supposed to collate a list of probable information and to classify it according to its nature in the spirit of the RTI Act. The Committee is to inform NIC about such a classification. Information may be kept confidential for a maximum period of 30 years depending on its nature. Every 10 years, the committee must review whether any information classified as confidential is to be continued as such. The committee can also keep information confidential for additional periods, as well as decide if the information can be deemed non-confidential. There is also a provision for making complaints on the classification. Any person may appeal before NIC on whether certain information should have been classified as confidential or not.

The RTI Act also has provisions regarding the protection of information. Public bodies are to protect information of a personal nature and prevent its unauthorised publication and broadcasting

Personal information held by public bodies, except in the following situations, cannot be used without the written consent of the concerned person.

- In case of preventing a serious threat to life and body of any person, or public health or security,
- If required to be disclosed in accordance with prevailing laws, and
- If related to an investigation into corruption.

In this way the privacy of personal information has been guaranteed unless otherwise provisioned in the law.

Use of information and communication technology (ICT)

The current information management and dissemination process is very traditional. A manual system of record keeping and disseminating information is prevalent in almost all organisations. This has made the RTI process very inefficient and time consuming. Records are also not maintained in a proper way. Therefore the use of ICTs to achieve and manage information is inevitable.

This 21st century is the age of information, backed with ICTs. All public bodies should be oriented towards using ICTs to facilitate information management, information dissemination and reliable record keeping. Digitising information, hosting websites, updating information, electronic transmission and dissemination of information, the use of broadcasting and print media for dissemination and proactive disclosure of information are some examples of using ICTs in the context of RTI.

The effective use of ICTs needs both hardware and software. In the context of hardware, the availability of equipment is important, while in the context of software, operating systems and capacity building of officials is important.

Transparency and accountability

Procedures and processes of all public organisations should be transparent so that people can easily understand the rules and regulations that concern them. Such a mechanism will make officers accountable to their jobs and customers. This will reduce delays in performing jobs and create a transparent environment.

To promote this process, rules and regulations should be prepared and amended to make the concerned officials more accountable and transparent in the conduct of business. The Right to Information law can play a crucial role in changing conventional bureaucratic practices, and establishing a democratic society.

CHALLENGES TO RTI

The RTI initiative is new to the country, although “Freedom of Expression” as a basis for the RTI law was adopted by the United Nations General Assembly in 1946. The implementation of RTI regulations has been slow in most countries. Common challenges (which may not be equally applicable in all countries) are:

- Hostile or indifferent governments, public bodies, and other concerned organisations. In many cases governments may not realise the value of having a Right to Information law, particularly in a country where there is a history and culture of secrecy. They fear a Right to Information law may also expose corrupt practices and undermine personal and professional interests.
- Situations where the media is suppressed, controlled or politicised. Access to official information by journalists in many countries has still not been realised. In some cases where a Right to Information exists, journalists are not using it because they continue to rely on relationships they have developed with government sources.
- In some cases, there is a constitutional guarantee for RTI yet there are many laws which contradict the RTI provisions and have not been amended.

These are common challenges that face most countries at different stages of implementation. There are no similar prescriptions to overcome these problems. Some of these challenges need amendments in the regulations, while others can be solved by executive decisions. Still others need training, workshops, seminars and other awareness and advocacy programs. Capacity building in public organisations is equally important to overcome the challenges faced by the RTI movement.

THE ROAD AHEAD

There has been a long debate on service delivery mechanisms in Nepal. The customer (service receiver) complain about delays in the process, red tape, corruption, and the lack of accountability of public officials. They also complain about clumsy working procedures and non transparent activities.

Right to Information has been recognised as a fundamental human right, linked to the dignity of human beings. It is also a building block of participatory management and good governance. It can create harmony and trust between service providers and service receivers. It can create a conducive environment for improving accountability and governance, and reducing corruption, abuse of power and misappropriation of funds in public offices.

Understanding the global importance of RTI, Nepal promulgated the RTI Act 2007 and the RTI Rules 2009. This was a landmark moment in the RTI movement in Nepal. Some salient features of the RTI regulations are:

Proactive disclosure

The principle of the RTI stipulates that public bodies are required to disclose key information even in the absence of any request. Section 5 of the RTI Act requires public bodies to proactively update and publish certain types of information on a periodic basis.

Protection of whistleblowers

Section 29 of the RTI Act has provided for the protection of whistleblowers. No harm or punishment should be borne by a whistleblower for providing information. If any punishment or harm is done to the whistleblower, the whistleblower may complain and demand for compensation.

The scope of act also extends to political parties and NGOs

Another noteworthy aspect of this Act is that it covers political parties and NGOs within its scope (under section 2(a)), and also makes them responsible for providing information like other agencies.

National information commission (NIC)

This Act has made a provision for the establishment of an independent NIC for the protection, promotion and practice of RTI in section 11. The NIC was established in 2008.

Time frame and procedure for providing information

Section 27 of the Act provides detailed procedures to acquire information from concerned agencies.

Compensation in case of harm or loss occurred as a result of not providing information

Section 33 says that if any person incurs any loss or damages due to the non-provision of information, refusal to provide information, or the provision of partial or wrong information, s/he is entitled to compensation.

If we look at the provisions of the RTI regulations, they appear to meet the expectations of the RTI movement. However, the implementation of the RTI regulations is not satisfactory. Both the supply and demand sides are learning the processes and provisions of the regulations, and they are currently in the stage of “learning by doing”. Many activities for increasing awareness about the RTI and the duties and responsibilities of information seekers and public bodies have to be carried out. Regular public activities, ad-

vertising, workshops, seminars, orientation programs, and trainings targeting officials of public bodies and the civil society have to be carried out.

Carrying out structural changes in public organisations, strengthening physical facilities, and the use of ICTs and other modern technologies are equally important.

Furthermore, the realisation of the importance of the RTI, and a commitment from political and administrative leaders to implement it is very important. Without their full support and willingness, it is impossible to ensure its smooth implementation.

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EXPERIENCES AND CHALLENGES OF INFORMATION OFFICERS IN THE IMPLEMENTATION OF THE RIGHT TO INFORMATION

Sher Bahadur Dhungana

INTRODUCTION

A landlocked country, Nepal remained in the clutches of Rana rule for 104 years. Although democracy was ushered into the country in 1949, it could not be sustained and institutionalised. The Panchayat political system that was forced upon the people by the king in 1960 only benefited a handful of dynastic rulers, classes and communities. The Nepalese people had to wait for the People's Movement of 2006/07 to become sovereign citizens. Prior to this they were deprived of their fundamental rights.

Democracy was reinstated in 1990. Nepal was also influenced by the wave of modernisation sweeping the world. From this point on, Nepal entered into an environment of openness. The Constitution of the Kingdom of Nepal, 1991 provided Right to Information as a basic right. However, a Right to Information law was not enacted for another 15 years. After the advent of *loktantra* or full-fledged democracy in 2006/07, the Interim Constitution of Nepal, 2007 also provided constitutional recognition to the Right to Information (RTI). The Right to Information Act was enacted in 2007. It is worth noting that access to information did exist in Nepal, especially in the judiciary long before the enactment of the RTI law. Clause 211 under the heading Court Procedures in the Muluki Ain [Civil Code], 2020 BS, states that *'the copy of the documents and case papers at the office/court where the case is heard should be given to anyone concerned asking for it'*. Similarly, Column 17 under the heading 'Paper Check' of the Civil Code reads as follows: *"Anyone concerned can take the copy of the government papers with the office/court."*

Although the Right to Information Act was enacted in Nepal, the work, duties and responsibilities of Information Officers (IOs) have not been clearly established even four years after the implementation Act. This paper analyses the experiences and challenges faced by IOs in seeking to implement the RTI Act.

The Right to Information has remained under-utilised in Nepal as very few citizens seek information. The approach of public officials, who presume that not providing information is a good and legally sanctioned practice, also serves to discourage requesters.

The related Acts and Regulations are in the initial phase of their implementation. Some information officers have not received necessary education or training, while others are not fully motivated. In the present context, the responsibility of smooth flow of information lies with officials who are not used to a culture of providing information. There remains the challenging task of making existing human resources well-acquainted with related laws in the interest of the country.

This paper has been prepared based on interactions and meetings held with the chiefs and information officers of public bodies and a study of published materials. Information on legal provisions, and on global and Indian experiences related to RTI have been collected from the Internet. Since the study had to be carried out within a limited time, the experiences and challenges of information officers outside Kathmandu Valley could not be included.

CITIZENS' CHARTERS IN NEPAL: THE FORERUNNER TO THE RIGHT TO INFORMATION

As per the Good Governance (Management and Operation) Act, 2008, the Good Governance (Management and Operation) Regulations, 2009,¹ and the Service Campaign Operation Guidelines, 2009, any public body providing goods and services should publish a Citizens' Charter providing particulars on the following topics for the information of service-recipients.

¹ See <http://www.lawcommission.gov.np/>. Accessed 20 May 2012.

- The service and the nature of service provided by the office concerned
- The process to be fulfilled by service recipients for getting the service and the documents required for that purpose
- The time it will take to provide the service
- Particulars of any charges or tariffs required to avail of the services
- Information about the officer providing the services and his/her office
- The name and designation of the officer hearing complaints of service-recipients
- The location and telephone number of the body providing the service

Once the Guidelines were implemented, public bodies across the country started making Citizens' Charters and hanging them in their respective offices. Efforts were made to collect all Citizens' Charters in a district in the form of a single compilation that could easily and widely distributed. The District Administration Office, the office of the District Development Committee and officers' clubs in different districts actively contributed to this. Organisations like Pro-Public, a group seeking to promote good governance, also sought to publicise these charters.

Citizens' Charters containing information on the services rendered by a particular public body have proved to be useful to people who need services and information. Citizens' Charters could be considered as information published voluntarily and proactively.

The Good-Governance (Management and Operation) Regulations 1999 have also created an institutional mechanism to resolve grievances and award compensation when public agencies fail to comply with the standards set out in the citizens' charter. A three-member committee headed by the Chairperson of the District Development Committee and comprising the Chief District Officer

and the Chief of the Office concerned will examine complaints and award damages. Any fines levied are supposed to be deducted from the salary of the employee concerned but in practice this has rarely been applied.

MONITORING THE IMPLEMENTATION OF CITIZENS' CHARTERS

There are people who say that it is not necessary to seek information as a lot of the information which the general public wants to know is already present in Citizens' Charters. The following results emerged while carrying out a study of the implementation of Citizens' Charters in 17 districts. The monitoring was carried out by the National Vigilance Centre from mid-December 2009/ mid-January 2010 to mid-March 2011.

“A team of the National Vigilance Centre visited the offices in the districts where there is maximum contact with people like the District Administration Office, the District Land Revenue Office, the District Survey Office, the local municipality office and hospital for the purpose of monitoring Citizens' Charters and the services rendered by these offices. The team collected information from 50 service-recipients, including 10 service-recipients each from the monitored offices, in each of the 17 districts.

When asked how they came to know about the services provided by the office concerned, 14.59 percent of the service-recipient respondents said they learnt about this by reading the Citizens' Charter while 59.09 percent of the respondents said they learnt about this from others. Similarly, 26.63 percent of the service-recipients said they learnt about the services provided by the office through other means.

Asked if they knew that the office had the Citizens' Charter, 34.04 per cent of the service-recipients said they knew about this.

Similarly, when asked whether works were carried out in the time as mentioned in the Citizens' Charter, 22.25 percent answered in the positive, 11.83 percent in the negative and 65.74 said they did not know whether their work was done within time or not but it was done.

To the question whether their work was carried out in accordance with the charge/tariff mentioned in the Citizens' Charter, 29.08 percent of the respondents said it was carried out as per the tariff mentioned in the Charter, 7.29 said it was not done while 61.86 percent said they did not know whether or not their work was done at the rate mentioned in the Citizens' charter or less, but their work was done.

Asked about their views regarding the service provided by the office, 18.77 percent of the respondents said they were fully satisfied, 34.63 percent said they were generally satisfied, 30.77 percent said they were satisfied (so-so), 7.83 percent said they were quite dissatisfied and 6.76 said they were very dissatisfied.”²

The large number of people professing ignorance of citizens' charters may indicate that charters have not been adequately publicized or that they exist on paper only and lack credibility in the eyes of the public.

THE RIGHT TO INFORMATION LAW: WHAT AN INFORMATION OFFICER NEEDS TO KNOW

What is information?

The first area where an IO needs to be conversant with is the definition of the term 'information' in the law. The right to seek and get information of public interest held by a public body is taken to be the Right to Information. This term also refers to the right to avail

² Annual Report 2067/68 BS, National Vigilance Commission, pp. 70.

of any written documents or materials kept by any public body, to study and observe the works carried out by that body, to get certified copies of such written records, to visit and observe the sites where works of public importance are being undertaken, acquire certified samples of any material, or to get information stored in any type of machine.

What qualifies as exempt under the law?

This is a tough area requiring the exercise of judgement as well as a substantive knowledge of the RTI law and the scope of its exemptions. Exempt areas include the following:

- Information likely to cause serious harm to the sovereignty, integrity, national security, public law and order or international relations of Nepal;
- Information directly hampering a crime investigation, interrogation and prosecution;
- Information likely to cause serious damage to economic, trade and monetary interests or to the protection of intellectual property or banking and commercial confidentiality;
- Information directly disturbing the goodwill and relations among different ethnic groups or communities; and
- Information that endangers an individual's privacy, body, life, property, health or safety.

What kinds of information need to be proactively disclosed on a regular basis?

There is the provision under which public bodies are required to publish the following information related to them. Public bodies should update this information within three months from the date when Act came into force and every three months after that.

The provision requires that public bodies should publish the following information related to them.

- The nature and type of the body
- The works, duties and rights and responsibilities of the body
- The number of staff in the body and their job descriptions
- Services provided by the body
- The branches of the body providing service and the responsible officers
- The charges required for the service and the time it takes
- The decision making process and details of officers taking decisions
- Officer hearing complaints on the decisions
- The details of works carried out
- The name and designation of the information officer and the chief
- List of Acts, Laws, Regulations and Guidelines
- Updated particulars on the income, expenditure and financial transactions
- The details of any programmes or project carried out by the public body in the previous fiscal year, if any
- The details of the Website of the public body, if any

Responsibilities of the office chief ³

According to the RTI Act, the head of office is the chief of the public body. The main responsibilities of the office chief in connection with enforcing Right to Information laws are as follows:

- Assigning the Information Officer at the office
- Providing required information to the IO
- Promoting RTI within his or her public body
- Hearing complaints against IOs
- Spontaneously publishing and disseminating information related to the office and ensuring that it is regularly updated as per the law.

³ Aryal, T.R. et al (2010), Right to Information (Training Resource Booklet), Citizens' Campaign for Right to Information, Pp. 38-39.

WORKS, DUTIES AND RESPONSIBILITIES OF INFORMATION OFFICERS

Differentiating between IOs and government spokespersons

As per the Good Governance (Management and Operation) Act, 2008, the Right to Information Act, 2009, the Good Governance (Management and Operation) Regulations, 2009, the Right to Information Regulations, 2009, the Service Campaign Conduction Guidelines, 2009 and other existing legal provisions, public bodies are required to provide information related to the beneficiaries of various government programmes. In this connection, it is necessary to be clear about the differences between the responsibilities of IOs and spokespersons. A comparative table is given below for that purpose.⁴

Topic	Information Officer	Spokesperson
Primary relationship with	General public	Press and media
Must be present in	All public bodies	Constitutional bodies, ministries and other offices at that level
Scope of work	Update and make information public on a regular basis; Provide information sought by citizens.	Release information as per need; Give information sought by the Press.
Legal status	Post created as per the legal provision of the Right to Information Act; Has legal responsibility and authority; Provision for sanctions in case of violation of law.	Post created based on demands of the Press; Assigned responsibilities based on guidelines issued by the Ministry of Ministry of Information and Communications.
Seniority	Not fixed; Ranges from Joint Secretary level to Enumerators.	Spokesperson is of Gazetted First Class rank and Assistant Spokesperson of Gazetted Second Class rank.
Means of motivation	None	Rs. 500 as telephone allowance
Transport facilities	Available in some bodies.	Joint Secretary is provided with a vehicle.
Number of positions	353 at the central, regional and district levels	51 at the central level (including some Assistant Spokespersons)

⁴ National Information Commission (2009), Guidelines on Implementation of the Right to Information, Pp. 34.

Responsibilities of information officers

According to the Right to Information Act, an IO has the following responsibilities:

- To immediately provide any information in the possession of one's office or related to one's office if asked for and available.
- If the information sought cannot be made available immediately, then make it available within 15 days explaining the reasons for the delay.
- Provide information about the life and body of any person within 24 hours from when it is sought.
- If the information sought by an individual is not available with the public body concerned, the person seeking information should be informed about this.
- Information related to the body one is associated with should be made public, published and disseminated every three months from the date the RTI Act came into force after classifying and updating the information.
- Update information, manage the certification of records, and store and protect information.
- Provide personal information with the consent of the person concerned.
- Play the role of the facilitator for making the works of one's office/department open and transparent.
- Update data on information sought and provided, and send this data to higher bodies and to the National Information Commission.
- Clearly state the name, address and other details of the IO in the relevant Citizens' Charter in order to make the process of seeking information easy and smooth.
- Clearly state on a notice board the contact details and alternate enquiry sections in case there is no IO.
- Provide necessary information about the process of seeking information for facilitating the process.
- Provide information about the time it takes to provide information.

- Provide information regarding the charges required for providing the information.
- Protect and preserve information of personal nature from unauthorised publication and dissemination.
- Not to shirk from the responsibility of supplying information except for valid and adequate reasons.
- Make relevant information public by publishing and broadcasting in various languages and mass media.

Appointment of information officers in public bodies

An important element of the NVC study mentioned above was to ascertain the extent to which IOs have been appointed. For this, data on the total number of existing government agencies was required. However, there is some degree of confusion regarding this number. According to the Civil Servants Records Office, the body responsible for keeping the records of civil servants, there are 8,991 government offices in the country.⁵ As per the Office of the Comptroller General that is responsible for releasing budgets and keeping the accounts of government expenditure, there are 5,000 offices throughout the country.⁶ According to the Office of the Auditor General, there are 30 to 40 offices in each district of the country. At the end of the Fiscal Year 2010/2011, there were altogether 4,194 offices including 3517 government offices, 602 offices of committees, organised bodies, boards and council and 75 District Development Committees (DDCs) in the country.⁷ In some enumerations, even health posts are considered as government offices while the Office of the Comptroller General only counts those offices that keep a separate account of the budget. Similarly, the Office of the Auditor General includes in its records only those of-

⁵ Interview with Mr. Shreeram KC, Director General, Nijamati Kitabkhana (Civil Servants Records Keeping Office), Chait 6, 2067 BS.

⁶ Office of the Comptroller General, Chait 6, 2067 BS.

⁷ Interview with Mr. Dev Bahadur Bohara, Deputy Comptroller General and Information Officer, Office of the Comptroller General, Chait 6, 2067 BS.

fices that maintain audited accounts of government funds. Thus, the exact total number of public offices in the country could not be ascertained during the course of this study. However, other relevant findings of the study are presented below.

In consonance with Clause 6 of the Right to Information Act, 131 IOs have been assigned at the central level in constitutional bodies, ministries, commissions, committees and centres. A majority of these constitutional bodies, commissions, ministries and central bodies have assigned only one spokesperson. Twenty nine information officers have been appointed in the Ministry of Agriculture and Cooperatives and other bodies under it. The Ministry of Information and Communications has appointed 14 information officers including those in its subordinate bodies. Among diplomatic missions, only three have designated IOs.

The study also found that 29 information officers have been appointed at the regional level offices in the five Development Regions. Among them, the Ministry of Agriculture and Cooperatives was found to have designated information officers at the regional level in all five development regions.⁸

At the district level, 191 information officers have been appointed in 63 of the 75 districts of the country. It was found that the Statistics branch offices in Bajura and Rukum appointed enumerators as information officers. IOs have not been named in 12 districts, namely Sunsari, Solukhumbu, Khotang, Sarlahi, Saptari, Lamjung, Parsa, Dolpa, Humla, Mugu, Jajarkot and Kalikot. The study could not ascertain whether there is a lack of awareness on the need to assign IOs or whether the law was not enforced in these districts. As a general rule, the chiefs of the bodies in which IOs have not been assigned, also work as information officers for that body.

⁸ See http://www.nic.gov.np/chertiye_adhikari.php.

Not all District Administration Offices or District Development Committee offices, or Municipality offices have assigned IOs. In the Kathmandu District, only the Project Management Office of the Second Small Urban Drinking Water and Sanitation Project has assigned an IO. Only four offices each have assigned IOs in Lalitpur and Bhaktapur districts.

EXPERIENCES OF INFORMATION OFFICERS

In the course of this study, we availed of the opportunity to talk to many IOs of the Government of Nepal. In several offices, IOs said that they were sharing a single room and not getting all the facilities that they needed. It was found that there was no separate budget and resources allocated for IOs. In several instances IOs had to make do with and share resources with related departments and sections. Many IOs also said that they had to share resources with other officers as well. Some IOs said they did not know what their responsibilities were as IOs and had been appointed for the first time after the RTI Act came into force.

Details of some individual experiences of the IOs interviewed are provided below.

- Implementing the Right to Information laws has become easier because a strong institutional mechanism such as the National Information Commission is in place.
- IOs have been appointed and are carrying out their responsibilities within the existing resources of the concerned office.
- Many bodies have not received any applications seeking information, while bodies that have received such applications are providing information on a regular basis.
- Generally, the IO works under the Chief of the office who is responsible for providing all important information related to the office. However, this is not being done in all offices. In some ministries and ministry-level public bodies, even Under

Secretary and Section Officer level staff discharge the responsibilities of IOs.

- As the office of the Auditor General does not have much public dealings, no applications seeking information have been received. The Auditor General calls a press conference at the time of submitting its Annual Report.⁹
- An office room inside the Parliament building has been made available to the Society of Parliamentary Affairs Journalists for reporting on the activities related to the drafting of the Constitution as well as the Legislature-Parliament. Entry passes have been issued to journalists of all major media houses and television stations to facilitate the sharing of information on parliamentary issues. However, most journalists seek information in verbal form rather than in writing.
- IOs do not have access to all information. In many instances, they are able to provide only the information that is available to them. Making all files, meetings and discussions accessible to IOs is impractical and difficult. Internal information sharing itself is very limited.
- Often information seekers expect the IO to be a 'know-it-all' person. This expectation is difficult to manage.
- Information should be categorised or classified as civil service rules do not say that all information is confidential.¹⁰
- In many instances citizens seek information without the knowledge of the RTI Act.
- Sometimes, when NIC is strict, files containing information is provided to it, but with the request that it can examine the file, but it should not be leaked to the media.¹¹
- The IOs job is a stressful one.

⁹ Information Officer Dev Bahadur Bohara, Deputy Comptroller General, 2067.12.4.

¹⁰ Mr. Dinesh Kumar Thapaliya, Spokesman of the Ministry of Local Development, 2067.12.6.

¹¹ Experience of an Information Officer.

- People seek information but sometimes higher authorities do not give orders for the information to be released. The culture and tradition of providing information has not developed yet.¹²
- The National Vigilance Centre, the Ministry of Defence, the Ministry of Women, Children and Social Welfare and the Ministry of Youth and Sports have not received any applications seeking information.¹³

Other major themes arising in the interviews are as follows.

- Information officers have not become open and transparent.
- There is a feeling of increased workload because they have to carry out the responsibilities of an IO in addition to carrying out other work of the related Division / Branch.
- In the context of information related to meetings and discussions held in an office, IOs do not have access to these meetings.
- Most of information seekers are journalists. There appears to be an impression that this right is exclusively for journalists.
- There is an acute lack of a culture of transparency and openness.
- Interference from the chief of the department can impact the provision of information.
- Identifying and providing old information is difficult. Some information officers also complained that they have to do work alone and do not have any assistants to support them.
- Many IOs received letters recommending departmental action against them when they discharged their duties. They have shared their concerns with NIC.
- Transfers of IOs have caused difficulties in providing information.
- Comprehensive and efficient information storage systems have not been established.

¹² Mr. Yagyanath Dahal, Research Officer/Information Officer, Ministry of Forests and Soil-Conservation.

¹³ Information Officers concerned.

- Many IOs do not have transportation facility. Further, Spokespersons in the same office are given a monthly telephone allowance of Rs. 500 whereas IOs are not given this allowance.
- Difficulty in providing timely service in many offices due to a lack of IOs and Assistant IOs.
- Non-clarity on the rank of the officer who is designated as the IO.
- No effective provisions for rewards and punishment for IOs.

CHALLENGES FACED BY INFORMATION OFFICERS

- Public bodies have had limited success in providing information in part due to the lack of clear political will and leadership in creating a culture and environment of openness.¹⁴
- NIC has not been able to set up offices outside Kathmandu despite legal provisions that support this.
- There is a lack of adequate information on the legal provisions of the RTI Act, including the responsibilities of IOs.
- A specific set of challenges exist with respect to information older than 20 years. Public bodies are not proactively providing updated information regularly as required under the law.
- IOs are often concerned about the problems that might arise after providing information.
- There are several challenges related to reconciling other laws that are in conflict with the Right to Information Act.
- Important government functionaries take an oath of secrecy and not transparency.
- While IOs are bound to provide information, departments often do not support this. In some cases, IOs are penalized for providing information.
- Even when an IO wants to provide information promptly, it is difficult to get information from all divisions, departments

¹⁴ National Information Commission (2010), Annual Report, 2009-2010, Pp. 55-61.

and other sections of public bodies due to the lack of a culture of providing information readily and easily.

- Only a few offices are using modern technologies of information management.
- There is a mismatch between the RTI Act and the prevalent culture of secrecy. While the Act is modern in spirit, the existing information systems and mechanisms are traditional and outdated.
- The position of an IO is not attractive as no incentives have been provided.

RECOMMENDATIONS

Based on the interviews held with IOs, the following recommendations are proposed.

- IOs should be imparted training and education on the Right to Information. Other staff should also be sensitized.
- The Right to Information Act, 2007 should override all other Acts.
- IOs should not be penalized for providing information.
- High level political commitment to RTI should be fostered through interactions with ministers and senior officials.
- All development-related and government information in the district should be made available weekly to existing information centres set up at the District Development Committee offices.
- IO posts should be created where absent and efforts should be made for their professional development.
- Information-friendly offices should be rewarded.
- The Right to Information should be included in the syllabus at all educational levels.
- Information must be classified based on its nature and not as per the decisions of ministries.
- Laws that are in conflict with the RTI Act should be amended.
- Awareness raising programmes must be carried out.

- Public bodies must not wait for circulars or directives from higher authorities for implementing the provisions which are already specified in the Act.
- A Right to Information Enforcement Cell should be established at the Office of the Prime Minister.
- NIC should be strengthened and made financially independent.

**CONSTITUTIONAL
GUARANTEES
OF THE RIGHT TO
INFORMATION WITH
REFERENCE TO NEPAL**

Toby Mendel

INTRODUCTION

The right to access information held by public authorities (the Right to Information) is now widely regarded as a fundamental human right. In international law, it is considered to be included in general guarantees of the right to freedom of expression, while in many national constitutions it is explicitly recognised as a human right. Nepal was among those countries that recognised the right early on, in Article 16 of the 1990 Constitution.

The current process of constitutional reform and renewal offers Nepal an opportunity to update the guarantee from the 1990 Constitution, which, although forward-looking and progressive at the time, no longer represents better practice. Proposals to introduce a federal system of government in the new constitution also raise important issues for the Right to Information.

This paper reviews the status of the Right to Information under international law, and in a number of national constitutions, outlining the key features of these guarantees, which may provide guidance to decision-makers in Nepal. It also reviews Nepal's current constitutional proposals for the Right to Information, which are identical to those in the 2007 Interim Constitution, which are themselves identical to those in the 1990 Constitution. Finally, it reviews the two main options for allocating jurisdictional responsibility for the Right to Information under a federal system, assessing the pros and cons of each system, through the experience of countries where they are in place.

RTI UNDER INTERNATIONAL LAW

Article 19 of the Universal Declaration of Human Rights (UDHR),¹ a UN General Assembly resolution, binding on all States as a mat-

¹ UN General Assembly Resolution 217A(III) of 10 December 1948.

ter of customary international law, sets out the fundamental right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

The International Covenant on Civil and Political Rights (ICCPR),² a formally binding legal treaty ratified by Nepal in 1991, guarantees the right to freedom of opinion and expression also at Article 19, in terms very similar to the UDHR.

These early international human rights instruments did not specifically refer to the Right to Information and their general guarantees of freedom of expression were not, at the time of adoption, understood as including a right to access information held by public authorities. However, the content of rights is not static. The Inter-American Court of Human Rights, for example, has held that international “human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions.”³

Part of the mandate of the UN Special Rapporteur on Freedom of Opinion and Expression is to clarify the precise content of the right to freedom of opinion and expression as guaranteed under international law. The issue of the Right to Information has been addressed in most of the Special Rapporteur’s annual reports since 1997. In his 1998 Annual Report, the Special Rapporteur stated clearly that the right to freedom of expression includes the

² UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

³ Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 31 August 2001, Series C, No. 79, para. 146. See also The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion of 1 October 1999, OC-16/99, Series A, No. 16 (Inter-American Court of Human Rights) and, in particular, the Concurring Opinion of Judge A.A. Cancado Trindade.

right to access information held by the State: “[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems. ...”⁴

The UN Special Rapporteur significantly expanded his commentary on the Right to Information in his 2000 Annual Report to the Commission, noting its fundamental importance not only to democracy and freedom, but also to the right to participate and to realisation of the right to development.⁵ Importantly, at the same time, the Special Rapporteur elaborated in detail on the specific content of the Right to Information.⁶ Some of the key features he outlined included the need to establish a presumption in favour of openness, subject only to a clear and narrow regime of exceptions, and with a right to appeal against refusals to provide access to an independent body. On exceptions, the Report stated:

[A] complete list of the legitimate aims which may justify nondisclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest.⁷

The UN Special Rapporteur’s views on the Right to Information have been supported by the official mandates on freedom of expression established by other inter-governmental organisations. In December 2004, the three special mandates on freedom of expression – the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression – adopted a Joint Declaration on the Right to Information stating:

⁴ Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/1998/40, 28 January 1998, para. 14.

⁵ Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 42.

⁶ *Ibid.*, para. 44.

⁷ *Ibid.*

The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.⁸

The statement went on to elaborate in some detail the specific content of the right, which was similar in nature to the earlier report of the UN Special Rapporteur.

The other main UN body with responsibility for the right to freedom of expression is the UN Human Rights Committee (HCR), established under the ICCPR and given responsibility for oversight of its implementation. On 21 July 2011, the Committee adopted General Comment No. 34 on Article 19: Freedoms of Opinion and Expression. Paragraph 18 of the new General Comment unequivocally recognises the Right to Information, providing:

Article 19, paragraph 2 embraces a general right of access to information held by public bodies.

These statements by UN bodies find support in similar statements adopted by regional human rights bodies. In October 2000, the Inter-American Commission on Human Rights approved the Inter-American Declaration of Principles on Freedom of Expression,⁹ paragraph 4 of which states: “Access to information held by the state is a fundamental right of every individual.” In 2008, the Inter-American Juridical Committee adopted a very progressive set of Principles on the Right of Access to Information,¹⁰ elaborat-

⁸ Adopted on 6 December 2004. Available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/0/9A56F80984C8BD5EC1256F6B005C47F0?opendocument>.

⁹ 108th Regular Session, 19 October 2000. Available at: <http://www.iachr.org/declaration.htm>.

¹⁰ Adopted at its 73rd Regular Session on 7 August 2008 in Rio de Janeiro, Brazil, OAS/Ser.Q, CJI/RES.147 (LXXIII-O/08).

ing 10 principles governing the Right to Information, including that it is a fundamental human right.

Within Europe, the Committee of Ministers of the Council of Europe adopted a Recommendation on access to official documents in February 2002.¹¹ The Recommendation includes the following provision:

III

General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including national origin.

The rest of the Recommendation elaborates in some detail on the content of the right. In November 2008, the Council of Europe adopted the Convention on Access to Official Documents, a legally binding treaty setting out detailed rules on the Right to Information.¹²

Finally, the African Commission on Human and Peoples' Rights adopted a Declaration of Principles on Freedom of Expression in Africa in October 2002.¹³ The Declaration is an authoritative elaboration of the guarantee of freedom of expression found at Article 9 of the African Charter on Human and Peoples' Rights.¹⁴ The Declaration clearly endorses the right to access information held by public authorities, and elaborates a number of key features of this right.

¹¹ Recommendation No. R(2002)2 of the Committee of Ministers of the Council of Europe to member states on access to official documents, 21 February 2002.

¹² Available at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>.

¹³ 32nd Ordinary Session of the African Commission on Human and Peoples' Rights, 17-23 October 2002, Banjul, The Gambia. Available at: http://www.achpr.org/english/declarations/declaration_freedom_exp_en.html.

¹⁴ Adopted at Nairobi, Kenya, 26 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986. Article 9 is somewhat weaker in its formulation than its counterparts in other regional systems, but the African Commission has generally sought to provide positive interpretation of it.

These authoritative statements have been backed up by legally binding decisions issued by international courts. The first such decision was adopted by the Inter-American Court of Human Rights on 19 September 2006. The decision specifically held that the general guarantee of freedom of expression at Article 13 of the American Convention on Human Rights (ACHR)¹⁵ protects the right to access information held by public authorities. Specifically, the Court stated:

77. In respect of the facts of the present case, the Court considers that article 13 of the Convention, in guaranteeing expressly the rights to “seek” and “receive” “information”, protects the right of every person to request access to the information under the control of the State, with the exceptions recognised under the regime of restrictions in the Convention. Consequently, the said article encompasses the right of individuals to receive the said information and the positive obligation of the State to provide it, in such form that the person can have access in order to know the information or receive a motivated answer when for a reason recognised by the Convention, the State may limit the access to it in the particular case. The information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.¹⁶

Inherent in this quotation are some key attributes of the Right to Information, including that restrictions may only be imposed consistently with Article 13, which is largely identical in this regard to Article 19 of the ICCPR. The Court went on to elaborate in some length on the legitimate scope of restrictions on the Right to Information, stating that they should be provided by law, aim to

¹⁵ Adopted at San José, Costa Rica, 22 November 1969, O.A.S. Treaty Series No. 36, entered into force 18 July 1978.

¹⁶ *Claude Reyes and Others v. Chile*, 19 September 2006, Series C No. 151, para. 77 (Inter-American Court of Human Rights). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc.

protect a legitimate interest recognised under the ACHR and be necessary in a democratic society to protect that interest.¹⁷

The European Court of Human Rights took two and one-half more years to recognise the Right to Information, but finally did so in a case from Hungary.¹⁸ Significantly, Hungary did not even contest the idea that Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),¹⁹ which guarantees freedom of expression, includes a right to access information held by public authorities, instead arguing that the information in question in the case fell within the scope of the exceptions to this right.

CONSTITUTIONAL PROTECTION FOR RTI IN OTHER COUNTRIES

The constitutions of many countries recognise the right to access information held by public authorities as a human right. Better practice is for this recognition to be explicit, in the form of a specific reference to the Right to Information in the human rights bill or part of the constitution, as is the case in Nepal. In other cases, the recognition may be implicit, for example as part of a general guarantee of the right to freedom of expression, as is the case under international law. In this case, clear recognition of the right will normally depend on a finding by courts that the general guarantee of freedom of expression does include the Right to Information.

Textual guarantees

The earliest constitutional recognition of the Right to Information was in the original Swedish Freedom of the Press Act, adopted 1766. The entire Act is part of the constitution and Chapter 2, entitled “On the Public Nature of Official Documents”, is effectively

¹⁷ Ibid., paras. 88-92.

¹⁸ Társaság A Szabadságjogokért v. Hungary, 14 April 2009, Application No. 37374/05.

¹⁹ E.T.S. No. 5, adopted 4 November 1950, entered into force 3 September 1953.

the Swedish Right to Information law. It is thus not only the earliest, but also the most comprehensive constitutional guarantee of the Right to Information.

The early 1990s saw the transformation of most of the States of Central and Eastern Europe into democracies, along with significant democratic renewal in a number of States in Africa and Latin America. In many cases, new constitutions adopted at this time included the Right to Information among their human rights guarantees.

Thus, for example, Article 74(1) of the Constitution of Mozambique, adopted in 1990, provides, very generally:

All citizens shall have the right to freedom of expression and to freedom of the press as well as the Right to Information.

Article 37 of the 1994 Constitution of Malawi provides:

Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.

This is a weak guarantee because it renders the right subject to any act of Parliament, as well as to the requirement that the information be needed to exercise a right. Ironically, Malawi has still not adopted a Right to Information law giving effect to this constitutional guarantee which, as a result, remains elusive in practice.

Similarly, Article 41(2) of the Bulgarian Constitution of 1991 provides:

Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or other secret prescribed by law and does not affect the rights of others.

This also contains important claw-backs from the right of access, being limited to matters of legitimate interest, and also limited to information which is not a secret prescribed by law or which does not affect the rights of others.

In the early 1990s, the idea of a human Right to Information was still nascent, which may explain some of the weaknesses in the guarantees quoted above. Over time, however, the general trend was to adopt increasingly strong constitutional guarantees. Thus, section 32 of the 1996 Constitution of South Africa provides:

(1) Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights;

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

There are a number of interesting and rather unique features of this guarantee. First, it applies not only to information held by the State, the usual ambit of Right to Information laws, but also applies to information held by private actors where this is required for the exercise of protection of any right. Second, it imposes a specific obligation on the State to adopt legislation to give effect to the right. Pursuant to Schedule 6, item 23 of the Constitution, that legislation had to be passed within three years of the Constitution coming into force, which requirement was met with the adoption of the Promotion of Access to Information Act in February 2000.

The Constitution of South Africa recognises that certain rights, including the Right to Information, may be restricted. But it places strict limits on such restrictions in Article 36(1), as follows:

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

According to this standard, restrictions must a) be set out in a law of general application and b) be reasonable and justifiable in an open and democratic society, taking into account the factors listed in the provision. This closely parallels the test for restrictions on the Right to Information under international law.

Perhaps the most robust constitutional guarantee of the Right to Information is found in Mexico. Constitutional amendments in 1977 added a very general guarantee in Article 6, although this was vague and was not made effective through implementing legislation. Amendments adopted in 2007 introduced a second part to Article 6, containing seven detailed provisions on the Right to Information, spelling out quite precisely what is included in the right. This includes, among other things, establishment of the right in accordance with the principle of maximum disclosure, free of charge and through expeditious mechanisms. The article also requires public authorities to maintain their records in good condition and calls for independent specialised oversight bodies.²⁰

Perhaps the most recent development in this regard is Amendment XVIII (the Eighteenth Amendment) of the Constitution of Pakistan,

²⁰ The English translation of the new constitutional provisions is taken from Perla Gómez Gallardo, "Scope of the Reform to Constitutional Article 6 with Regard to Oversight Bodies" (1997) 10 Comparative Media Law Journal 115. Available at: <http://www.juridicas.unam.mx/publica/librev/rev/comlawj/cont/10/lay/lay6.pdf>, accessed 22 December 2010.

passed by the National Assembly of Pakistan on 8 April 2010, adding a new Article 19A, guaranteeing the Right to Information.²¹

Legal Decisions

In a number of countries in Asia, leading courts have interpreted constitutional provisions guaranteeing freedom of expression as providing for the Right to Information. As early as 1969, the Supreme Court of Japan established in two high-profile cases the principle that *shiru kenri* (the right to know) is protected by the guarantee of freedom of expression in Article 21 of the Constitution.²¹

In 1982, the Supreme Court of India, in a case involving the government's refusal to release information regarding transfers and dismissals of judges, ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression, guaranteed by Article 19 of the Constitution:

The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.²²

In South Korea, the Constitutional Court ruled in two seminal cases in 1989 and 1991 that the Right to Information was inherent in the guarantee of freedom of expression in Article 21 of the Constitution,

²¹ Repeta, Lawrence, Local Government Disclosure Systems in Japan, National Bureau of Asian Research, Paper Number 16, October 1999, p. 3.

²² S.P. Gupta v. President of India, India [1982] AIR (SC) 149, p. 234.

and that in certain circumstances the right may be violated when government officials refuse to disclose requested documents.²³

Courts in countries in other regions of the world have followed suit. In an August 2007 ruling, the Constitutional Court of Chile ruled that the right to access information held by public officials was protected by the general guarantee of freedom of expression. In a case based on an application by a private company for information held by the Customs Department, the Court held that public authorities must first consult with interested third parties before refusing to provide access to information provided by them. It also held that the overall public interest in disclosure needed to be taken into account before any refusal to disclose might be justified.²⁴

On 17 June 2010, the Supreme Court of Canada adopted a decision recognising a limited right to access information held by public authorities as part of the guarantee of freedom of expression in section 2(b) of the Canadian Charter of Rights and Freedoms.²⁵ The case arose out of a request to access a police report into possible abuses by police officers during a criminal investigation. The Court held that access was “a derivative right”, which applied where access to information was necessary to conduct an expressive activity. This is unfortunately narrow,²⁶ but it does represent the first time a court in a Western country has recognised a constitutional Right to Information as part of the guarantee of freedom of expression.

THE CURRENT NEPALESE PROPOSALS

We understand that the current proposals regarding the Right to Information in the new draft Constitution of Nepal, which is still un-

²³ Sung Nak-in, Korea Country Report (English summary), presented at the Asian Conference on Civil Society and Access to Government-Held Information, Tokyo, Japan, 13-14 April 2001.

²⁴ Casas Cordero et al v. The National Customs Service. A Spanish version of the decision is available at: http://www.justiceinitiative.org/db/resource2?res_id=103745.

²⁵ Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23 (available at: <http://www.canlii.org/en/ca/scc/doc/2010/2010scc23/2010scc23.html>).

²⁶ See Mendel, Toby, Supreme Court Upholds a Constitutional Right to Information. Available at: <http://www.law-democracy.org/wp-content/uploads/2010/07/10.06.Winston.SCC-FOI-Decision.pdf>.

der preparation, are identical to those found at Article 27(1) of the Interim Constitution of 2007, which is currently in force. This states:

27. Right to Information

- (1) Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance.
- (2) Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

It is welcome that the draft Constitution provides protection for the Right to Information, in line with the better practice outlined above. At the same time, there are a few key respects in which this guarantee does not conform to international law.

First, the guarantee only applies to citizens. Pursuant to international law the Right to Information, like the general right to freedom of expression, should be enjoyed by everyone, not just citizens. Governments tend to make two arguments to justify limiting the Right to Information to citizens. Sometimes, they argue that the costs of providing information to non-citizens, who do not pay tax, will be prohibitive. The experience of other countries suggests that this will not be the case. Indeed, in most other countries, the volume of requests from non-citizens is nominal. Furthermore, when non-citizens do make requests, these frequently relate to research on the relevant country, which is something that citizens also normally benefit from.

In other cases, governments argue that providing non-citizens with a right of access could endanger national security. This argument is without merit. Any national security sensitive information may be withheld pursuant to an exception to the right of access, since such information could be abused by citizens as well as non-citizens. In any case, anyone with the capacity to really inflict harm on a State's security would normally be in a position to identify (or contract with) a citizen to make a request for them.

Second, the guarantee states that citizens have the right to “demand or obtain information”. Perhaps this is a translation error, but individuals have a right both to demand *and* to obtain information.

Third, the constitutional guarantee only applies to personal information or information deemed to be of public importance. Under international law, the right applies to all information held by public authorities, regardless of whether or not it is deemed to be of public importance. This is consistent with the idea underlying the right, which is that public authorities hold information not for themselves, but on behalf of the public.

Furthermore, if an individual wishes to obtain certain information, it should not be for an official of a public authority to assess whether or not it relates to a matter of public importance. The mere fact that someone wants the information is enough to engage the Right to Information.

Finally, if officials are allowed to reject requests on the basis that they do not relate to information of public importance, this gives them ample scope to refuse to provide information either due to an unduly narrow interpretation of what is important or with the specific intention of denying access. What is of public importance is a very subjective notion, susceptible to wide interpretation. Although a rejection on this basis may be contested later, to have to lodge an appeal to get the information represents a considerable delay in the release of information and places a great burden on the requester.

At the same time, it might be useful to clarify in the constitutional provision that the right only applies to information held by public authorities. Otherwise, it might be interpreted as applying to information held by any individual or body, which is presumably not what is intended.

Fourth, and most important, Article 27 accepts any restrictions on the Right to Information that may be established by law. Under

international law, as outlined above, restrictions on this right are subject to strict conditions, including that they are provided for by law, that they serve an interest recognised in international law, and that they are necessary to protect this interest. Without such conditions, any law, no matter how widely phrased or unnecessary, could be passed to limit access to information.

The draft Constitution recognises the need to place conditions on laws which restrict other rights. Thus, the proposed guarantee of the right to freedom of expression, which we understand is identical to the guarantee in the Interim Constitution, at Article 12(3) (a), strictly circumscribes the permissible scope of restrictions on freedom of expression. There is no warrant for treating the Right to Information any differently. Strict limits on any restrictions on access to information should be set out explicitly in the Constitution, in line with international standards.

Possible constitutional reformulations

It is clearly up to the people and government of Nepal to decide how they wish to protect the Right to Information in their constitution. At the same time, putting forward potential options for this guarantee which are consistent with international standards might be useful to help decision-makers formulate this key guarantee.

One possible formulation, which is fully consistent with international law, is as follows:

Everyone has the right to access information held by public authorities. This right may be subject to reasonable limits but only where these are provided by law and are necessary to protect the rights or reputations of others, or national security, public order or public health.

If it were deemed important to draw a closer parallel with the constitutional guarantees of freedom of expression, then perhaps the guarantee could look more like this:

Everyone has the right to access information held by public authorities. This right may be subject to reasonable restrictions provided by law to prevent any act which undermines the sovereignty and integrity of Nepal, which jeopardises public order, including by undermining the independence of the courts, inciting to an offence or harming the harmonious relations subsisting among the peoples of various castes, tribes, religion or communities; which causes harm to public behaviour or morality; or which harms the commercial or privacy interests of third parties.

Consideration might also be given to the idea of providing constitutional status for the National Information Commission and, in particular, for its independence. While there is little practice on this in other States, such guarantees of independence are commonly found in respect of bodies which exercise regulatory powers over the media.²⁷

A possible formulation for this could be:

There shall be an independent oversight body to ensure respect for the Right to Information, to resolve disputes about its implementation and to undertake promotional activities in relation to this right.

ADDRESSING RTI IN A FEDERAL STATE

An issue which Nepal will have to consider in relation to the Right to Information as it moves towards a federal system of governance is where the responsibility for this activity will reside. It is possible to identify two main approaches to this among federal States. The first approach, represented, for example, by India and South Africa, is to grant primary responsibility for this area to the federal government. Under this approach, there is just one overarching Right to Information law and system. The second approach, of

²⁷ See, for example, Article 192 of the 1996 South African Constitution and Article 47 of the 2007 Constitution of Thailand.

which Canada and Mexico are examples, allocates responsibility to each level of government – in other words the federal government and each state or province – for the Right to Information in respect of the information held by its authorities. In this case, each individual state adopts its own Right to Information law and puts in place its own structures and rules.

Centralised Right to Information systems

In the Indian example, the federal law is binding on all individual states in the federation.²⁸ Thus, the standards for disclosure of information and the exceptions thereto, as well as to the main institutional arrangements, such as the setting up of State Information Commissions are all dealt with in the national legislation. The law prescribes the manner of appointment of the State Information Commissions, their terms and key conditions of office and removal, and their main powers and responsibilities (see sections 15-20 of the Indian Right to Information Act, 2005). The detailed rules on the functioning of the State Information Commissions is, however, set at the local level, including by virtue of section 15(4) of the Act, which vests power in the Commissions to supervise “the general superintendence, direction and management” of their affairs.

At the same time, nothing in Indian law, either constitutional or statutory, prevents individual states or the National Capital Territory of Delhi from putting in place other laws or arrangements regarding the Right to Information. Where this happens, requesters can decide which system they wish to use to obtain information. This means that, in effect, the federal system establishes a set of minimum standards for the Right to Information, which state laws may go beyond, but cannot limit.

There are a number of significant advantages to a centralised approach. One is that it establishes a set of minimum standards regarding the Right to Information. As a result, all requesters receive

²⁸ Except for Jammu and Kashmir, which has a special constitutional status.

at least this minimum standard of treatment, regardless of where they reside, and which public authority holds the information they are seeking. This avoids a situation where there is a patchwork of standards and systems across the country, with some potentially falling below minimum international requirements.

There are also important efficiency gains from having a centralised system. This allows for consistent institutional and systemic design. Thus, systems such as requesting procedures, proactive disclosure regimes, including websites, record management standards, the provision of training, the adoption of regulations, and mediation and appeals procedures can be done centrally, or at least models can be developed at the central level, rather than having to do this individually for each different state (which under a non-centralised system would have its own, different, set of primary rules, thereby precluding central modelling).

The same applies to institutional relations, oversight and reporting. If each state has its own system, each state government will need to develop its own system of institutional relationships, for example between the oversight bodies (information commissions) and government, the legislature and different public authorities, as well as between government and each public authority. This also applies to reporting, and instead of one central report going to parliament, each state oversight body will need to report separately to each state legislature.

A further possible efficiency gain through a central system in Nepal, depending on the approach, is that there could be just one unified oversight body, the current National Information Commission (NIC), possibly with different offices in different states, rather than multiple oversight bodies, as there are in India. Section 21 of the Nepalese Right to Information Act, 2007, already allows NIC to establish offices in different parts of the country. Building an integrated system of oversight along these lines would entail considerable savings and other efficiencies.

A centralised system also allows for very important efficiencies in terms of interpretation and application of the rules. Once an authoritative interpretation of the rules has been provided in a particular area, whether by the oversight body or by the courts, the issue will be settled. By contrast, in a non-centralised system, interpretations for one law – for example relating to the scope of the exceptions – will not apply to other laws, which will very likely use different phrases to define the exceptions.

There are also very important benefits to be gained for external stakeholders from a centralised system. For the general public, it will be much easier to understand and use a centralised system. It is often difficult for an ordinary member of the public to understand the proliferation of different laws and systems under a non-centralised system. It is always a challenge to raise awareness among the general public about the Right to Information and the more complex the system is, the greater is this challenge.

In a non-centralised system, it can also be difficult for individuals to make (correct) decisions about where to lodge a request. If an individual lodges a request with the wrong level of public authority (for example, an authority that operates under the state system, instead of the federal one), the whole application may need to be revised so that the request can be accommodated under the other system, which is likely to have different rules on and systems for lodging requests.

Under a non-centralised system, users, whether individuals or groups, may need to familiarise themselves with a plethora of different sets of rules. For example, an NGO which wished to compare the performance of different states in terms of an activity for which responsibility is vested at the state level would need to learn how to make requests under the different systems that apply in every state (and potentially how to lodge appeals in each state as well).

Finally, it is significantly more difficult for civil society groups and other external observers, including oversight bodies, to monitor the

way in which the rules are being applied where there are different sets of rules and systems for applying them in each state. Instead of monitoring one central set of rules and systems, they need to monitor every single state system separately, an often daunting task.

A decentralised approach

In Canada and Mexico, as noted above, responsibility for the Right to Information is, in line with the constitution, decentralised with each individual state (or, in Canada, each province and territory) being responsible for ensuring access to the information held by state-level public authorities. The federal government, for its part, is responsible for ensuring access to the information it holds. Thus, in Canada, requests for information on issues such as broadcast regulation or monetary policy, which are federal responsibilities, are dealt with under the federal law, while requests relating to education or health care, which are provincial responsibilities, are dealt with under the provincial system.

Where information is shared by both federal and provincial authorities, the request will be dealt with under the system which applies to the authority with which the request is lodged. Thus, a request in Canada relating to federal transfers of funds to the provinces for health care might be put to either the federal government or a provincial one.

In line with this approach, each different province or state has its own Right to Information law. Thus, in Mexico, there are 32 different state laws, including the federal district of Mexico city, and one federal law for a total of 33, while in Canada there are ten provincial laws, three territorial laws and one federal law, for a total of 14.

In practice, these laws vary considerably in almost every possible respect, including as to the scope of authorities they cover, the extent of proactive publication obligations, the procedures for lodging requests, the regime of exceptions, the system of appeals and the promotional measures they establish. As suggested above, this results in a patchwork of different standards across the system,

with the result that the extent to which the Right to Information is protected depends on where one happens to make a request.

The complexity of these systems, and the need for substantial resources to run them, is obvious. Empirical research also shows that they deliver a patchwork of results in terms of implementation of the Right to Information.

In the case of Mexico, two NGOs, ARTICLE 19 and Fundar, have rated all 33 laws on the basis of their compliance with both constitutional and international standards.²⁹ There is massive variance in the results. In terms of compliance with constitutional standards, with possible scores ranging from 0-1, the best performer was the Federal District (i.e. Mexico City), with a score of 0.89, and the lowest score went to Guerrero state, with a score of just 0.36. The federal law received a score of 0.65 on this rating, placing it in 11th place overall.

The scores for meeting international standards were, overall, lower, suggesting that international standards are more stringent than the constitutional requirements. The Federal District was again the top scorer, obtaining 0.83, and Guerrero state again came last, scoring just 0.32. The federal law was in 15th place, scoring 0.55.

It is possible to draw two key conclusions from these results. First, they suggest that there is a massive range in the different laws in terms of implementation of the Right to Information, with the top performers getting almost three times as high a score as the lowest performers. Second, the federal system is by no means a top performer, with one-third or more of the states outperforming it on both ratings.

A similar picture emerges in Canada, where the Canadian Newspaper Association conducts an annual audit of access to information performance. Their National Freedom of Information Audit 2009-2010³⁰ is based on filing the same or similar requests at the

²⁹ The results are available at: www.checatuley.org.

³⁰ Available at: <http://www.newspaperscanada.ca/system/files/CNA%20FOI%20Audit%202010%20efinal.pdf>.

municipal, provincial and federal levels. It provides a numerical score of between 0-30. Provincial scores ranged from 6-21, and the average score of federal bodies was 10, placing it tenth out of the twelve jurisdictions covered.³¹

The study indicated very substantial variation among the different provinces, territories and the federal government across a number of variables. These included timeliness (with the range of responses falling within the legal timelines ranging from 100% to 33%), actual release of information (with a range of between 80% and 14% for full release of the information), and fees (with different jurisdictions asking for between under \$50 to over \$98,000 for one request).

The study also conducted a cross-jurisdictional analysis, filing similar requests at three levels – municipal, provincial and federal – with the results showing significantly better performance at the municipal level, followed by the provincial and then federal levels.

Once again, we see a patchwork of performance, with different levels of respect for the Right to Information. In the case of Canada, the federal system does even more poorly than in Mexico, consistently being ranked in the bottom half in terms of performance.

There are some advantages to having a non-centralised system for the Right to Information. The multiplicity of different systems offers a richer laboratory for experimentation and for developing better practices. There is some evidence that this leads to a leveraging up of performance and systems over time, as better practices are duplicated across the range of systems. Thus, in Mexico, there has been a sort of competition between the oversight bodies of the Federal District and under the federal law, with arguably positive results. At the same time, there is also some evidence that progress is far from even or unidirectional (i.e. there can also be rollbacks based on poorer performance by other players).

³¹ The study only scored one of the three territories in Canada, although two were included in the testing.

There is also evidence that civil society has not managed to exercise a vigilant monitoring role in non-centralised systems. For example, in Canada, there are dedicated Right to Information organisations in only two of ten provinces (and none in the territories). These groups have managed to undertake only limited advocacy in other provinces, with the result that in most provinces there is very little civil society advocacy to ensure proper implementation of the rules, or pressure for positive reform.

CONCLUSION

The Right to Information is now well established under international law. It is also increasingly being recognised in national constitutions, either directly or through constitutional interpretation by senior courts. Although some of the earlier constitutional guarantees were somewhat weak, this has changed and more recent constitutional provisions on the Right to Information tend to be far more robust.

Nepal adopted an explicit constitutional guarantee for the Right to Information as far back as 1990, and was the first country in South Asia to do so. While this can be counted as a success, at the same time this 'first generation' guarantee no longer represents better practice. It is limited in terms of both scope and the standards it sets for restrictions on the right. The current round of constitutional reform and renewal presents a good opportunity for Nepal to address these shortcomings, and to once again show leadership in this area.

The move toward a federal system of governance in Nepal presents a choice in terms of the allocation of responsibility over the Right to Information. While a non-centralised system does have some advantages, on balance it is unduly complex and expensive, especially for a poorer country like Nepal. In contrast, a centralised system offers the opportunity to concentrate limited expertise and resources so as to ensure the best possible implementation of the right.

**THE RIGHT TO
INFORMATION
IN NEPAL:
CONSTITUTIONAL
AND JUDICIAL
PERSPECTIVES**

Dr. Ram Krishna Timalsena

THE CONTEXT

Nepal is drafting a new constitution through the Constituent Assembly directly elected by the people. The new constitution will not be drafted in a vacuum. The Interim Constitution of 2063 provides a baseline for the new constitution and the forthcoming constitution may continue institutions and practices are relevant.

Major shifts will be seen in the structure of the state i.e. the country is going from being a unitary state to a federal one. It is a very difficult task to manage a federal set up in a system where everything was designed for a unitary framework. We must be very careful in designing a federal model of governance. Similarly we have to develop a scientific system of governance after abolishing monarchy. We have to institutionalise a republican system, something that was unknown to us before. As we know, the Constitution guarantees the fundamental rights of all citizens and individuals. However, it is yet to be decided how the chapter on fundamental rights will be drafted.¹ What would be the content of those rights? Will socio-economic rights be made enforceable or not? How will third generation rights like the Right to Information be addressed in the Constitution? Moreover, a mechanism for the enforcement of fundamental rights is very important in a federal system. How will the jurisdiction of the federal courts be spelt out? These are pertinent in questions in the given situation. In this paper everything about these aspects will not be discussed.

This paper attempts to shed light on the status of the Right to Information in the constitution drafting process. It will also highlight the mechanisms needed to enforce the Right to Information in the present context. At the same time, other rights connected to the Right to Information also need specific attention i.e. the right to privacy, freedom of press and publications, freedom of expression, etc.

¹ This was the situation when this paper was prepared.

RIGHT TO INFORMATION: A CONCEPTUAL FRAMEWORK

The Right to Information (RTI) has acquired a special importance in the democratic world. It has become a vital element in the scheme of open and responsive governance. It is considered to be the pulse and lifeblood of democracy. It is necessary for individual fulfilment. It empowers people, makes them responsible citizens and helps in creating a just society by preventing secret dealings in public business.

RTI is important for the political, economic and social well-being of society in general. It ensures transparency. The level of transparency determines the responsiveness of government to our needs, wants, ideas and creativity. For a government to enjoy the faith and confidence of its citizens, it must truthfully be in touch with the governed. RTI provides an opportunity for citizens to participate in the governmental process.

The effective operation of a representative/participatory democracy depends on the ability of people to analyse, discuss and contribute to government decision-making. To do this, they need transparency which is possible only when there is access to information. It is well known that much material about government operations is provided voluntarily. The Right to Information also has an important role to play in enhancing the proper working of our representative/participatory democracy by giving citizens the right to demand and receive information of public importance. Such access to information permits the government to be assessed and enables people to take part more effectively in the policy and decision-making processes of the government. It is clear that access to information is closely related to the notion of a healthy democracy where citizens participate in and influence the processes of government decision-making and policy formulation on any issue of concern to them. The importance of the Right to Information legislation is that it provides the means for a citizen to have

access to the knowledge and information that can contribute towards improving the life of the people.

RTI is also vital in recognising citizens as consumers in public life. Public bodies and government departments govern our lives, and these institutions must be held accountable and answerable to the people through RTI.

As we know, RTI is the backbone for participatory democracy without which people cannot effectively exercise their rights and responsibilities as citizens or make informed choices. It is the currency that we all need to share in the life and governance of our society. It enhances the accountability of government, and ensures that Members of Parliament are aware of the activities of the executive, which is especially important in light of the disparity in power between them. It is also an important protection against corruption. Therefore, the RTI is an important tool in revealing corrupt activities and shifts the balance of power in a subtle yet profound way from the state to the individual.

THE RTI AND THE DEMOCRATIC PROCESS

Democracy demands transparency in decision-making and this is possible only through effective RTI provisions and their implementation. Transparent processes produce fairness and legitimacy. The consequentialist logic for transparency in government usually rests upon the idea that unclear processes are likely to facilitate corruption and irregularities. In such cases, corruption and irregularities are more likely as secret decision making promotes rent-seeking by public officials. Transparent processes make bribery more difficult and increases the likelihood of its exposure.

Democracy has become a catchword these days. Every system claims itself to be democratic. It has been said that democracy is like a hat which fits everyone who wears it. There may be many

forms of democracy in the world, but the substance of democracy is the same - to uphold political, economic and social justice for everyone. We call a democracy substantive if the substance of a given system is pro-people or people-centred. In this sense, democracy with substance is substantive democracy. Substantive democracy relies on transparent governance as a result of which people have information that is necessary for them to become dignified and responsible citizens. Transparency deepens democracy. It helps to recognise diversity as the soul of the modern democratic world. In the same fashion, it takes into account the autonomy of people, communities and groups by maintaining their respective identities.

WAYS OF ENSURING ACCESS TO INFORMATION

Transparency relies on access to information. Access is guaranteed through various ways. The most important one is a culture of openness whereby the government and people act transparently without any legal sanctions. The second is the constitutional guarantee of the Right to Information which provides access to information of public importance. Under this, citizens may have access to information as a fundamental legal right. It is the main instrument of guaranteeing transparency. There is also a third way of getting information. Although the constitution and laws regarding the Right to Information are the major tools to access government information, there are several other ways by which public information is made available to citizen. The parliamentary system, including the parliamentary committee system, promotes the transfer of information from the government to Parliament, and then to the people. Members of the public can try to obtain information through their parliamentary representatives. Annual reporting requirements of constitutional organs, community consultations in certain types of bills, publication of information, and administrative law requirements increase the flow of information from the government. The government also provides information

through various means of communication. The media is the main source of information in a democratic country. The press, radio, television and the Internet disseminate information to the public by using their freedoms and rights. In addition to the constitutional guarantee and the Right to Information legislation, there are a number of statutes which provide for disclosure of information. These statutes are complementary and supplementary to the Right to Information law.

THE RIGHT TO INFORMATION IN NEPAL

The Right to Information is one of the basic aspects of transparent governance. It mainly focuses on three principal areas:

- Access to public records and documents, in which the “business of the people” is stored in some tangible form;
- Access to the deliberative institutions of the government and other public bodies, such as meetings and forums in which public business is debated and resolved; and
- Access to places that conduct routine non-deliberative public business, such as government-managed prisons, hospitals, or schools, etc. It also includes the inspection of public functions and the delivery standards of public services.

Transparency is a desirable quality in all walks of national and international life which include markets, procedures, and governance institutions, both private and public. But what is “transparency” and why is it a good thing? This is very difficult question to answer. However, the fundamental idea of transparency is simple: things go better when processes are open and transparent. Markets function best when transactions are open and public. Judicial processes work best when they are observable to the consumers of justice and the public. Governments work best when both inputs to decisions and the meetings in

which decisions are taken are made public. Parliamentary functions can be audited by the people when everything inside the Parliament is transparent. People know their position through transparency and become real citizens. In short, we need an open mind, open eyes and attentive ears to internalise the concept of openness and transparency. However, transparency is not nakedness. It does not allow the violation of the private domain - the right to privacy.

The 1990 Constitution has been replaced by the Interim Constitution of 2063. The new Constitution has guaranteed different fundamental rights including the freedom of opinion and expression, rights of the press, and the Right to Information under part III of the Constitution. These rights together with the Directive Principles of State Policy are said to be the conscience of the Constitution. Most of the fundamental rights incorporated under the interim constitution are negative rights whereas the provisions incorporated into the Directive Principles are positive rights. In other words, most fundamental rights are the reincarnation of civil and political rights whereas the Directive Principles are perceived as socio-economic and cultural rights. The Constitution is based on the principle of rule of law.

The vast information the government holds is a national resource. Neither the government nor public officials collect or generate information for their own benefit. They collect information for public purposes. Government and officials are, in a real sense, trustees of that information for the public. The information acquired or generated by public officials in office, both elected and appointed, should not be used for their own benefit, but for purposes connected to the legitimate fulfillment of the duties of their office. It must be used for the benefit and service of the public for whose advantage the institutions of government exist, and who ultimately fund the institutions of government and the salaries of officials.

The government is the most powerful generator and manipulator of information in our society. Undeniably, when the government controls information and uses the weapon of secrecy, the government becomes the adversary of democracy and of the people. The culture of secrecy is the enemy of democratic polity. Therefore government-held information should be maintained cautiously and should normally be within the reach of the public. It should be accepted that the information collected and produced by public officials is a public resource.

In reality, the government should not be the owner of the information it produces or obtains. Similarly, it should not have any proprietary rights over this. However, in some situations it can be said that the constitutional protection of the right of the public to get information cannot be an unqualified one. Information should be denied to the public only in exceptional cases that are narrowly and clearly defined.

Access to information ensures that all information of public importance must be readily available. There must be free access to such information. What do we mean by free access to information? Free access to information primarily implies that information is available 'without constraint'. The second aspect is that information must be available without payment if it is in public interest. The third aspect is that information should be readily available to every citizen who seeks it. It should also be made available through publications and other means of communication even to those who don't seek it as per the principles of open government. However, readily available information does not mean that it is available free of cost as the production, storage, dissemination and access to information involve some costs. Therefore, some reasonable fee for access is justified.

INCLUSION OF THE RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT

The Constitution of the Kingdom of Nepal 1990 made the Right to Information a fundamental right in Nepal. The Interim Constitution of Nepal 2006 also retained the Right to Information in a similar fashion. Realising the importance of open government in maintaining a liberal democracy, the framers of the Constitution included the Right to Information as a fundamental right. They imposed a positive duty on the government to provide information of public importance. In South Asia, Nepal is the only country where the Right to Information has got a special status of a fundamental right specifically incorporated in the Constitution. However, now Pakistan has also amended its Constitution and added a new Right to Information under Article 19(a).

The framers of the Constitution found that freedom of opinion and expression was not enough to compel an unwilling speaker to speak and an unwilling government to divulge information. Therefore, they included the Right to Information as a fundamental right in the Constitution, which could compel the government to provide information and documents as a matter of duty.

The Constitution, however, does not make the Right to Information an unqualified right. It allows secrecy to be maintained by law. A law to make certain information secret can override RTI provisions. This provision is regressive to some extent because it leaves the discretion to make information secret in the hands of the legislature. Therefore, while drafting the new Constitution, an unlimited discretion in the hands of the Parliament/legislature must not be given. The makers of the present Constitution have left the area of secrecy to be determined by the representatives of the people. It has provided blanket powers to the legislature to enact secrecy provisions while positioning RTI as fundamental right in the Constitution.

The Right to Information is not confined to Article 27 only. Several other articles of the Constitution also support and strengthen it. The preamble, which determines the spirit of the Constitution, enshrines the philosophy of an open, democratic and inclusive government. Democracy, peace, prosperity, complete press freedoms, and proactive economic and social changes have been accepted as the core values of the Constitution. National independence, integrity and liberties have been placed at the centre of the constitutional philosophy. All these values recognise the need for transparent government. All other fundamental rights can be implemented only if there is a Right to Information. Without this right other rights cannot be exercised effectively.

RIGHT TO INFORMATION UNDER THE FORTHCOMING CONSTITUTION

The Fundamental Rights and Directive Principles Committee of the Constituent Assembly presented its preliminary Draft Report on Fundamental Rights to the Constituent Assembly in 2009. Under article 12, it frames the Right to Information in the following terms:

Every citizen shall have the right to demand and receive information on any subject relating to oneself or having public importance, provided that no one shall be compelled to provide information that requires to be kept secret by law.

The proposed article is the replica of the Interim Constitution. It also provides a blanket exemption for secrecy by law. The Parliament, under this provision, is free to impose restrictions to disclose information. This provision requires modification in line with international standards related to the Right to Information. Disclosure in public interest must be allowed and it should be maintained accordingly. Laws curtailing the Right to Information must be reviewed through a constitutionality test and should be

declared *ultra vires*. For this reason the proposed article must be redrafted.

So far the Constituent Assembly has not discussed the role of information commissions in a federal polity. Will there be separate information commissions at the state or provincial level? Establishing independent and separate information commissions in every state is not necessary. Like India, the Right to Information Act could remain the governing statute for access to information across Nepal. However, the Nepal Information Commission could establish branch offices in different regions in the country. This can be done with suitable amendments to the RTI Act, 2064.

THE JUDICIARY AND THE RIGHT TO INFORMATION

Access to Judicial Information: As compared to other branches of government, the judiciary is more open and transparent in its business. The Supreme Court publishes its annual report as per the requirements of law. It provides comprehensive information regarding judicial administration. It also publishes important decisions of the Supreme Court in its regular law reporter. It is now disseminating the status of case hearings online, and providing easy access to judicial information. The concept of digitising the judiciary is being implemented gradually. In this respect, transparency has been implemented to a great extent. There is considerable access to judicial decisions of the Supreme Court and the Court of Appeal. Any lawyer may demand a copy of any final judgement of the courts on payment of the prescribed fee. The Supreme Court has also designated one of its Joint Registrars as the Spokesperson of the Court. There are no constitutional or legal constraints on providing judicial information. Nevertheless, underdeveloped information mechanisms and traditional record keeping systems are responsible for creating hindrances in obtaining judicial information. However, judicial appointments are not

free from criticism. There are allegations that adequate transparency is lacking in appointment processes.

Judicial Interpretations of the RTI: The Constitution provides the right to demand and receive information in matters of public importance. There is no law to define what a matter of public importance is. The Supreme Court, through its dynamic approach, has filled this gap. The Court in the Tankpur Case made it clear that a matter of public importance need not affect the whole country for it to be regarded as such. Even if it affects certain groups or communities, this is sufficient for it to be a matter of public importance.

The Supreme Court found that a bilateral agreement regarding water resources is of public importance. Similarly, in the Arun III Case, the Court filled a gap that existed in Nepalese law. There was no fixed procedure for applying for information, giving out information, paying for information obtained, etc. The Supreme Court seized the opportunity in this case and issued an eight point guideline for the government. The guidelines were as good as a Right to Information legislation until the government enacted a separate legislation to this effect. The Supreme Court found a very close relationship between matters of public interest and matters of public importance. In some cases the Supreme Court ordered the government to publish information publicly instead of giving it only to the requester. In this respect, it favoured “active publicity” rather than the “passive publicity”. If the government publishes information of public interest *suo motu* there is no need for demanding information. In view of this, the Supreme Court in the Lumbini Case changed the focus towards ‘active publicity’.

The Supreme Court has also set a precedent that any information of national concern is related to the Right to Information, and the government or public authority has to inform the people about such matters. The Court in the Godavari Marble Case held that mat-

ters related to environment protection are very serious, sensitive and important from humanistic, national and international perspectives, and are thus matters of public importance.

In the Chitra Dev Joshi case, the Supreme Court gave a verdict in favour of the Right to Information so that the petitioner received information regarding the charges and decisions taken by the Judicial Council against him.

THE NEPALI BUREAUCRACY AND THE RTI

The bureaucracy in Nepal is not properly safeguarding the people's right to know. It seems unaware of the constitutional guarantee of the Right to Information. The Civil Service Act and Rules both forbid civil servants from disclosing information to unauthorised persons. The oath they take forbids them to disclose information obtained during the course of their official duties. As long as this situation remains the same, it is very difficult to obtain information from the government. Moreover, official documents are not scientifically filed and kept. An old document is generally non-traceable except when kept in the courts of law and Land Revenue Offices. Mismanagement of official documents is another problem. Although official spokespersons are in place, most of them have not internalised the concept of transparency. In some situations they themselves do not know what is happening in their offices.

All political appointees are also liable to take an oath of secrecy and not of transparency. This is a clear cut barrier to transparent governance. It is high time that the format of the oath is changed so that the oath of secrecy is replaced by an oath of openness and transparency.

So far as access to official documents are concerned, Nepalese legislation limits it to the concerned person. The person request-

ing access has to supply the details of the documents in his application. Otherwise he/she may not get a copy of that document. Moreover, if the departmental head or office in-charge does not permit the copying of the requested document, no appeal can be made against this decision. It shows that the right to access official documents is not really a right because it depends on the discretion of the concerned head of the department or office in-charge. Any document can be stated to be a secret and unpublished document by a government office. In the absence of a proper classification of documents, the right has not been implemented properly. Therefore there seems to be a gap between the constitutional vision and the related statutory provisions.

Access to the national archives is available if the law does not prohibit it. One may ask for a copy of archival documents under the Archives Preservation Act 1989. However, access to the archives is restricted on certain grounds. Access is not permitted if the reading, copying and duplicating of documents transferred by the concerned office to the National Archives for preservation is prohibited.

There is a need for civil servants to understand more clearly the scope of information that is exempt under the Act. The government should also consider enacting complementary legislation relating to privacy rights, whistleblower protection, and the management of public records. Similarly the classification of documents is far from being a scientific process and there are no proper guidelines on how to administer the RTI Act.

DISCLOSURE OF INFORMATION BY PRIVATE BODIES

The Constitution is not sufficient to fulfil all aspects of the Right to Information because it guarantees only the right to demand and receive information of public import and related to the applicant. In reality, the scope of the Right to Information should extend to

information kept in private offices if the information has public importance.

At the moment, there is no law regarding accessing information in the hands of private organisations, institutions and companies. It is left to the will of such organisations or institutions. If any corporation denies access to information to any citizen, there is no law compelling the organisation to give information. In this aspect, non-government information cannot be accessed by the public. However, there is hope that the Supreme Court may include private agencies within the meaning of the state by virtue of their nature and functioning. The RTI Act, includes NGOs, (local and international) and political parties under the definition of public bodies as well. The private sector must be responsible for releasing information under a separate legislative framework.

RECOMMENDATIONS FOR IMPLEMENTING THE RTI IN NEPAL

1. A long-standing tradition of secrecy cannot be changed overnight simply by making the Right to Information a fundamental right and by enacting a Right to Information legislation. A comprehensive programme of administrative training in new practices is required. In addition to this, the people and the press must be constantly vigilant to enforce their Right to Information. For this, they need a thorough knowledge of their rights. The provisions of the law and major decisions interpreting these provisions must be widely disseminated amongst the general public.
2. A change in the existing information infrastructure is required. The Right to Information can have no substantive existence unless there are free and independent institutions dedicated to the circulation of information among people. These include a free press, radio, television, public libraries,

facilities for publishing books, articles, which ordinary people can afford.

3. To provide greater access to information to the people, suitable policies to encourage community radio and community papers must be formulated. Likewise, a limited supply of electricity creates hurdles for access to television. Only about 40 percent of the total population is using electricity and the remaining 60 percent are deprived of this facility. Moreover, heavy load shedding has affected the dissemination of information very seriously. Access to information is, therefore, limited only to a few people. To overcome this situation, the government should give priority to electrification and mass communication. Likewise laws related to the media sector need to be updated to make the Right to Information meaningful.
4. The bureaucracy in Nepal is responsible for implementing the provisions of the Constitution and other laws. As a fundamental right, the Right to Information requires bureaucratic support for the proper implementation of this right. In order to provide greater access to government information, the bureaucracy must act not only legally but also fairly. As the government has endorsed the concept of good governance in its functioning, the bureaucracy must carry out this policy and develop skills to function openly and show its commitment to upholding transparency. It should also not forget that openness must be the rule and secrecy an exception. A well-balanced approach regarding the people's right to know and official secrecy has to be designed. To meet this requirement, the bureaucracy must be trained in the context of an open, liberal democracy where the people's Right to Information gets primacy over official secrecy.
5. Ministers should also know that they work for the people. They are not responsible only to the Parliament and the Prime Minister. They are equally accountable to the people. They must show their readiness to provide information concern-

ing their respective ministries. They must be required to do their job in writing so that they maintain institutional memory. They must not perform their work orally. The problem of the hour is that both the bureaucracy and the ministers prefer oral transactions. This is one of the reasons behind clandestine transactions and corruption.

6. There is an absence of suitable legislation regarding the classification of official documents. The Secrecy of Documents Act 1982 classifies documents into 'strictly prohibited', 'top secret' and 'confidential' documents. This Act has not been enforced so far. The Act does not address the problems of classification. Therefore, a suitable legislation having proper guidelines regarding the classification of official documents is required. The Act should specify the authority for classifying documents and the period for which the documents can be classified. It must ensure that after the expiry of the fixed time, there must be a speedy declassification of such documents.
7. A culture of active publicity or affirmative disclosure should be developed through executive instructions and policies of the government. Every policy of the government to be announced before it is implemented. The Parliament should act towards the fulfilment of its duties regarding delegated legislation. There must be a legal provision regarding the publication of delegated legislation before its enforcement. The committee on delegated legislation should act promptly and efficiently so that access to delegated legislation is more effective.
8. The government should give information in advance regarding how public services are run, how much they cost, targets, expected standards and results, and details of the complaints procedure.
9. Right to Information requests should not be developed into legalistic adversarial contests.
10. Sometimes the law becomes confusing for applicants and difficult to use. Therefore, suitable working guidelines for the

Right to Information should be published and distributed widely to make access to information easy.

11. Record management is fundamental for the effectiveness of the Right to Information legislation. This aspect should be given sufficient prominence.
12. The most important thing is that public authorities should make discretionary disclosures of exempt information when such disclosures may not cause any foreseeable harm to any interest that is protected by an exemption under the Right to Information legislation. An agency should withhold information under the Right to Information Act only when it is necessary to do so.
13. The standard of a need to know should change into a right to know and the burden should be shifted on the government to prove why records should not be disclosed.
14. The Right to Information requires that certain information, such as descriptions of agency organisation and office addresses, statements on agency operations, rules of procedures, general policy statements, final opinions made in the adjudication of cases, and administrative staff manuals that affect the public must be made available for inspection by the general public. This can be done through the use of public reading rooms.
15. The Right to Information Act should require that other legislation be interpreted, as far as possible, in a manner consistent with its provisions. Where this is not possible, other legislation dealing with publicly held information should be subject to the principles underlying the Right to Information legislation.
16. The regime of exceptions provided for in the Right to Information law should be comprehensive and other laws should not be permitted to extend it. In particular, secrecy laws should not make it illegal for officials to divulge information that they are required to disclose under the Right to Information law. Moreover, over the longer term, a commitment should be made to bring all laws relating to information in line with the principles underpinning the Right to Information law.

17. The Parliament should form a support unit to provide continuous, on-going review and oversight of government information.
18. It is recommended that the present catch-all provisions of the Civil Service Act and Rules be repealed and replaced with provisions under which the application of penal sanctions on unauthorised disclosure of official information is limited to specific categories of information. It is also recommended that these categories include information related to intelligence and security services, defence, foreign relations, information obtained in confidence from other governments or international organisations, information supplied in confidence, information affecting personal privacy, information the disclosure of which could damage international relations or information causing damage to the economy. Officials should be protected from sanctions where they have, reasonably and in good faith, disclosed information pursuant to a Right to Information request even if it later happens that the information was not subject to disclosure.
19. The government should review all existing secrecy provisions within a specified time with a view to repeal or amend those provisions which conflict with the basic object of the Right to Information legislation.
20. It is very difficult to implement greater openness in Nepal as the incentives for secrecy are great in Nepalese tradition. It provides opportunities for evading the intent of any disclosure regulations. If formal meetings have to be open, then all decisions could be made in informal meetings. If written material is subject to disclosure, there will be an incentive to ensure that little is written down, and what is written down will be for the public record. Because of these limitations of legalistic approaches, emphasis must be placed on creating a culture of openness where the presumption is that the public should know about and participate in all collective decisions. We must create a mindset of openness, a belief that the public

owns information that public officials possess, and to use it for private purposes is similar to a theft of public property.

21. The press plays an essential role in the battle for openness. But the press, as we have seen, is at the same time a central part of a conspiracy of secrecy. The press must commit itself to working for openness. It may be too much to expect it to disclose its secret sources inside the government, but there needs to be more reporting on the reporting process itself, exposing immoralities in the system.

CONCLUDING REMARKS

After the restoration of multi-party democracy in the year 1990, access to information is gradually improving despite many hindrances. The Nepalese press is also moving ahead with sound constitutional and legal foundations. However, there is still a big gap between the constitutional mandate of openness in governance and the traditional culture of secrecy in the bureaucracy and the government. Existing archaic laws need to be amended / updated in tune with access to information. The most important task now is to draft a new Constitution where the RTI must be included as a fundamental right and disclosure must be the rule, and secrecy an exception. A suitable number of State Information Commissions as units of the Central Information Commission must be established.

ASSESSING THE LEGAL REGIME FOR IMPLEMENTING THE RIGHT TO INFORMATION IN NEPAL

Tanka Raj Aryal

BACKGROUND

The United Nations General Assembly Resolution¹ recognised the Right to Information in 1946 for the first time. It states, “Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.”

The Universal Declaration of Human Rights (UDHR)² has recognised the Right to Information under Article 19. Under its provisions, the right to seek, receive and impart information, without interference and regardless of frontiers, is protected. Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR)³ has guaranteed the Right to Information. It states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Both documents protect the Right to Information as an integral part of freedom of expression. The trend in regional mechanisms is similar. Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples’ Rights also recognise the Right to Information as a part of freedom of expression.

The Right to Information is an emerging right but it is not a new concept. Sweden was the first country to recognise the Right to Information in 1766. Another country with a long history of Right to Information legislation is Colombia, whose 1888 Code of Political

¹ United Nations General Assembly Resolution 59(I), 14 December 1946.

² Universal Declaration of Human Rights, adopted by United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III).

³ General Assembly resolution 2200A (XXI) of 16 December 1966 which entered into force 23 March 1976 in accordance with Article 49.

and Municipal Organization allowed individuals to request documents held by government agencies or in government archives.⁴ It took about a century for a third country to have legal provisions on the RTI. In 1953, Finland adopted a Right to Information law, followed by the United States in 1966, and Norway passed a law on the Right to Information in 1970. Similarly, Canada, Australia and New Zealand passed RTI laws in 1982, and Italy in 1990. Only 13 countries had a specific legislation on the Right to Information by 1990.⁵

Recognition of RTI as a fundamental right accelerated after 1990 as many new democracies acknowledged it in their constitutions. Nigeria became the 89th country to have a specific legislation on the Right to Information in 2011. So far, more than 50 countries have constitutionally protected the Right to Information.

Nepal is also part of this wave, and it has constitutionally protected the Right to Information and also has a separate and specific legislation on the Right to Information. Further, Nepal has international obligations for the protection of the Right to Information as it has ratified the ICCPR without any reservations.⁶ In such a legal context, this paper focuses briefly on the history of the enactment of the Right to Information Act in Nepal including its major provisions. Specific attention will be paid to legal problems that are hindering the effective implementation of RTI in Nepal.

HISTORY OF THE RIGHT TO INFORMATION ACT 2007

Before 1990, Nepal was under a partyless *Panchayat* regime. Freedoms were curtailed and people had limited scope to exercise their rights. Limited freedoms existed at the mercy of the rulers.

⁴ See Mendel, T. (2009), *Freedom of information: a comparative legal survey*, UNESCO, Pp. 22.

⁵ See <http://www.right2info.org/access-to-information-laws>. Accessed 10 March 2011.

⁶ Nepal ratified the International Covenant on Civil and Political Rights (ICCPR) on 14 May 1991.

Most legal provisions including the Constitution were in favour of the ruler and suppressed the rights of the people. In such a context, seeking information held by public bodies was inconceivable. Transparency was lacking and accountability was towards the royal palace instead of the people.

After the People's Movement of 1990, the partyless Panchayat regime was superseded by an open and democratic government in Nepal. With the restoration of open and democratic government, the new Constitution, "the Constitution of the Kingdom of Nepal 1990" was promulgated. The Constitution explicitly recognised the Right to Information as a fundamental right under Article 16.⁷ With this constitutional guarantee, Nepal became the first country in South Asia to have the 'Right to Information' as a fundamental right. But the enactment of an RTI legislation to implement Article 16 never happened.

The Country Code had a provision to get a copy of official documents⁸ and a provision to take copies of public (official) documents by concerned stakeholders.⁹ But these provisions did not explicitly say anything about a Right to Information. Provisions were explicitly related only to court procedures.

Some attempts were made to enact an RTI legislation during 1990 to 2006 but they did not yield any results. Due to huge pressures from the media and civil society organisations, the 'Right to Information Bill' was first tabled in the Parliament in 1993 but was rejected by a Parliamentary Committee as some stakeholders including the media opposed that draft. RTI advocates and stakeholders strongly criticised the draft bill stating that the govern-

⁷ It says: Every citizen shall have the right to demand and receive information on any matter of public importance, provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

⁸ No. 211 of the Chapter of Court Management of Muluki Ain (Country Code, 2020 BS) August 1, 1963 CE.

⁹ No. 17 of the Chapter of Paper Examination of Muluki Ain (Country Code, 2020 BS), August 1, 1963 CE.

ment intended to create a legal regime to hide information rather to disclose it.¹⁰ Media organisations took the initiative in 1997 to draft an alternative bill and presented it to the government. The Bill was finally tabled in the Parliament in 2001. This bill remained just a bill as it was never discussed due to political wrangling. Later, the dissolution of the Parliament meant there was no further progress.

The Judiciary has played a supportive role in the development of RTI in Nepal. In 1994, the Supreme Court, in the Arun III hydro-power case,¹¹ described the importance of the RTI and directed the government to enact RTI law. Further, the Court also set out an eight-point procedure for public agencies to provide copies of documents until a relevant law was enacted.

The second popular people's movement in Nepal took place in 2006 which led to the promulgation of the Interim Constitution of Nepal 2007. The new Constitution guaranteed the Right to Information under Article 27 as a fundamental right.¹² An RTI Act was still lacking. There was huge pressure from civil society and recommendations were also made by different agencies including the High Level Media Commission¹³ to adopt an RTI Act.

Finally, the government formed a taskforce to draft a Bill on the Right to Information in September 2007. The seven-member taskforce was headed by the former Secretary to the Judicial Council Kashi Raj Dahal. Parliament endorsed the draft produced by

¹⁰ Country paper on the tight to information presented by Tara Nath Dahal at the regional workshop Towards More Open and Transparent Governance in South Asia, New Delhi, 27-29 April 2010, Pp. 1.

¹¹ Advocate Gopal Siwakoti et al v Ministry of Finance and others, Writ Petition 3049/050.

¹² It says: Every citizen shall have the right to demand or obtain information on any matters of concern to himself or herself or to the public, provided that nothing in this Article shall be deemed to compel any person to provide information on any matter about which confidentiality is to be maintained according to law.

¹³ High Level Media Commission Report, 2006.

the taskforce with some amendments on 18 July 2007 and the Act came into force on 19 August 2007.¹⁴

The National Information Commission was established on 4 June 2008.¹⁵ The Right to Information Regulations were adopted in consultation with the National Information Commission on 9 February 2008.¹⁶

KEY FEATURES OF THE RIGHT TO INFORMATION ACT 2007

This Act has a number of progressive features for the promotion, protection and implementation of the Right to Information. Some key features are as follows:

Wide definition of public agencies

The RTI Act applies to public agencies. The definition of public agencies covers constitutional and statutory bodies, and agencies established by law to render services to the public. All branches of the state - the executive, the legislative and the judiciary - are covered by the Act. A noteworthy aspect of this Act is that it covers political parties and non-governmental organisations as they are also considered to be public agencies. Political parties and NGOs have to function under the obligations imposed by the Act.¹⁷ This provision provides an opportunity for political parties and NGOs to be more transparent and accountable towards the public.

Proactive disclosure

The Right to Information Act stipulates that public agencies are required to disclose certain key information *suo-motu*, i.e. without prompting or an explicit demand. Such a requirement is termed

¹⁴ See <http://www.ccrinepal.org/legal-provision/rti-act-2007> Accessed 15 March 2011.

¹⁵ See http://www.nic.gov.np/download/annual_report_2065_2066.pdf, Accessed March 20, 2011.

¹⁶ Ibid.

¹⁷ Section 2(a)5 and 8 of the RTI Act, 2007.

as proactive disclosure. Section 5 (3) of the RTI Act requires public agencies to update and publish different categories of information on a periodic basis.¹⁸

Time-frame and procedures for providing information

The Right to Information Act has provided comprehensive procedures to acquire information from concerned agencies. In addition, public agencies are required to provide information immediately. If they are not in a position to do so, then they are given 15 days from the date of the submission of the application. Similarly, the Act also defines a time limit for the National Information Commission to give a final verdict - within 60 days of the submission of the appeal.¹⁹

Provision of compensation and punishment

The Act has a provision that if any person incurs any losses or damages by not receiving the requested information, the denial of information, the provision of partial or incorrect information, or the destruction of information, then he or she is entitled to get compensation.²⁰ Similarly, it has provisions of sanctions on the Chief of the public agency or Information Officer (IO) for holding back information without any valid reason, or for providing partial or incorrect information, or for destroying information.²¹

¹⁸ Section 5(3) requires public agencies to publish the following information related to themselves: (a) Structure and nature of Body; (b) duties, responsibilities and powers of Body; (c) number of employees and working details of Body; (d) service to be provided by the Body; (e) branch and responsible officer of the service providing Body; (f) fee and time limit required for service; (g) decision making process and authority; (h) authority to hear appeal against decision; (i) description of functions performed; (j) name and designation of Chief and Information Officer; (k) list of Acts, Rules, Byelaws or guidelines; (l) Updated description of income and expenditures, financial transactions; and (m) Other particulars as prescribed.

¹⁹ Section 7, 9, 10 of the RTI Act, 2007.

²⁰ Section 33 of the RTI Act, 2007.

²¹ Section 32 of the RTI Act, 2007.

Provision of oversight body

The RTI Act has made a provision for the establishment of an independent National Information Commission as an oversight body. It is responsible for the protection, promotion and implementation of the Right to Information.²²

Protection of whistleblowers

Protection of whistleblowers is another significant aspect of this Act. According to this provision it is the duty of the employees of public agencies to provide information on any ongoing or probable corruption or irregularities. It protects whistleblowers and mentions that no harm or punishment or legal responsibility must come to a whistleblower for providing information. In the event of retaliation, the whistleblower may complain, along with a demand for compensation, to the Commission.²³

MAJOR LEGAL DRAWBACKS OF THE NEPAL RTI ACT

After a detailed review of the provisions of the Right to Information Act 2007, and the problems faced in its practice, it can be said that the Act has some flaws. It could be better implemented if these flaws were addressed.²⁴

The flaws in this Act can be seen from two angles. The first angle is the issue of standards and the second is practicality. Since Nepal has international obligations, it is essential to maintain international standards and best practices in the RTI Act of Nepal. In the meantime, the law should be functional and address practical issues of implementation.

In the RTI Act, the most serious flaw is the regime of exceptions, which does not include a public interest override and which ap-

²² Section 11 of RTI Act, 2007.

²³ Section 29, of the RTI Act, 2007.

²⁴ Annual Report of National Information Commission, Kathmandu, 2065-66 BS, Page 55.

pears to promote the withholding of information simply on the basis on how it has been classified.²⁵ Some of the provisions related to the National Information Commission and the obligations of the State are other major gaps.

Extensive exceptions

It is a well accepted principle that the Right to Information is not an absolute right. Limitations on the Right to Information are founded on protecting the rights of individuals, such as privacy. Similarly, state sovereignty, public order and security are issues where disclosure of information can be denied. Such exceptions are misused very frequently by the organs of the state.

The International Covenant on Civil and Political Rights (ICCPR) provides the grounds for the legitimate restriction of the RTI²⁶ as follows:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order or of public health or morals.

But these restrictions are not absolute: They must be grounded in law and regarded as necessary under the circumstances. Similarly, the European Convention on Human Rights has provided the grounds for exceptions²⁷ the following terms:

“...in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

²⁵ Memorandum on the Right to Information Act of the State of Nepal 2008, ARTICLE 19, Freedom Forum and Federation of Nepalese Journalists.

²⁶ Article 19 (3) of International Covenant on Civil and Political Rights, 1966.

²⁷ Article 10(2) of European Convention on Human Rights, 4 November 1950.

Thus, limitations are only justified on the basis of legitimate reasons. The grounds for legitimate restrictions vary from country to country. In most countries, exceptions recognised in the Right to Information laws relate to legitimate interests, although in many cases they are cast in unduly broad terms and this is a serious problem in many laws. A few laws contain rare or peculiar exceptions. For example, the laws of the United Kingdom and Thailand contain exceptions related to the royal family while South Africa has exceptions related to the Internal Revenue Service and third party research. The United States law contains an exception related to information about oil wells.²⁸

The Interim Constitution of Nepal provides a wide scope of exceptions²⁹ in Article 27:

“Every citizen shall have the right to demand or obtain information on any matter of his/her interest or of public interest. Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.”

Echoing the qualifications in Article 27 of the Interim Constitution of Nepal, the Right to Information Act 2007 provides for a long list of exceptions covering information the disclosure of which would seriously jeopardise the sovereignty, integrity, national security, public peace, stability and international relations of Nepal; directly affect the investigation, inquiry and prosecution of crimes; have a serious impact on the protection of economic, trade or monetary interests; jeopardise the harmonious relationship among castes or communities; and interfere with individual privacy and the security of the body, life, property or health of a person.

It is worth noting that none of these exceptions are absolute: each is subject to a harm test of varying severity. Nonetheless, the Act

²⁸ See Mendel, T. (2009), *Freedom of information: a comparative legal survey*, UNESCO, Pp. 148.

²⁹ Article 27 of the Interim Constitution of Nepal 2007.

covers some 22 different exceptions including sub-categories. There is no clarity on the grounds of exceptions. Many subjects like national security, privacy, and state secrecy are never defined.

Classification of information and confusion

For the protection of information related to Sub-Section (3) of Section 3, held by public agencies, the Act has made a provision of classification of information.³⁰ A committee has been defined for the classification of information but many questions are yet to be addressed regarding classification. It is not clear whether the committee formed under Section 27 of the Act is to be ad hoc or permanent. It is also not clear whether the committee has to function prior to applications under the RTI Act, or take a decision on particular information after the application is submitted. Similarly, the scope and jurisdiction of the committee is not clear. For example, it is not clear whether the committee is empowered to classify documents at the local level. The committee has the right to determine how long information shall remain classified as well as to specify how such classification is to be protected.

The Classification Committee has cordoned off a large amount of information from the public domain. It has provided huge discretionary powers to public agencies to withhold information. The time-frame for keeping important information confidential has been randomly set at 30 years. Much information related to the public interest has been kept confidential. Confidentiality has been granted without conducting any harm tests or assessing the sensitivity of information in the current context.

The classification provisions of the Act have thus been used by the government to hide and block information.

³⁰ Section 27 of the RTI Act, 2007.

Inconsistencies with existing laws

Generally, once an RTI law is enacted, the State has an obligation to make RTI laws compatible with existing legal arrangements. However, many legal provisions are not still friendly with the RTI Act. Along with this, the culture of secrecy among civil servants is a barrier in the implementation of the RTI Act in Nepal.³¹

Generally, a specific law prevails over the general application of other laws. The Right to Information law should prevail over other laws on matters related to the Right to Information. But In Nepal, different public bodies refer to specific laws related to their agencies to prevent the disclosure of information. The Public Service Commission has denied the disclosure of information citing provisions of the Public Service Commission Act 2066.³² Over a dozen Acts and Regulations with such provisions exist. The Income Tax Act 2058 B.S. (2000),³³ the Competition Promotion and Market Protection Act 2063 (2007),³⁴ the Revenue Leakage (Investigation and Control) Act, 2052,³⁵ the Commission for the Investigation of Abuse of Authority Act 2048 BS (1991),³⁶ the Civil Service Rules 2065,³⁷ and the Scholarship Rules 2060³⁸ are some examples.

These inconsistencies are beyond the scope of Section 3 of the Right to Information Act 2007. Five categories of interests are listed under Section 3.3 whose protection could justify a refusal to disclose information, such as national security and privacy. A public body may invoke these exceptions only if there are appro-

³¹ Annual Report of National Information Commission, Kathmandu, 2065-2066 BS, Page 55.

³² Section 46 of the Act says "examination papers are not subject to disclosure."

³³ Section 84 of the Income Tax Act 2058.

³⁴ Section 36 of the Competition Promotion and Market Protection Act, 2063 (2007).

³⁵ Section 28 of Revenue Leakage (Investigation and Control) Act, 2052.

³⁶ Section 23 of the Commission for the Investigation of Abuse of Authority Act 2048 BS (1991).

³⁷ Rules 7 (2) of Civil Service Rules, 2065.

³⁸ Rule 19 of Scholarship Rules, 2060 which says that, "examination papers are not subject to disclosure."

priate and adequate reasons. But at present, these inconsistencies have led to parallel exemption provisions beyond those permitted under the RTI law.

No clear RTI overriding principle established

The absence of a clear overriding provision is a major legal problem of the Right to Information Act 2007. Section 3 provides an exhaustive list of exceptions and Section 27 dwells on classification of information. Despite these, the RTI Act lacks an overriding status. Section 37 is not clear about the overriding effect of this Act on others.

“All the matters written in this Act will be carried out in accordance with this Act, whereas other matters will be dealt in accordance with prevalent laws”.

There are different Acts and Regulations which have provisions inconsistent with the Right to Information Act. Generally, the overriding provisions are activated only in cases of inconsistency with other laws. If there is no inconsistency, then the two laws can operate simultaneously. But in Nepal such a provision is lacking in the Right to Information Act. In many countries, even classified information is accessible on grounds of public interest. In Nepal, the public interest override is entirely absent as well.³⁹

OTHER OBSTACLES TO THE RTI IN NEPAL

No nodal agency

Implementing the Right to Information is an obligation of the government. The government has to mobilise different state

³⁹ Memorandum on the Right to Information Act of the State of Nepal 2008, ARTICLE 19, Freedom Forum and Federation of Nepali Journalists, 2008.

⁴⁰ Section 11 of the RTI Act 2007.

organs and make other necessary arrangements. In Nepal, the National Information Commission exists as an oversight body.⁴⁰ The responsibilities for the protection, promotion and implementation of the RTI Act lie with the National Information Commission. The Ministry of Information and Communications is considered as the line ministry for contact between the NIC and the government.⁴¹ However, there is no specific legal provision for creating a nodal implementing agency. The government has also not taken any initiative to create a nodal agency within itself.⁴²

For the effective implementation of the Right to Information Act 2005, the Indian government created a nodal agency. The Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions is responsible for promoting and implementing the Right to Information.⁴³ It is responsible for training, developing guidelines and creating a conducive environment for the implementation of the RTI Act 2005. Such an agency is lacking in Nepal.

No Record Keeping

One of the biggest lacunae of the Right to Information Act 2007 is the lack of an obligation for public agencies to maintain data relating to requests. In most countries, public agencies are required to collect data on requests received, accepted or denied, and appeals filed. In Nepal, public agencies have no such reporting obligations. Even agencies that have a positive attitude and are willing to provide information keep no records of the process. This creates hurdles for assessing trends in the use of RTI by the public. Due to the lack of proper data,

⁴¹ Section 26 of the RTI Act 2007.

⁴² CCRI (2010), Long Way to Go - Towards effective Implementation of the Right to Information Laws in Nepal, Page 55.

⁴³ See www.rti.gov.in. Accessed 15 March 2011.

the analysis of the use of RTI is based on speculation. Only the National Information Commission tracks appeals that come before it.

Reasons for seeking information

The Right to Information Act requires an applicant to mention reasons for his or her request for information.⁴⁴ This provision appears to contradict the basic idea of the Right to Information law, namely that information belongs to the public rather than the government, and should be accessible to it unless a public body has good reasons to withhold the information. It is common practice in most countries that if one is eligible to submit an application for information, s/he is not required to mention any reasons for seeking information. In addition, the Nepal RTI law prohibits the use of information for purposes other than for which it was requested. These provisions discourage the use of the RTI law.

Staffing of the National Information Commission

The National Information Commission is an independent oversight body. The independence of the Commission has to be maintained under all circumstances. Yet, all the staff of the NIC is supplied by the Nepal government, except for Commissioners.⁴⁵ As all the employees are government servants, they are more loyal towards public agencies than appellants or the Commission. This system severely hampers the independence of the Commission. The frequent turnover of such staff undermines the administrative functioning of the Commission as well.

Defence and Implementation of NIC Decisions

The National Information Commission is supposed to be independent but in many cases it seems to be a part of the government. The NIC has been using the logo of the government. All

⁴⁴ Section 7(1) of the RTI Act 2007.

⁴⁵ Section 22(2) of the RTI Act 2007.

administrative tasks of the Commission are managed by the government, even as its judicial role of hearing appeals is expected to be independent. Decisions of the Commission are supposed to be final with regard to the disclosure of information. However, its decisions are consistently challenged in the Supreme Court. In such cases, the Office of the Attorney General is responsible for defending the decisions of the Commission. At the same time, the Office of the Attorney General has to defend parties opposing the Commission as well. This is unacceptable under the principle of natural justice. In such cases, there are high chances of the misrepresentation of the Commission in Court.

The implementation of the decisions of the National Information Commission is another problem. Beyond going to Court, there is little the Commission can do to ensure that the government complies with its directives.

CONCLUSION AND RECOMMENDATIONS

It has been already three and half years since the RTI Act was enacted in Nepal. Compared to India and Bangladesh, the implementation status is very poor. Very few information officers have been appointed in public agencies and the status of proactive disclosure is low.

From a legal point of view, the following issues should be addressed for creating an environment conducive to the effective implementation of the RTI in Nepal.

- Clear provisions on the overriding effect of the RTI Act should be established. There should be provisions under section 37 stating that “this Act prevails over other laws to the extent of inconsistency”. Such provisions will help to end confusion among stakeholders about the overriding nature of the RTI

Act. If such provisions are established, the problem of inconsistent laws will be solved.

- Exhaustive exception provisions have to be managed. If exceptions are managed by the Constitution rather than providing an open space for interpretation, the Right to Information will be protected better. Exceptions to the Right to Information should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests. The present information classification system should be invalidated. Classification should be an administrative practice, designed to ensure the proper internal management of information.
- There should be legal provisions to establish an implementing (nodal) agency. Such a legal obligation will make the government more responsible for taking steps to establish such an agency. Such an agency will be useful for the implementation of the decisions of the Commission and will also be the responsible agency for taking care of the implementation of the Right to Information in Nepal. Specifically, it should also have the responsibility of monitoring the status of implementation within state organs. It will also oversee capacity-building efforts for information officers and others in government and issue guidelines to facilitate the implementation of key aspects of RTI, such as *suo motu* disclosure and records management.
- Public agencies must be obliged to maintain records of the number of requests received, accepted or denied, and appeals as well as details of information seekers and the type of information sought. Similarly, there should be a legal provision which obliges public bodies to submit this information to the commission. This information would help in tracking the implementation status of RTI and pinpoint problems that need to be addressed to ensure greater access to information. The provision of having to provide reasons for seeking information should be deleted to boost the confidence of information seekers. This will ultimately reduce unnecessary obligations on public bodies to track the misuse of information.

- The independence of the commission must be maintained through legal arrangements. It should be empowered to recruit staff. The recruitment of external lawyers to defend the decisions of the commission should also be allowed. Necessary funds for such activities would need to be managed in its budget.

A CONSTITUTIONAL AND LEGAL HISTORY OF THE RTI IN NEPAL

Dr. Bipin Adhikari

Although the Right to Information Act was enacted in Nepal only recently, it is of tremendous value. Examining its constitutional and legal history can be very useful in helping us understand the development of its underlying principles. This becomes especially important in the current political context in which the Constituent Assembly is engaged in drafting a new Constitution for the country.

The move towards putting in place an RTI regime perhaps began with the drafting of the Constitution in 1990. Prior to that, no legal provisions of that nature existed in the country. After the promulgation of the Constitution of 1990, many Supreme Court judgements interpreted this right in the Nepali context, and also defined the direction of its subsequent interpretations.

One important case was that of Purendra Aryal. In this case, the petitioner went to the Supreme Court seeking information about certain political parties which were registered with the Election Commission. They were seeking information about the membership as well as other information related to the profile of these parties. The case highlighted the issue that for an efficient freedom of information regime, information seekers should approach only the appropriate public body. For example, the Election Commission can only provide the information it has, not other information that may be requested from it. This first case was very prominent as it laid the ground for the further development of jurisprudence on the RTI.

Another case was *Balkrishna Neupane v. Prime Minister G.P. Koirala*. The petitioner had approached the Supreme Court seeking information from the government about the Tanakpur barrage. The information sought was related to the Prime Minister G.P. Koirala's visit to India where he had carried out negotiations with the Indian government on the sharing of natural resources, specifically water in the case of the Tanakpur barrage. The Prime Minister had stated that no treaty had been signed with the Indian government, but simply an 'understanding' had been reached. He had further stated that the government would provide information about the Tanakpur

barrage project once it reached the stage of implementation. The Supreme Court, however, ruled that it did not matter what name the government chose to give the ‘understanding’. Given that there was a division of responsibilities and there were contracting parties, the ‘understanding’ was to be seen as a treaty, and therefore had to be presented to the Parliament for ratification. This case thus became an important case in the history of jurisprudence on the RTI.

The third important case was related to a large hydropower project being carried out in Nepal, called the Arun III project. The petitioner, Gopal Sivakoti, went to the Supreme Court seeking information on several aspects of this project, including that related to its financial aspects. Apart from directing the Finance Ministry to provide information related to the project, the Supreme Court also observed that such cases were repeatedly coming to the Court because the government had delayed in enacting a legislation to practically realize the fundamental Right to Information. Directing the government to enact an RTI legislation, the Court went on further to define a set of guidelines that would guide all public requests for information until such a legislation was in place. The guidelines were unprecedented and displayed the seriousness with which the Supreme Court was approaching the matter of the RTI.

After almost two decades since this case, we now have an Interim Constitution of Nepal following the people’s movement that took place in 2006. This Interim Constitution also has provisions on the RTI. The Committee that has been tasked to draft the provisions related to the RTI in the new Constitution has proposed that the relevant article should state that every citizen shall have the right to demand and obtain information on any matter concerning himself / herself or the general public, subject to the caveat that it cannot compel any person to provide information on any matter about which confidentiality is to be maintained according to the law. In itself, this is not very different from what existed earlier. However, an explanatory memorandum has been attached to this provision by the Committee which provides the jurisprudence be-

hind this particular provision. It explains that this right is guaranteed to every *citizen* but not to all persons.

A second feature of this right is that it extends the fundamental right of freedom of opinion and expression which is in the Constitution. A third feature of this right is that while it ensures the right of citizens to access existing government information, if the state does not have information, it is not duty bound to respond to the request for information. A fourth feature of this right is related to its importance in national development, as well as in the institutionalisation and consolidation of democracy. The memorandum also highlights the importance of this right in creating a transparent state and society, and ensuring the meaningful participation of the people in governance.

It must be emphasized that although Nepal had the Right to Information earlier, this explanatory memorandum provides the jurisprudence-related framework to this right. In this context, the ambit of Article 12 as proposed in the preliminary draft of the Committee on Fundamental Rights and Directive Principles provides every citizen the right to demand any printed or any other form of information or data available within the state machinery or public agencies. The definition of ‘information’ includes audio, video and other forms of media, as well as visits to a public location. An important provision within the Article states that the Right to Information cannot be claimed in the case of national security, individual privacy, business, monetary secrecy, confidentiality, criminal investigations, ‘premature’ information that is in the process of being acted upon, and other information of national importance that has to be kept confidential in accordance with the law.

The draft Article 12 proposed by the Committee is almost a copy of the RTI provision under the Interim Constitution. However, when compared with Article 16 of the 1990 Constitution, the Interim Constitution ensures that the Right to Information is not limited only to information that is related to matters of public concern. A citizen can also invoke this right to seek information that is related to himself / herself.

THE ROLE OF CITIZENS IN PROMOTING THE RIGHT TO INFORMATION IN NEPAL

Basu Dev Neupane and Bed Prasad Sapkota

INTRODUCTION

This paper presents the findings of a rapid survey among 163 respondents mainly from NGOs, the general public and some professionals. This rapid assessment was conducted between 22 February and 6 March 2011, and focused on how citizens perceive and use the Right to Information. The paper also discusses the experiences and constraints faced by NGOs in promoting the RTI, particularly *Samuhik Abhiyan*, a national group working in the health sector. It concludes with a set of recommendations for better implementing the RTI in Nepal.

THE RIGHT TO INFORMATION AS A DEVELOPMENT TOOL

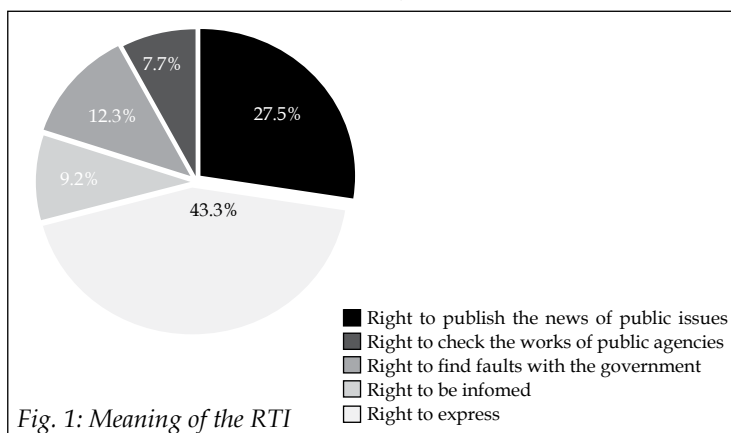
There is a common notion that the Right to Information is only related to the freedom of the media. In Nepal, the last few years have seen a gradual shift in the popular perception of the RTI, and at least a small section of people have now realised that the RTI can be a powerful development tool for raising people's awareness about basic rights such as the right to food, shelter, and security, as well as public participation. Participation in governance is at the heart of any successful democracy. Public involvement not only enhances the quality of governance but also promotes transparency and accountability in government functioning. Citizens are expected to participate at each step of governance on a day to day basis, and not only at the time of elections once in every five years. The situation in Nepal suggests a very gloomy picture of citizen participation in governance. In reality, a large number of citizens are denied participation in governance and they do not have access to information about government decision-making processes. Furthermore, citizens also do not know how their taxes are spent, how public schemes operate, and whether the government is acting honestly and fairly when it makes decisions. Following the enactment of the Right to Information Act 2007, all

citizens of Nepal now have the legal right to access information. The RTI Act recognises that in a democratic republican Nepal, all information held by the government ultimately belongs to the people. Making information available to citizens is simply a part of normal government functioning because the public have a right to know what public officials do with their money on their behalf.

FINDINGS OF A RAPID SURVEY

A rapid survey was conducted to assess the implementation of the RTI Act in Nepal, particularly the level of awareness amongst citizens of the new law and the use of the RTI Act by civil society organisations. A total of 163 respondents participated in the survey. Respondents were selected from rural and urban areas of all five development regions of Nepal. They were school teachers (29), NGO workers (56), media persons (13), local business persons (18), Village Development Committee secretaries (15) and leaders of mothers' groups, including Female Community Health Volunteers (32). Furthermore, the research team visited 13 NGOs of Kathmandu.

a. What do citizens understand by the RTI?



The rapid survey found that 71% of the respondents perceive RTI only as a right to free expression of their thoughts or feelings through the media or any other means of publication. 12.3% respondents said that the RTI is the right to find faults with the government and to bring these to the public attention. Only less than one in every ten persons replied that the RTI involves the right of citizen to monitor the work of public agencies which affect their lives.

b. Who is responsible for promoting the RTI?

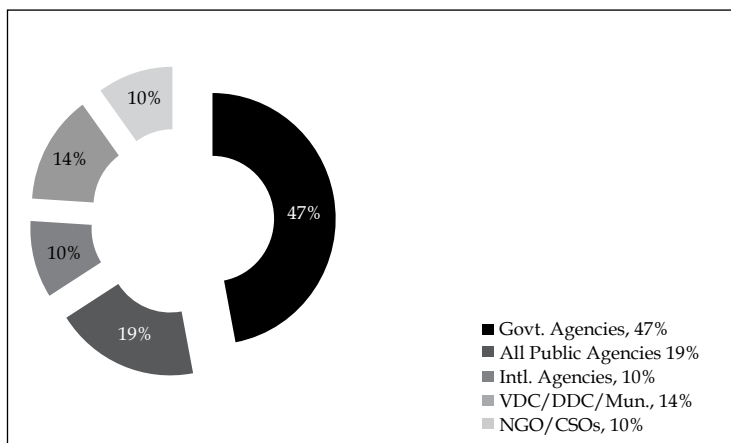


Fig. 2: Responsibility to promote the RTI

A multiple choice question was asked about the responsibility for promoting RTI. Nearly half of the respondents said that the government was principally responsible. Almost 20% of the respondents said that it was the responsibility of public agencies, whereas 14% of the respondents reported that the local government was responsible. The survey found that most people did not view civil society organizations as being primarily responsible for promoting RTI; indeed, only 10% of all respondents said that CSOs are also responsible for promoting the RTI.

c. What role can citizens play in promoting RTI?

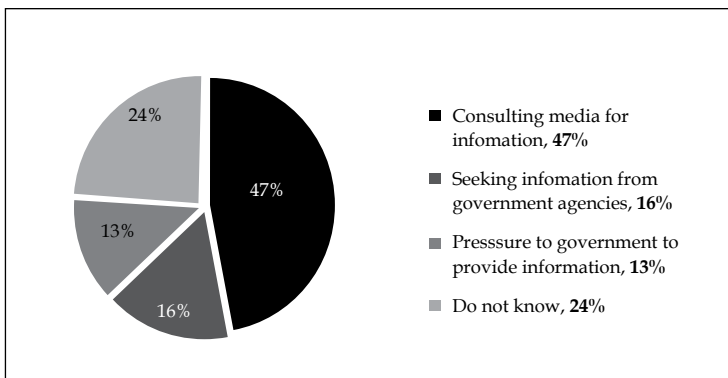


Fig. 3: Role of citizens in promoting the RTI

Nearly one fourth of the respondents were unaware of their potential role as citizens in promoting RTI. Similarly, only 13% of respondents said that the role of citizens was to create pressure on the government to provide relevant information. Only 16% respondents saw their role as claiming or demanding information from the government or any public agency. 47% of all respondents perceived consulting the media as the main way of exercising their Right to Information.

d. Have people heard about the RTI Act?

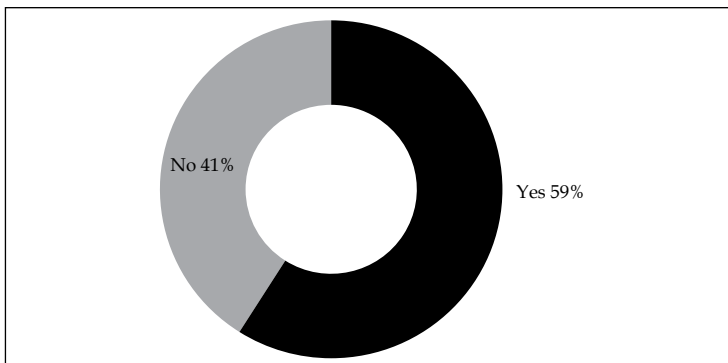


Fig. 4: Awareness about the RTI Act

41% of the respondents said that they had not heard about the RTI Act. This situation shows that the RTI is either a very new issue in Nepal, or awareness about it has not been widely disseminated among common people.

e. How can the RTI be promoted at the community level?

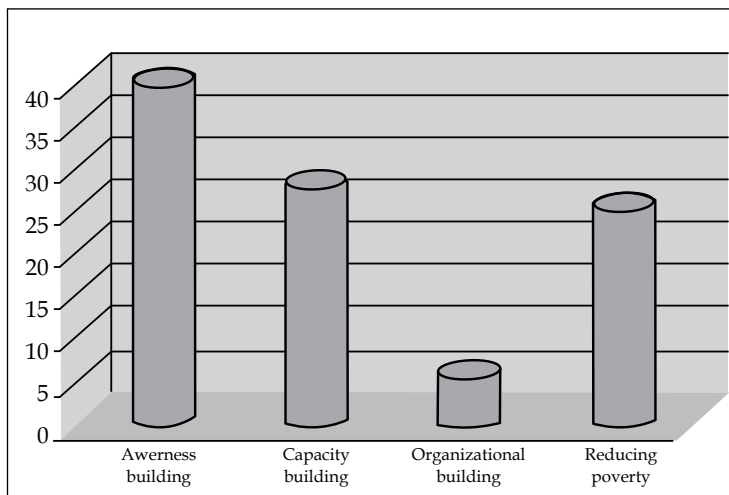


Fig. 5: Promotion of the RTI at the community level

A multiple choice question was asked to assess the perception of respondents on how best to promote RTI. Nearly 40% of respondents firmly believed that mass awareness-building was an effective way of promoting RTI in rural as well as urban areas of Nepal. Another 27% respondents relied on capacity-building of people so that they could promote RTI. Similarly, 25% said that reducing poverty was an effective way of promoting RTI, indicating a very low level of awareness of RTI.

TOOLS FOR PROMOTING THE RTI

Several tools and techniques have been used by CSOs to promote the Right to Information in Nepal so far.

Social audits

A Social Audit is an independent and participatory evaluation process of the performance of a public agency or a programme or scheme. It is an instrument of social accountability whereby an in-depth scrutiny and analysis of working of a public authority vis-à-vis its social responsibility can be undertaken. It provides an assessment of the impact of a public authority's activities through systematic and regular monitoring by stakeholders.

Social audits help to promote RTI in the following ways:

- **Complete transparency:** In the process of administration and decision-making, social audit ensures an obligation on part of the Government to provide full access to all relevant information.
- **Rights Based Entitlement:** Social audit propagates rights-based entitlements for all the affected persons (and not just their representatives) to participate in the process of decision making and validation.
- **Informed Consent:** Social audit provides for the right of the affected persons to give informed consent, as a group or as individuals, as appropriate.
- **Immediate Answerability:** Social audit enables swift and prompt response by the elected representatives and Government functionaries, on their relevant actions or inactions, to the concerned people.
- **Speedy Redressal of Grievances:** Social audit ensures speedy redressal of grievances of the affected people by the public agencies.
- Cited from "The Right to Information Act, 2005 and the Role of NGOs", RTI Cell, ATI, Kohima

Using the RTI Act, Samuhik Abhiyan (SA), has facilitated social audits of processes, activities, expenditures of CSOs/projects, users groups and so on. This has helped improve public service delivery and the efficacy and accountability of VDCs and projects. In Nuwakot district, SA has been facilitating communities (health service users) to use the RTI Act to inspect various processes and schemes related to health services offered by the government. SA has been helping the local community to collect and verify records and documents regarding health service delivery, particularly those related to essential drugs.

Public hearings

In Nepal, public hearings are an effective means of allowing citizens to express their grievances to service providers. This helps both the service providers (supply-side) and the citizens (demand-side) to reach a common understanding on the effectiveness of services. Further, it helps promote the Right to Information of citizens and increases the accountability of service providers towards citizens. Experiences have shown that such public hearings help in accurately identifying the information that different communities need in order to bring about social and economic development. CSOs can play the role of a bridge in eliciting information using the RTI Act. This will serve the interests of the weak and the poor, because inequality in access to information reflects a deeper inequality of power. If civil society is active, then the RTI Act will be a useful instrument in the fight for social justice.

Media mobilisation

Information is power and is regarded as the oxygen of democracy. Samuhik Abhiyan has designed and promoted media mobilisation activities in promoting RTI in its project district. Media such as the local FM radio and print are present throughout the project area. Right to Information messages are disseminated through FM radio. It was found that such activities can make a real difference to the lives of poor and disadvantaged people by:

- Making citizens more aware of their rights and entitlements;
- Enabling citizens to have access to government programmes, schemes and benefits;
- Making citizens more aware of political issues, and help to stimulate debate;
- Drawing attention to institutional failings – corruption, fraud, waste, inefficiency, cronyism, nepotism, abuse of power and the like;
- Creating pressure for improved government performance, accountability and quality, for example in service delivery;
- Providing a discursive space for citizens to engage in a dialogue with other actors in the governance process; and
- Highlighting significant cases or efforts made by organisations/individuals on the RTI.

Training and awareness campaigns

Several CSOs have incorporated RTI-related content in their training curricula. Most RTI-related content is incorporated under sections concerning good governance, gender and social inclusion, and empowerment. Samuhik Abhiyan has developed and delivered training packages for promoting participatory governance using the RTI Act to CSO workers, VDC officials and media persons. After a training was organised for one group (25 participants), it was found that participants achieved significant outcomes in their programme/project areas. However, there is no training package focused on the role of citizens in promoting RTI.

Some CSOs, including Samuhik Abhiyan, Pro-Public, and the NGO Forum are involved in raising awareness on RTI, and the role of citizens in using the RTI Act to get information on issues that affect their concerns. Recently, Samuhik Abhiyan conducted an awareness campaign in Bidur Municipality and two other VDCs of Nuwakot district focusing on improving access to information relating to health facilities of the government and the Right to Information of citizens. It included key features of the RTI Act

and the RTI Regulations, information related to essential health facilities provided by the government, processes to be followed for obtaining such information, and the role of citizens in promoting their right to health. A massive awareness raising campaign has been carried out in the project area to improve health service delivery practices. It sought to obtain information on several issues relating to the administration of health facilities, including the following:

- The absence/presence of health personnel in Sub Health Posts;
- The number of field visits of Primary Health Centre staff;
- The number of supervisory visits undertaken by other health officials of the district;
- Public access to the stock registers of medicines with dates of procurement, expiry dates of medicines, etc.;
- The number of outpatients treated;
- The status of maintenance of birthing centres;
- The number of actual immunisations achieved measured against the Action Plan;
- The right to inspect vaccines in the cold chain (refrigerators);
- The right to inspect safety measures followed by staff during regular medical treatment;
- Inspection of other relevant registers; and
- Information relating to the implementation and use of Citizens' Charters.

As a result of this campaign, four cases were filed before the Good Government Monitoring Committee of the district. This committee is formed through a consensus of all political parties, government officials and CSOs to monitor corruption in the district. According to the Medical Superintendent of the district hospital of Nuwakot, the number of outpatients in the hospital increased by 150% as a result of this massive awareness campaign.

CHALLENGES IN PROMOTING THE FILING OF RTI APPLICATIONS

This time of political transition in Nepal is marked by anarchy, unrest, impunity and injustice. These challenges have been compounded by the security situation in the Terai region, underdevelopment and a strong culture of secrecy within the government. Another challenge is that the law classifies most NGOs as public bodies, which is part of the reason that this sector, often a key driver for the RTI, has done very little towards its implementation in Nepal.

Some key challenges are:

- There is a low level of awareness amongst people on their rights to access information, since only few applications are filed in urban departments/ municipalities. Only a large-scale campaign on the RTI can lead to the realisation of the Right to Information for common citizens.
- There is also a cultural mindset that prevails in favour of not disclosing information. Changing attitudes towards voluntary disclosure of information is important for the effective implementation of RTI.
- Suggestion boxes at a significant number of offices at district or VDC levels were not opened regularly and there was no response to people's suggestions/claims. It is a waste of time and effort for any person to write and drop any claim.
- It is important to open help centres at district or VDC levels to assist RTI applicants. The experiences of grassroots-level campaigns have demonstrated that citizens need support in drafting applications, formulating their questions and developing confidence to withstand pressure from government staff, VDC officials and influential interest groups.
- Most CSO workers, teachers and general people perceive the RTI to be useful for media professionals only. There needs for greater awareness of the importance of RTI in preventing vio-

lation of individual rights as well as improving governance and service delivery.

- Record management is a major challenge for the government as it follows a very traditional system. Records and documents are maintained only in hard copies. Financial constraints, poor categorisation, and old filing systems are not favourable to the delivery of information.
- Developing a 'claiming culture' among people, breaking the culture of silence, and reducing the crisis of confidence between the government and the people are some major challenges in promoting RTI in rural areas.
- RTI can be a major tool to improve public services. At present, many citizens do not know about the range of public services available. Service providers are unaware of their responsibilities under the new law, while citizens' charters are rarely followed even when they are publicly displayed. A severe crisis of confidence between the government and the people is also visible at the local level. People do not have the trust that the government will fulfil its commitment of providing services to the people. The RTI Act is one way of bridging this 'trust' gap.

CONCLUSION

RTI has considerable potential to empower citizens in Nepal. Existing networks such as the NGO Federation of Nepal, the Federation of Nepali Journalists, the Federation of Community Forest Users and other groups have already begun to promote greater awareness of RTI, although much more needs to be done. The government should also consider innovative ways to make it easier for ordinary citizens to file requests, for example by using a telephone-based system. Success stories ought to be widely disseminated. As the benefits of RTI become more visible, for example, through more accountable service provision, citizens are more likely to use the RTI Act on a wider scale.

THE ROLE OF THE MEDIA IN THE PROMOTION OF THE RTI

Yek Raj Pathak

INTRODUCTION

Information plays a vital role in society. Without information, democracy becomes only a tag without substance. Information empowers people and helps them to be responsible citizens. The Right to Information is a fundamental right of the people. It is also essential for the effective exercise of various other rights guaranteed by the Constitution, particularly the right to freedom of speech and expression and the rights of the mass media. As a fundamental right of the people it holds a special status and no other law can change or supersede it. Freedom of opinion and expression is guaranteed in similar terms in Article 19 of the Universal Declaration of Human Rights.

The Right to Information was first envisioned in Nepal in 1990 when the post-Democracy Constitution of Nepal 1990 enshrined the Right to Information as a fundamental right. Article 16 of this Constitution states:

Every citizen shall have the right to demand and receive information on any matter of public importance.¹

No constitutional precedent for the Right to Information in Nepal existed before this time. Similarly, the Interim Constitution of Nepal 2007 also guaranteed the Right to Information in Article 27:

Every citizen shall have the right to demand or obtain information on any matters of concern to himself or herself or to the public.² Provided that nothing in this article shall be deemed to compel any person to provide information on any matter about which confidentiality is to be maintained according to law.

Nepal's media played a vital role in the enactment of the RTI Act. Following the incorporation of the RTI in the 1990 Constitution,

¹The Constitution of the Kingdom of Nepal, 2047 BS (1990).

²The Interim Constitution of Nepal, 2063 BS (2007).

the media continued to advocate for a specific Act as a way of ensuring the implementation of the Right to Information in practice.³

THE RTI ACT AND THE MEDIA

The Nepalese RTI Act recognises the media as an important channel for the effective disclosure of information. The media can help public bodies promote ‘proactive disclosure’ by publishing, broadcasting and making information public.

Enhanced access to information

The effective exercise of the Right to Information acts as a restraint on the state from improperly encroaching upon or tampering with the rights and freedoms of the people. The right of the media to access public records is based on its duty and responsibility to keep the nation informed of all matters of public concern. Mass media is the most important vehicle for information, knowledge and communication in any country. It is accessible, cost-effective and provides a widespread source of information as well as a platform for expression. The media acts as an honest broker of information for readers, viewers and listeners.

Furthermore, as all citizens cannot queue individually to get information, they depend on the mass media for various types of information of public significance. Through the media, people get vital information that matters in their lives. The media is the most accessible and affordable means for institutions and individuals to satisfy their need for information. Greater access to the media means the development of a more informed citizenry.

Proactive disclosure: conditions for a better flow of information

Public bodies under the RTI Act are obliged to classify, update and disclose information on a regular basis. The Act provides a concrete

³Working paper presented by the author on 26 September 2010 in an RTI-related programme organized by Freedom Forum.

list of information that is mandatory for public bodies to disclose proactively.⁴ Although the Act seems to lack clear guidelines about the process to make information public, it states that public bodies may use different national languages and the mass media while publishing, broadcasting or making information public.

Broad coverage of public agencies: a boon for the media

The Nepalese RTI Act has defined public agencies in a broad sense. Political parties and civil society organisations are also considered as ‘public agencies’ which are supposed to provide information. As the RTI Act brings into its fold a wide spectrum of public agencies which are obliged to provide information, the media stands to gain as it can now gain access to additional sources of information. According to the RTI Act, all organisations that provide public services, including political parties, NGOs, INGOs⁵ and other legitimate bodies, have to comply with its provisions. It is therefore mandatory for these agencies to periodically publish information related to their activities. The media is an instrument in this process. Greater proactive disclosure by public agencies helps the media, the government, and the citizenry in the following ways:

- By producing better news outputs;
- Providing a regular flow of information about public agencies to citizens;
- Promoting transparency in public agencies;
- Enhancing the relationship between the media and public agencies; and
- Gradually eroding the culture of silence in the bureaucracy.

EXISTING PERCEPTIONS ABOUT THE MEDIA AND RTI

There are some misperceptions regarding the Right to Information and mass media in Nepal. Generally, people assume that the

⁴ Section 5(3), Right to Information Act, 2007.

⁵ Section 2, Right to Information Act, 2007.

Right to Information is meant only for the media. People have taken on the role of passive information recipients and are completely dependent on the mass media. Most people tend to assume that it is the media's job to use the Right to Information Act on their behalf. But this is only a misperception, which may in part be fuelled by the fact that pursuant to Section 12(3) of the RTI Act, the committee which appoints the members of the National Information Commission (NIC) comprises the Speaker, the Minister for Information and Communications, and the President of the Federation of the Nepali Journalists (FNJ).⁶ The media and the FNJ in particular have been involved in activities to implement the law, for example by assisting NIC to conduct training programs. However, not many journalists are using the Act to facilitate their role as purveyors of information (i.e. making requests to access information to publish as part of their reporting).

WHAT THE MEDIA CAN DO

Advocacy

Firstly, the media can advocate for RTI nationwide. It can encourage people to exercise their Right to Information under the Act. Media advocacy in favor of the RTI can raise awareness about transparency, and help to combat impunity and corruption. By frequently advocating for RTI and its use through articles, news stories, interviews and editorials, the media can inspire individuals and institutions to make use of the RTI as much as they can.

Investigation and Reporting

Another pivotal function of the mass media is to use the RTI Act adequately to inform and empower people. The media can demand information under the RTI Act relating to issues of corruption, fraud, waste, inefficiency, cronyism, nepotism, and abuse of

⁶Section 11(3), Right to Information Act, 2007.

authority. The media can thus play an exemplary role in encouraging ordinary people to seek information through the RTI Act.

The media as a source of demand for accountability

The media can help foster greater demand for public accountability by:

- Making people more aware of their rights and entitlements;
- Enabling people to seek information about government programmes, schemes and benefits;
- Making people more aware of political issues and stimulating debate;
- Educating the public on social, economic and environmental issues;
- Drawing attention to institutional failings, including corruption, inefficiency, and waste in the public sphere;
- Disseminating best practices concerning good governance;
- Creating pressure for improved government performance, accountability and quality (in service delivery, for example); and
- Providing a discursive space for citizens to have a dialogue with other actors in the governance process.

PROMOTING THE RTI: THE MEDIA'S ROLE

The media can directly promote the RTI Act by in the following ways:

- The media can push the government to properly implement the RTI through frequent coverage of the status of RTI implementation, how it has been used, and why it has been used so little. It can also generate a public debate to identify the main barriers limiting the implementation of RTI in Nepal.
- The media can play a powerful role in raising awareness about the RTI Act and its potential benefits. People generally do not know about the contents of the RTI Act. They have a

preconceived view that the Right to Information is only for the media. The media has so far not reported much on the benefits of RTI for ordinary people as an instrument to demand greater accountability from the government.

- The media is undeniably a bridge between public agencies and the people. With respect to the implementation of the Right to Information, the media can play a bridging role. Have people asked for information? If yes, have they received information? If not, why? What is the government's attitude to providing information to information-seeking citizens? The media can thus mount pressure on the government to respond more effectively to RTI requests by citizens.
- The media can mobilise people against corruption by continuously publicizing irregularities. It can also use investigative journalism to expose corruption using RTI to obtain information. One Kathmandu-based FM Radio station has, for example, focused on the issue of how Constituent Assembly members spend their constituency Development Fund.
- The media can play an important role in drawing attention to success stories in the use of RTI. The media can present these in the form of news stories, interviews and articles. Moreover, they can allocate some space for regular coverage of RTI issues. This will motivate citizens to use the RTI Act for their own benefit and boost the credibility of the new law in the eyes of ordinary citizens and officials alike.

NEPALI MEDIA PRACTICES: EXPERIENCES AND OPINIONS OF PROFESSIONALS

Following the adoption of the RTI Act in Nepal in 2007, the media has not played a proactive role in using it. There is a scarcity of investigative journalism that uses the RTI Act. The media has not

used the RTI Act to disclose big corruption scandals and irregularities. During the three and half years after the approval of the Act, the Nepali media has not yet taken any initiatives to push public authorities, including the National Information Commission, towards the implementation of the Act. Despite the media's overall lack of enthusiasm it has sought to use the RTI Act for news stories in a few instances with mixed results.

Probe committee report

Ramji Dahal of *Himal* magazine applied to the Ministry of Home Affairs asking for the investigation report and the financial statement of the Probe Committee formed to investigate the murder of a Kailali-based journalist. His purpose was to write a news story on the issue. He filed an application at the Office of the Prime Minister and Council of Ministers on January 26, 2010. "I did not get complete information from the authority concerned and I appealed to the Home Ministry again citing dissatisfaction with the information given to me", said journalist Dahal. The Ministry did not take a decision on his appeal. However, after directives from NIC, he received the information and wrote a news story about the committee's irregularities in his magazine.⁷

Information on tenders for machine readable passports

A reporter of the Republica Daily, Kiran Chapagain, asked the Ministry of Foreign Affairs for information about the tender process for supplying Machine-Readable Passports (MRPs). Four companies out of 14 companies had been shortlisted for the project. The reporter asked the Government for the details of all these companies, and sought information on how the tender process was carried out. When the Ministry refused to provide the requested information, the reporter filed an appeal with NIC, but was told that his appeal did not comply with proper procedures.

⁷ Pathak, Y.R. (2011), Suchana Sangharsha. Freedom Forum, Kathmandu.

Concerns with the national army

In another attempt to obtain important information, Mr. Chapagain sought information from the Nepal Army Headquarters on 25 August 2010 regarding the involvement of army personnel in human rights violations. The Army spokesperson responded to him in writing saying that the Army was not expected to give out this type of information as it was a matter of defence secrecy.⁸

Budget transparency of NGOs

In December 2009, Mr. Lokmani Rai used the RTI Act to request details about different national and international non-governmental organisations and their programs and approved budgets from the Social Welfare Council. He obtained the requested information in about 10 days. "Despite the lack of cooperative atmosphere, I obtained information," Mr. Rai said.

Concerns with the local government

Ritesh Tripathi, a journalist based in Parsa in the western Terai region of Nepal, had sought information from 46 Birgunj-based offices regarding their operating expenses, staffing situation, and performance in accordance with the Right to Information Act 2007. He submitted applications on behalf of the *Terai Patra Saptahik* (a local weekly newspaper) to these offices between 25 July and 15 September 2009. None of these offices provided information, according to Tripathi. Some offices even refused to accept applications.

When journalists threatened to file complaints against them, the District Postal Office and the Oil Corporation provided information but not as sought. With their quest for information remaining unfulfilled, journalists later blacklisted 10 offices which did not cooperate with them by providing information. Tripathi then decided to file an appeal at the National Information Commission.

⁸ Interview with Kiran Chapagain, Reporter, The Republica Daily.

Good news... but with the RTI, it could have been better!

There are other examples where reporters filed stories that could have been more accurate had they used the RTI Act to access factual information. One story published in *Kantipur Daily* on 8 March 2011 highlighted the fact that members of parliament were spending considerable sums of money on foreign trips. However, the report did not provide details about the amounts involved. The RTI could have been used to ask government to provide the exact cost of these trips, which would have improved the credibility of the story. In India, for example, the RTI Act has been effectively used to obtain detailed information on the expenditures of officials while travelling abroad for stories by both print and electronic media. Another story also published by *Kantipur Daily* on 19 February 2011 focused on the financing of political parties without providing specific information. Again the reporter could have filed an RTI request with the main political parties seeking detailed information on their income and expenditures. Other stories relating to fraud in government programs and schemes could also have been made more credible through the use of the RTI Act. The quality of journalism thus stands to gain considerably from the greater use of the RTI Act by reporters.

Current status of the implementation of the RTI in Nepal

While the media played a critical role in the adoption of an RTI Act in Nepal, it has done little since to facilitate its implementation. As a result, the current status of RTI in Nepal is not encouraging due to the following reasons:

- Public agencies have not recruited information officers;
- The updating of information and information management in these agencies is weak;
- In general, a culture of proactive disclosure or periodic disclosure has not been developed;
- No regular training for information officers has been carried out;

- Citizens and institutions have not been encouraged to seek information;
- The National Information Commission has failed to organise nationwide campaigns aimed at the implementation of the RTI Act;
- No mechanism to monitor the implementation of the Act is in place yet;
- Mass media has shown little interest in carrying out investigative journalism by using the RTI Act; and
- The implementation of the orders of NIC has been difficult.

CONSTRAINTS FOR THE MEDIA IN USING THE RTI ACT

Non-communicative culture in the bureaucracy

This is an important constraint regarding the implementation of the RTI Act. The Nepali bureaucracy still has a negative culture of remaining non-communicative on public issues and agendas. It does not appear to be very conscious about why communication, information and the mass media matter to society. This non-communicative culture is a challenge as the media is not able to receive information from public agencies.⁹ Due to this problem, media workers do not believe that they can get any serious information for immediate dissemination from public authorities by using the RTI Act. The Chief Reporter of Nepal Magazine, Chudamani Bhattarai, felt that it was easier to get information through traditional ways due to the non-communicative culture of officials.

Lack of time

Most journalists who were interviewed for this study said that they did not have sufficient time to use the RTI Act for their stories. They first have to file an application for information. The information officer could at that point hold up the application for 15 days as per the Act. If the initial request for information is rejected, an

⁹Dahal T.N. and S. Sigdel (2064 BS), Suchanako hak hatepustika.

appeal has to be filed with the National Information Commission, which can take even more time. Media houses do not have enough journalists on their staff and they cannot afford to give a journalist a month-long assignment for one report. Dailies require information immediately, but the procedures and processes required by the Act to obtain information are lengthy and uncertain.¹⁰

Limited focus on investigative reporting

Journalism today is more inclined to reflect opinions rather than information and facts. Nepali journalism has not been involved much in in-depth and investigative reporting. It is more involved in political debates or political views of leaders, and most front pages of newspapers are focused only on political news. The Act is useful to explore facts and data about irregularities and various scandals in the country. If a reporter uses the Act, finding detailed information is possible and this would make the news report more authentic and informative. The RTI Act is relevant for such investigative and in-depth reporting, says RTI expert and journalist Tara Nath Dahal.

Lack of knowledge about the RTI

Reporters (and editors) are not fully aware of the RTI Act and rarely use it in the course of reporting. Instead, journalists tend to rely on their traditional sources or personal contacts for information.

Information officers not appointed

Many public agencies have not even appointed information officers to deal with public information issues. No monitoring mechanisms have been set up to ensure that public agencies work as per the Act. As a result, it is difficult for reporters to obtain information. Reporters are often confused about where to direct an application for information. This is another constraint for journalists. Some journalists at the district level do not know who to demand information from as there are no information officers in public offices. A journalist from Pachthar district said that journalists were

confused about who to demand information from, as public agencies in the district had not appointed any information officers.¹¹

Lack of demand for information

Due to their fundamental state of disempowerment, a majority of people are unable to demand information as one of their fundamental rights. Most do not even know that the Right to Information is guaranteed in the country's Constitution, and that the RTI Act and RTI Regulations exist. They depend mainly on the opinions of leaders for information.

Limitations of the national information commission

As information officers at the district level do not provide information, journalists are bound to visit NIC in Kathmandu for making appeals. Many of them cannot visit the Kathmandu based office of NIC due to constraints of distance and resources.¹²

Lack of academic and training programs

Although universities have the Right to Information as one of their components in mass communication and journalism programmes,¹³ this is not enough for in-depth studies and developing specialisation. Non-governmental organisations and public agencies can themselves conduct necessary RTI training programmes for all stakeholders, including media workers.

Poor record management systems

There is no proper record management system in place which has frequently caused problems in providing information on the supply-side. No archives are maintained and no systems are in place. Documents in most offices are stored in sacks. Information management is a challenging task. No concrete programmes or poli-

¹⁰Interview with Hari Dahadur Thapa, News Chief of Kantipur Daily.

¹¹Interview with Laxmi Gautam, a journalist from the Pachthar district.

¹²Interview with a Birgunj-based journalist Ritesh Tripathi.

¹³For example, in the Master's programme at the Department of Mass Communication and Journalism at Purbanchal University.

cies have been proposed and no investment or human resources have been allocated for it. After the enforcement of the Act, no formal training has been provided for information officers on information dissemination systems, including record management and updating of systems.¹⁴ Due to this, the press does not successfully get information when it seeks it.

CONCLUSION

Nepal's media sector has not been able to practically use the RTI Act mainly due to:

- A deep-seated culture of concealing information in public agencies;
- Low faith among the media that any worthwhile information will be forthcoming from the authorities as a result of an RTI request;
- Practical limitations due to professional compulsions and media deadlines; and
- The failure of the media to understand the long-term benefits of using the RTI.

However, the media has a big role in promoting the use of the Act. Without the media playing an important role in comprehensively and frequently informing people about the rationale, functions and uses of the RTI Act, its use cannot be increased. Since the media mainly represents people in obtaining and disseminating information, it is natural to expect them to take an initiative and launch campaigns in using the RTI Act. The media itself can persist in demanding information using the RTI Act, and it can encourage civil society institutions to do so by regularly reporting on the information they seek, and the responses they receive from

¹⁴Country paper presented by Taranath Dahal in a South Asian regional workshop held in Delhi in April 2010.

public agencies. The media and civil society institutions can work together in making the best use of the RTI Act.

Although there are many reasons behind the non-involvement of the media, an important one is the insecurity of media workers who try to carry out in-depth investigations on corruption and other irregularities. Nepal is in a transitional phase of politics and journalists are being threatened and beaten up every day. In some cases, journalists have also been killed.

The Nepali press has not exercised the RTI Act in order to obtain information from public agencies as this task involves patience and in-depth study. Media workers have to work hard to dig out new and interesting information and earn credibility. For this the RTI Act can be extremely helpful.

RECOMMENDATIONS

Media houses should:

- Launch campaigns to make people aware of the RTI law and its usage by producing news and articles
- Give assignments for investigative reporting that rely on the RTI Act as a source of vital information. Television channels, radio stations and newspapers should allocate separate space for RTI coverage and analysis through talk shows, columns and so on.
- Give wide publicity to convince people that the RTI Act is not only for the media but is a fundamental right meant for all citizens.
- Broadcast programs and advertisements (Especially community radio stations) to spread public awareness on the RTI.
- Collaborate closely with civil society organizations to give voice to citizen complaints as well as expose inefficiency, waste, and corruption.

Reporters should:

- Use the RTI for investigative reporting to get data and more facts.
- Follow the application process and appeal if necessary.
- Expose the tendency of information officers to not give information.
- Not misuse information.
- Maximise the use of the RTI to explore issues of corruption and other public interest matters.
- Work hard to dig out new and interesting information and earn credibility.
- Point out instances where people seeking information on corruption and irregularities has been important.
- Follow up on the obligation of every public agency for *suo moto* disclosure (self-disclosure provisions) of information.
- Publicise success stories regarding the use of the RTI.

Civil society organisations should:

- Collaborate with the media on anti-corruption and transparency-related activities, and the media should give coverage to pro-transparency activities of CSOs.
- Use the RTI Act as an innovative tool to promote good governance, and develop other tools such as citizen report cards, social audits, etc.
- Generate more success stories regarding people using the RTI.
- Encourage people by giving them a sense that the RTI is their right, and organise public hearings on construction and development work and people's grievances.
- Expand networks of NGOs to the local level and create an information culture in society.
- Organise public hearings at the local level.

Government and public bodies should:

- Create a Nodal Agency under the Office of the Prime Minister and Council of Ministers to provide central leadership for implementation.
- Monitor implementation tasks with clear authority.
- Strictly monitor pro-active disclosure by every public agency.
- Prepare directives for every public agency for proactive disclosure and information dissemination systems.
- Provide necessary training and guidelines for updating information.
- Provide training to every government official about the importance of information through the Nepal Administrative Staff College (NASC), which is responsible for providing central training to officials.
- Provide necessary physical infrastructure and extra incentives to information officers.
- Accept oral demands, for example by telephone, as applications for information.

The national information commission (NIC) should:

- Expand the network of NIC through branch offices across the country.
- Organize nationwide training programmes for journalists on the Right to Information.
- Lead awareness campaigns in the country's districts to encourage citizens to seek information under the RTI Act.
- Monitor the periodic disclosure of information by public agencies.
- Pressurise the government to create a Nodal Agency, which would make it easy to coordinate its work with the government.

Universities should:

- Revise the curricula of mass communication and journalism programs at the university level to include courses on the RTI and increase its understanding amongst students.
- Encourage the writing of theses on RTI at the Master's Degree level.
- Give research assignments on RTI to students of mass communication and journalism.
- Maintain RTI related materials, books and research documents in libraries and study centres.

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REFORMING POLITICAL PARTIES IN NEPAL: THE ROLE OF THE RIGHT TO INFORMATION

Sanjeeb Ghimire

INTRODUCTION

An informed citizenry is the backbone of democracy. Free flow of information and communication enables an informed citizenry and the process of democratisation. Democratisation leads to a more open, more participatory, and less authoritarian society. Political parties are indispensable institutions in all forms of democracy ranging from representative to participatory or inclusive. They must aggregate and articulate people's interests and formulate suitable policy options.

Being an intermediary institution between the state and society, political parties are expected to mobilise a large chunk of society in their activities. Therefore, the organisational structure and working style of political parties greatly affects the democratisation process in society.

Transparency, accountability and responsiveness are the basic elements of democratic governance. When political parties lack internal democracy, they cannot credibly promote democracy as a whole. How basic values of democracy are exercised within the governance of a party is a major issue in building or reforming political organisations in transitional democratic societies like Nepal.

Despite their contribution to democratic struggles in Nepal, the political parties are often criticised for their failure to make good on promises made during elections. A focus on internal quarrels only to secure power has lessened their commitment to democracy. This has led parties towards gradual deinstitutionalisation, witnessed in the form of frequent splits and fragmentation, weak political identity, an emphasis on personal leadership, indecisiveness, arbitrary and opaque decision-making, centralised working styles, and the hereditary transfer of leadership. Nevertheless, there are no institutional alternatives to political parties. All transformational agendas of the Nepalese polity have been institution-

alised through political parties. The only option is a shift towards more democratic political parties with intra-party democracy.

Access to information is a tool for ensuring accountable and transparent democracy. The RTI law in Nepal includes political parties within its purview. Political parties now have an opportunity to internalise the spirit of RTI and reconstruct their internal functioning and governance. Responsiveness to the people's quest for information can help restore public image, strengthen their ethical and moral power, and make them fit for leadership.

IMPORTANCE OF POLITICAL PARTIES AND GROWING DISTRUST

The pivotal place of political parties in a nation's governing system is widely accepted by all developed and developing democracies. However, in Nepal, a severe crisis of governance has occurred, especially after the 1990s. Politics has been marked by deadlock and corruption has become institutionalized. Mass political alienation has grown. Fighting for state patronage and a power-seeking attitude amongst political parties has paved the way for mass distrust towards parties, and non-political and non-programmatic alliances have emerged. Parliamentary norms and values have been ignored and procedures have degenerated into horse-trading. The political game of forming coalitions and breaking them has resulted in the fragmentation of all parties. The weaknesses of political parties have translated into a crisis of credibility for the system as a whole. The erosion of the state machinery - especially the decreasing presence of development and service delivery agencies – and an absence of elected bodies has shrunk the state's domain of influence.

The nation's transformation into a Federal Democratic Republic following the Constituent Assembly (CA) elections in April 2008 provided an excellent opportunity for political parties to

improve their tarnished image. The elections to the Constituent Assembly has contributed to the party building process in Nepal.¹ Out of 74 political parties registered with the Election Commission, only 25 political parties were able to secure seats in the Assembly. The results of the CA election not only changed the polity but also threatened the status of traditional parties. "The emergence of new parties in the CA elections, such as Communist Party of Nepal (Maoist), Madhesi Jana Adhikar Forum (MJAF), Tarai Madhes Loktantrik Party (TMLP) and Sadbhavana Party (SP) signalled the relative decline of older parties - such as Nepali Congress (NC), Communist Party of Nepal (CPN-UML), Nepal Sadbhavana Party(A), Rastriya Prajtantra Party (RPP), and Rastriya Janashakti Party (RJP). The decline of older parties has been caused largely by anti-systemic social movements, demands of various social strata, such as women, Dalits, Madhesis, youth, indigenous people, and ethnic groups seeking wider representation in the political structure, and the inability of older parties to include them in the party framework². To a large extent this has expanded the domain of political power and civic engagement in society and could strengthen internal democracy in political parties.

LEGAL REGIME FOR DISCLOSURE OF INFORMATION

Political parties are supposed to link the state and society. Nepal's RTI Act treats political parties as public bodies. In addition, there are a host of laws related to political parties and elections that have provisions for disclosure, including:

¹ The Interim Constitution of Nepal-2007 emphasises inclusion and its application to the entire state apparatus. The Election to Members of the Constituent Assembly Act, 2064 (2007) has defined the proportion of representation of Madhesi, Oppressed tribes/Indigenous tribes, Dalit, Backwards and others through a proportional electoral system.

² Dahal, Dev Raj (2008), "Democracy Building and Party System in Nepal" in Readings in Governance and Development, No. 11, 2008.

The Interim Constitution (IC) of Nepal 2007

The Interim Constitution requires that political parties disclose their sources of income and function democratically. The IC also requires political parties to have elections for office bearers at all levels at least once in every five years.

Political Party Act 2002

This Act requires political parties to keep records and accounts in a particular format. It makes it mandatory for them to submit and publicise annual reports revealing their income and expenditures within six months of the end of each fiscal year. The identity of donors who donate more than NPR 25,000 needs to be made public as well.

Election Commission Act, 2063 (2007)

Nepal's election law requires that candidates to submit a return of campaign expenses to the appropriate District Election Office within 35 days after the release of the results.

Right to Information Act, 2064 (2007)

As a "public body", a political party has the responsibility to respect and protect the Right to Information of citizens. To ensure this, political parties must, among other things:

- Make citizens' access to information simple and easy.
- Conduct its functions openly and transparently.
- Provide and update information regarding their income, expenditure and financial transactions.

In spite of such legal mechanisms for disclosure, political parties have not strictly followed them nor have the regulatory agencies, such as the Election Commission and the National Information Commission, strictly enforce the laws.

CONSTRAINTS IN INTRA-PARTY GOVERNANCE AND RTI PRACTICES

Political parties must adopt universally accepted basic democratic values in internal governance and political life. Inner party or intra-party democracy can be defined as the ability of a political party to engage its members in deliberation and decision-making.³ Transparency, especially in financial matters, is very important for democratic parties to prevent capture by vested interests. In addition, an inclusive and participatory party structure is necessary for legitimacy and responsiveness. Major constraints that have hindered the development of intra-party democracy and transparency include:

Hierarchy and 'black-box' decision making

The organisational structure of the main political parties of Nepal is mostly hierarchical, leader-centric, pyramid based and centralised. The locus of power remains in their respective central offices. The extent of centralisation is associated with the degree of charisma of the leadership. This trend has led to the formation of leader-centric parties, where the party-supremo is treated as the 'party', and there is no chance to criticise the chief's "judgement". The chief's judgement is considered final and is supposed to be followed by all levels of the party - from the top to the bottom. This hierarchical and centralised organisational structure and a trend to pass the buck has hindered candid information sharing and adherence to RTI principles in party mechanisms. The leader-centric nature of political parties has made them less accessible to party activists and the general public. This trend has occurred in Nepalese political parties at different times and in different ways and has also resulted in fragmentation, factionalism and 'splits'. Further, this has created a personality cult among leaders. Sometimes, the party supremo is considered as the 'antidote' for all malpractices in intra party governance.

³Dahal, Dev Raj (2008). "Inner Party Democracy in Nepal". Ppaper presented at a seminar organised by FES, CELCAR and SM College, Pokhara, November 27, 2008.

These trends can be seen in all parties in Nepal in different degrees. Power in the Nepali Congress has fragmented and is now evolving towards forms of 'collective leadership'. A similar process is underway in the CPN-UML after its Eighth National Convention. Most policy decisions are made in conventions without serious discussion because most participants are engaged in lobbying for specific candidates. Little time is spent on policy discussions and debates. Resolutions are passed hurriedly and without much understanding. Short-term decisions made by the Central Committee and sometimes the leader's statements become the 'party line'. Lower committees of all parties are treated as implementing and subordinate agencies and simply follow the decisions taken at the apex level. They are only receivers of policy outcomes and information and they play only a minimal role in providing policy inputs. They only represent the centre and obey and execute directives. They work as a 'welcome agency' and event organisers.

'Democratic centralism' is the basic organisational principle⁴ of the CPN-Maoist party. The CPN-UML party has also mentioned it as its governing principle of party organisation. Although the same is not written in the NC party constitution, the inclination towards the centre is very high. There is no effort to strengthen local party units in any party in an 'institutional' sense. There is only one-way communication and flow of information with regard to policy matters. Only procedural and ritual reporting is carried out by lower levels. The provisions of the RTI Act are not strictly followed in decision-making, and the process of decision-making is not even disclosed. Even when decisions are disclosed, little information is given to the public on how it was arrived. All these practices suggest that parties carry out decision-making in a black-box. Thus 'inclusion' in decision-making or participatory decision-making is limited only to a physical presence. Moreover, it is rare for all parties to use 'information' from surveys to ground their decisions.

⁴Interim Constitution of CPN-Maoist party, Article 6.

Choosing party leaders

Internal elections of parties is not merely a mechanism to choose leaders. They also improve information flows within party structures, between party leaders and party activists, and the general public. Some measure of internal democracy characterises the process for choosing party leaders. The Nepali Congress and the CPN-UML have defined the election process in choosing their leadership in their party constitutions⁵ and both parties have recently renewed their leadership from the top to the bottom. A central electoral management mechanism⁶ exists to conduct and supervise elections to party committees at all levels in the NC and the CPN-UML. However, such processes are often non-competitive in nature: elections are usually preceded by consultation and the outcome is based on consensus. Carrying out consultations is not bad for democratic politics and can forestall threats to party unity, but this should not turn the electoral process into a formality. In the CPN-Maoist party, there is no clear provision for elections at the central and lower levels of leadership. The same party leader has continuously led the party after his selection. No general convention has been held for years. Leaders of different party committees are selected by the top leader. Although the party constitution says that there will be an 'elected' central committee, this has not happened so far.

Opacity in the selection of candidates

The selection process of candidates for political office seems to be very non-transparent in Nepalese political parties. There are no criteria in party constitutions regarding the selection of candidates for public office. In most cases, a centralised method is used. The central party committee or party chief sends the names of candidates to the local level for nomination and orders it to campaign for the candidate. In some cases, the central party office

⁵See Party Constitution of Nepali Congress and CPN-UML.

⁶NC Party Constitution Article 35 (central election committee), CPN-UML Article 17 and Central Election Commission.

asks local party committees to send the names of three or four potential candidates and the central committee or party chief finalises the name. Most often, the party leader has the final say about candidates. Finally, the list of candidates comes from the party supremo. However, the leader is not always completely free to decide names because a coterie encircles and influences him/her in selecting candidates. Sometimes, the factional dynamics within a party is also reflected in the process of candidate selection. At other times, the obligation to include various socio-cultural groups narrows the leader's choices. It has been observed that: "Four traits have marred the internal development of Nepal's political parties: primacy of gerontocracy, hereditary and familial succession of leadership, clientelist networks and lack of sound think tanks to update vision and policies as per the spirit of age"⁷.

Non-transparent political financing

Properly managed financing is an essential element of sound governance in any party. In Nepal, political finance is very opaque. The funds of the CPN-UML party comprise a membership fee, levies, donations, publication sales, and money collected through special campaigns. The NC party constitution cites membership and renewal fees as the main source of party funds. The CPN-Maoist party refers to membership fees as their main source of income. It is obvious that the stated sources of income cannot finance the entire expenditure of political parties and they manage by finding 'other sources'.

The Political Party Act, 2002 requires a declaration on party funds and resources as a requirement for registration. It also obliges parties to maintain and keep records of income and expenditure of all electoral and non-electoral expenses, and these *must be audited* by a certified auditor annually, and reported to the Election Commission.

⁷ Dev Raj Dahal, Op.Cit. n 7 p4.

The Election Commission has defined a ceiling on electoral expenses by political parties and candidates, and requires them to submit a detailed report on the income and expenditure within 35 days of the election. Candidates competing in the first past the post system can spend up to NPR 459,500, and candidates elected under a proportional system can spend up to NPR 50,000. The Election Commission can levy fines if expenses cross these ceilings. Candidates crossing these ceilings can be barred from contesting any election for six years. The Code of Conduct of the Constituent Assembly Election in 2007 had prohibited the misuse of government resources. It had also prohibited the extending of any financial or other inducements to voters, as well as other malpractices.

Despite the comprehensive legal provisions to regulate political finances, the situation is deteriorating. The internal record and book keeping practices of parties are not being carried out as legally prescribed. Although parties like the Nepali Congress, the CPN-UML and the CPN- Maoist maintain record books and a registry of assets⁸, this is done in a mostly ad-hoc manner by party cadres. There are many hidden expenses which are not shown in the accounts as parties send bills directly to the companies that support them⁹. There is no provision prohibiting cash donations to political parties and political parties can have multiple accounts to manage their income and expenses.

The Nepali Congress and the CPN-UML have provisions for an internal auditing mechanism in their party constitution, but the CPN-Maoist party does not. Parties have not paid any attention either to their own proclamations, or to the legal requirement of preparing and submitting an annual audit report to the Election

⁸ "Report on Transparency in Political Finance in Nepal", Pilot Study conducted under the Crinis Project in Bangladesh, Indonesia and Nepal. Study Commissioned by Transparency International Nepal, February 2010.

⁹ Ibid.

Commission within a defined time. Parties are required to report their sources of income from membership and annual renewal fees, and individual and corporate donations in cash or in kind. No party has submitted this report to the Election Commission. Although the law envisages penalties for non-compliance, none of the political parties have been penalised by the Election Commission for failing to submit their reports. The media has often reported that large amounts of money are received by political parties from businessmen and corporate houses. The business community has been a major source of funding to political parties, and they have even threatened to stop giving donations if the government continues to attack the industrial sector. The entry of high-profile businessmen as Constituent Assembly (CA) members serves as the strongest evidence of the close ties that now exist between several political parties and the business community.

Lucrative political appointments, contracts, transfers and promotions of public employees are also other sources of party funds. Party leaders are reluctant to disclose detailed information about their sources of income. Many party leaders themselves do not know about sources of income as this is managed by and shared only within the core leadership of the party. The youth wings of some political parties also collect money by force for party expenses.

The Election Commission is the main regulatory and constitutional body for overseeing party activities. The Election Commission's monitoring of the parties is 'event oriented'. At other times, it does not monitor parties properly. The practice of appointing Election Commissioners based on their party loyalties has weakened the Commission's ability to ensure compliance with the law. Besides, the Election Commission lacks the human resources necessary for

¹⁰Ibid.

¹¹Pranav Bhattarai, "Money in Politics", Republica newspaper, 10 August 2010.

strictly executing its obligations. Civic groups have also largely failed to monitor political party expenditures and financing except during elections.

REINVENTING INTRA-PARTY GOVERNANCE THROUGH THE RTI

Access to information is a key tool for people-centred governance, development and democracy. It enhances peoples' capacity to exercise control over public authorities, people's representatives and the overall political process. It turns the 'public' into 'citizens' and thereby changes democracy from being merely representative to becoming participatory and inclusive.

Nepal is passing through a political transition. In this transition, the restructuring of public institutions is emerging as a key agenda. In this context, access to information can serve as a powerful instrument to redefine political parties, including their structure and spirit. There are many questions in peoples' minds about political parties. What are the bases of party functioning? How many members does a party have? What are the sources of party funds? How are funds managed? What are the expenses? How are funds spent? How much money do party members get paid? How are party offices established and how are they managed? How are decisions carried out in parties? Who selects candidates in an election? How are lower level party committees involved in decision making processes? What are the criteria for membership? Who has the final say in the party?

Parties now have an opportunity to proactively respond to these questions and build a closer relationship between party leaders, the rank-and-file, as well as with civil society. The Right to Information thus has the potential to transform the working of political parties as well as democracy in Nepal.

DISCLOSURE MECHANISM AND TRENDS

There are no strong, vibrant, formal, and permanent disclosure mechanisms in political parties. Most parties have separate departments for publication and publicity. However, except some publications, there are no mechanisms of regular and timely interaction with lower committees, party activists and the public. Most parties have recruited spokespersons at the central level, but they are ritualistic in their work. The spokesperson's appointment is more about glamour rather than enhancing access to information or promoting proactive disclosure and transparency. The spokesperson reveals facts to the extent he/she gets such information from senior leaders. Thus, only the senior-most leaders know the real picture. The offices of parties are not disclosure-friendly.

Several barriers need to be overcome before political parties can truly embrace the spirit of the new Right to Information law including:

The culture of secrecy

Nepali society is developing as an open society but the traditional legacy of a closed society still exists. Nepali parties are not outcomes of open political systems. They emerged as a movement for democracy in a closed society. They have worked secretly for years for accomplishing the single aim of establishing democracy. Therefore, they have not developed an open political culture and thus do not reflect the features of an open society in their structures, mechanisms and working modalities.

A superiority complex

Most politicians belong to the urban elite and are from either the middle or upper class backgrounds. Therefore, there is a superiority complex amongst party leaders. The leaders do not feel it necessary to discuss policy issues with the lower strata of the party leadership, party activists and the general public.

Ignorance of RTI

Politicians played a positive role in adopting the RTI law. However, the passivity in implementing it within their own parties and beyond reflects the ignorance of leaders about the real value of RTI.

Technological illiteracy

Nepalese political parties have mostly used traditional channels of communication such as party meetings, local rallies, canvassing, pamphlets, and speeches. Now, parties are shifting towards mediated channels of communications such as newspapers, magazines, televisions, and radio. Some political parties and politicians have even used the Internet as a channel of communication, including party and personal websites and e-mail. However, most channels are one way. The Internet has not been used for conducting dialogues with party committees at lower levels or the electorate. Party websites are launched with limited information and are not regularly updated. Some party websites are not even functional.

Information as propaganda

Nepalese political parties have used a propagandist approach in disseminating information instead of strengthening their respective party committees, activists and the electorate. Parties use information to keep a hold on their support bases. They sometimes tend to misinform.

Uneven and fragmented disclosure

Nepalese political parties are not regular in the disclosure of information on their internal functioning and programming. Disclosure is frequent at the time of elections and conventions. But there is no regular disclosure mechanism and disclosures are fragmented. Sometimes, it is hard to find a real 'party-line'.

Reactive and formal rather than proactive disclosure

Often, Nepalese political parties are reactive in the disclosure of information. Their basic form of disclosure is disclosure upon

request or in response to pressure from the media. Nepalese parties are not strictly following the self-disclosure guidelines embodied in the RTI Act as well as in electoral laws.

CONCLUSION

Political parties are indispensable institutions of Nepalese democracy. However, most political parties have hierarchical, centralised and leader-centric structures. These structural limitations have hindered the free flow of information. Some parties have initiated internal election practices for choosing their leaders and respective party committees while other parties have not even held a convention for more than a decade. Most political parties do not have clear or transparent criteria for selecting candidates. Party financing remains opaque. Even the Election Commission is silent on the extent of their compliance with the mandatory financial disclosures required by law. The National Information Commission has not been able to promote *suo moto* disclosure by political parties. Neither party cadres nor civil society organisations have effectively demanded party-related information.

Even parties involved in a single-point mission of democracy have not been able to enshrine democratic values of openness and transparency within their structure and style of functioning. The RTI Act was adopted within a context of reforming and restructuring the state and non-democratic legal regimes in the wake of the uprising of April 2006. In this context, parties should use the RTI to redefine their institutions, and uproot the culture of secrecy and reactive disclosure.

RECOMMENDATIONS

Role of political parties

- Political parties should disclose their sources of income and expenditure publicly at least on an annual basis. Such disclosures should be based on adequately maintained and professionally audited books of account.
- Candidates for public offices should be elected through the electoral college of party members from their respective constituencies.
- Robust information management systems should be introduced and full time information officers should be appointed.
- All transactions of political parties should be managed through a single bank account.
- Information and communication technologies (e.g., websites, email and Internet) should be used as interactive means of communication and proactive disclosure.
- Parties should take the initiative to train their members on the new RTI law and its importance.
- Political parties should commit to comply with the RTI Act in their internal functioning.

Role of the government

- Public funding and state subsidies to political parties should be made more transparent.
- Private political funding should be made legal and tax-free.
- The Election Commission and the National Information Commission should be supported to ensure that political parties comply with laws relating to political finance and disclosure.
- The government should ensure that political parties maintain a single bank account to manage their income and expenditure. This will make tracking of political party finances much easier. It should also assist in the record management of political parties.

Role of civil society

- Engage in vigorous advocacy and awareness campaigns for intra-party democracy and disclosure of information relating to political finance.
- Actively monitor political parties - not just during elections but on a constant basis.

Role of the election commission

- Strictly implement political finance regulations and election laws on party disclosures.
- Ensure that the legal provisions for conducting internal elections in political parties, selecting leaders, and conducting regular conventions are implemented in letter and spirit. It should further play the role of the observer in these processes.
- Strengthen human resources for the effective monitoring of party activities, especially book keeping and record management, political finance and disclosures at all times.
- Prepare disclosure guidelines for political parties in collaboration with the National Information Commission and make them mandatory.

Role of the national information commission

- Review the information and record management systems of political parties and make recommendations to improve them. Order political parties to proactively disclose information on a regular basis.

Role of the media

- Conduct investigative reporting on political finance, selection of party leaders and candidates, and party decision-making and functioning.
- Provide space to citizens to debate issues relating to political party reform.

Role of the constituent assembly/parliament

- Ensure the recruitment of professional commissioners in the Election Commission in the new Constitution.
- Make the Election Commission an independent and autonomous constitutional body.

LOCAL GOVERNMENTS AND THE RIGHT TO INFORMATION IN NEPAL

Hem Raj Lamichhane

BACKGROUND

Even after the adoption of the RTI Act in 2007, Nepal has witnessed no substantive progress regarding its implementation. Key stakeholders have not built upon the RTI movement as expected. There is confusion among the stakeholders on how the RTI Act can be used to serve the larger goals of promoting state accountability, enhancing citizen's access to information and advancing people's empowerment. Similarly, RTI is not widely understood as a tool to bring about a multiplier effect in people's livelihoods, and the overall development of social, economic and cultural processes. The implementation of the Right to Information comes at a difficult time for Nepal.

In this context, this paper will try to focus on the legal provisions and practices which can promote effective implementation of the RTI Act at the local level. This paper tries to examine the role of local bodies in its implementation and makes some recommendations to ensure the effective implementation of the provisions of the RTI Act, especially by District Development Committees (DDCs), Village Development Committees (VDCs) and municipalities. The paper also examines the legal provisions and practices, possibilities, constraints, challenges and their implications for the implementation of the RTI Act in Nepal.

GOVERNANCE

Governance is a method through which power is exercised in the management of a country's political, economic, and social resources for development.¹ It includes the mechanism, process, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and medi-

¹ The World Bank (1992). *Governance and Development*, The World Bank, Washington DC.

ate their differences.² Key dimensions of governance identified by the World Bank include public sector management, accountability, legal frameworks for development, and transparency and information.³ The UNDP Human Development Report 2002 further elaborates on the concept of 'democratic governance' as a system of governance that promotes human development.⁴

GOOD GOVERNANCE

UN Secretary-General Kofi Annan has said that "Good governance is perhaps the single most important factor in eradicating poverty and promoting development".⁵ Good governance has eight major elements. Governments must be participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follow the rule of law. They must assure that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. They must also be responsive to the present and future needs of society (UNDP, 1997).

² UNDP (2002). Human Development Report 2002, Pp. 65.

³ Adel M. Abdellatif (2003). "Good Governance and Its Relationship to Democracy & Economic Development", Global Forum III on Fighting Corruption and Safeguarding Integrity, Seoul 20-31 May 2003.

⁴ UNDP (2002). Human Development Report 2002, Pp. 65.

⁵ Adel M. Abdellatif (2003). "Good Governance and Its Relationship to Democracy & Economic Development", Global Forum III on Fighting Corruption and Safeguarding Integrity, Seoul 20-31 May 2003.

Table 1: Provisions Regarding Good Governance in Local Bodies Grant Procedures in Nepal

DDC grant procedures, 2010 (Chapter 10, point 41)	Municipality grant procedures 2010 (Chapter 10, point 41)	VDC grant procedures, 2010 (Chapter 10, point 41)
Each DDC has to prepare clear terms of reference for each staff and have them approved by the district council.	Each municipality has to prepare clear terms of reference for each staff and have approved by the municipal council.	Each VDC has to prepare clear terms of reference for each staff and have them approved by the village council.
Each DDC must appoint a nodal officer to hear grievances.	Each municipality must appoint a nodal officer to hear grievances.	None
At least two public hearings must be conducted by each DDC about the service delivery situation in the district.	At least two public hearing must be conducted by each municipality about the service delivery situation in the district.	At least one public hearing must be conducted about the service delivery situation in the VDC.
Each DDC has to manage and conduct citizen monitoring, social audits, public audits, and citizen charters through the Local Governance and Accountability Facility (LGAF) for reducing fiduciary risks and increasing accountability.	Each municipality has to manage and conduct citizen monitoring, social audits, public audits, and citizen charters through the Local Governance and Accountability Facility (LGAF) for reducing fiduciary risks and increasing accountability.	Each VDC has to manage and conduct citizen monitoring, social audits, public audits, and citizen charters through the Local Governance and Accountability Facility (LGAF) for reducing fiduciary risks and increasing accountability.
Each DDC has to manage vital registrations, social security allowances, and daily certification of citizen concerns to ensure effective service delivery.	Each municipality has to manage vital registrations, social security allowances, and daily certification of citizen concerns to ensure effective service delivery.	Each VDC has to manage vital registrations, social security allowances, and daily certification of citizen concerns to ensure effective service delivery.
Details of personal assets of all DDC staff must be maintained in the format prescribed by the National Alert Centre.	Details of personal assets of all municipality staff must be maintained in the format prescribed by the National Alert Centre.	Details of personal assets of all VDC staff must be maintained in the format prescribed by the National Alert Centre.

Source: DDC, VDC and Municipality Grant Procedures, 2010

LOCAL GOVERNANCE SYSTEM IN NEPAL

The current structure of local governance in Nepal was put in place after the restoration of democracy in 1990 and the functions, duties, and powers of Local Governments (LGs) are specified in the Local Self Governance Act, 1999. The Interim Constitution of Nepal has also strongly focused on the existence of elected representatives in local bodies. There are explicit provisions to hold local elections (Article 139 (1)) and create accountable and responsible political mechanisms (Article 139 (2)).

Nepal has a two-tier system of local governance, with Village Development Committees and municipalities as the lower tiers and District Development Committees as the higher body. There are 3,913 VDCs, 58 Municipalities and 75 districts in Nepal. The establishment of associations of local bodies viz. Association of District Development Committees of Nepal (ADDCN), Municipal Association of Nepal (MuAN) and National Association of VDCs in Nepal (NAVIN) has had an important role in institutionalizing decentralization, developing the capacity of local bodies, policy lobbying, mobilizing external resources through local bodies and implementing the LSGA, 1999.⁶

The LSGA, 1999 envisages VDCs to provide basic services to the people related to agriculture, drinking water, works and transportation, education and sports, irrigation, soil erosion, river control, physical development, health services, forests and environment, language and culture, tourism, and cottage industries (LSGA, section 28). Similarly, municipalities are responsible for finances, physical development, water resources, environment and sanitation, education and sports development, culture, works and transport, health service, social welfare, industry and tourism (LSGA, section 96). DDCs are responsible for issues related to agriculture, rural

⁶Adhikari, Damodar (2006). *Towards Local Democracy in Nepal: Power and participation in district development planning*.

drinking water and habitation development, hydropower, works and transport, land reforms and land management, development of women and helpless people, forest and environment, education and sports, wages for labor, irrigation and soil erosion and river control, information and communication, language and culture, cottage industries, health services, and tourism (LSGA, section 189).

Although local bodies are supposed to be autonomous, self governed and permanent representative institutions, there are no elected representatives in any local bodies since July 2002.⁷ Public servants are fully responsible for leading the local bodies in close coordination with party mechanisms at local level.

Development of plans and its implementation at local level

The following provisions of the LSGA, 1999 provide guidelines related to the formulation of plans, selection of projects, and implementation, management, monitoring and evaluation of local level projects.

Formulation of plans

- Each Village Development Committee shall formulate periodic and annual plans for the development of the village development areas (LSGA, 1999, Section 43).
- Each municipality shall formulate periodic and annual plans for the development of the municipal areas (LSGA, 1999, Section 111).
- Each District Development Committee shall formulate periodic and annual plans for the development of its District (LSGA, 1999, Section 195).

Selection of projects

- Information on the selected projects shall have to be made public among the inhabitants of the village (LSGA, 1999, Section 46-(5)).

⁷ Since July 2002, the Government of Nepal has not conducted any local elections. As a result, local bodies remain without any representatives.

- Information on the selected projects shall have to be made public among the inhabitants of the municipality (LSGA, 1999, Section 144-(5)).
- Inhabitants of the district shall have to be informed about the projects selected by the DDC (LSGA, 1999, Section 202-(2)).

Project implementation and management at the local level

- Village level projects shall be carried out through consumer committees (LSGA, 1999 section 49).
- Projects which have direct concern with the people at the municipal level shall be operated through consumer committees (LSGA 1999, 117 (2)).
- Similarly, the VDC or consumer groups shall have the responsibility for the implementation of the plan (LSGA 1999, Section 205 (2)). Projects under the district level plan may be implemented and operated through consumer groups (LSGA 1999, Section 205 (3)).

Mechanism of monitoring and evaluation at the local level

- To ensure the mobilization of resources, and to facilitate the implementation of projects, there is a provision for a supervision and monitoring committee in each DDC. This committee would be chaired by MPs of the concerned district in alphabetical order for each year. (LSGA, 1999, Section 210 (1)).
- There is also a provision for a supervision and monitoring sub-committee under the chairmanship of the Vice-President of each DDC to carry out regular supervision and monitoring of the district level programs/projects and to submit reports to the supervision and monitoring committee (LSGA, 1999, Section 210, and LSGA/Rules, 2000, Regulation 202).

INFORMATION SYSTEM IN LOCAL GOVERNMENTS

One of the most important principles of local self governance is to orient local bodies towards building the democratic process,

and developing transparent practices, public accountability, and people's participation in carrying out the functions devolved on them (LSGA, 1999, Section 3 (d)). Towards this, the LSGA has mandated the establishment of an information and record centre in each DDC to identify the real situation of the district and enhance the planned development process. These centres shall have to collect and maintain proper information (LSGA, 1999, Section 212). Although there is no provision about the establishment of information and record centres by VDCs and municipalities in the LSGA, there is a mandatory provision for municipalities to establish information centres under the Minimum Conditions (MCs) and Performance Measure (PM) indicators.

POSITIVE INITIATIVES FOR THE IMPLEMENTATION OF THE RTI ACT

The government of Nepal has emphasised the importance of effective information systems to make the activities and decisions of public bodies transparent. In order to make the process of public service delivery transparent and understandable, the Government of Nepal has expressed strong commitment to prepare, amend and implement service delivery guidelines. Towards this, the provision of intensive trainings has been made to enhance the capacity of the officials of various public bodies.

Although the Ministry of Local Development has also initiated some positive steps in this direction by drafting the District Information and Documentation Centre Management Procedure, 2007, the process has not been finalized yet. The Association of District Development Committees of Nepal (ADDCN) with the support of Danida HUGOU has prepared a District Information and Documentation Centre - Information Management Manual, 2007. Similarly, the Ministry of Local Development prepared an action plan related to the proper management of reports and the transparency of local bodies in 2010.

The Good Governance (Management and Operation) Act, 2008 has accepted that public administration must be transparent and accountable and maintain financial discipline properly. Further, the Good Governance Regulations, 2009 (Regulation 10) ensures that decisions related to the public made by local bodies must be posted on notice boards and disseminated through websites and other media. Local bodies must also disseminate the details of income (internal and grants received from the central government) and expenditure on separate notice boards for easy access by the general public. Further, for projects over NPR one million, separate notice boards must be provided at the site of the project.⁸

Table 2: Provisions regarding transparency in grant procedures

DDCs grants procedure, 2010 (Chapter 10, point 42)	Municipalities grants procedure, 2010 (Chapter 10, point 42)	VDCs grants procedure, 2010 (Chapter 10, point 42)
Each DDC has to provide relevant project information on notice boards at project sites for projects of over NPR 0.5 million.	Each municipality has to provide relevant project information on notice boards at project sites for projects of over NPR 0.5 million.	Each VDC has to provide relevant project information on notice boards at project sites for project of over NPR 0.2 million.
Each DDC must conduct a public audit of the completed project to receive the last instalment of the project.	Each municipality must conduct a public audit of the completed project to receive the last instalment of the project.	Each VDC must conduct a public audit of the completed project to receive the last instalment of the project.
Each DDC must conduct at least one social audit in the presence of the ward citizen forum and other stakeholders.	Each municipality must conduct at least one social audit in the presence of the ward citizen forum and other stakeholders.	Each VDC must conduct at least one social audit in the presence of the ward citizen forum and other stakeholders.

Source: DDC, VDC and Municipality Grant Procedures, 2010

PROBLEMS AND POSSIBLE SOLUTIONS

The Ministry of Local Development (MoLD) has identified some problems in implementing provisions relating to transparency at the local level. Local bodies have not submitted periodic reports

⁸ Action Plan on reporting systems and transparency prepared by the Ministry of Local Development, 2063 BS.

to MoLD, with the result that MoLD has not been able to submit its report to institutions such as the National Planning Commission. However, the Action Plan prepared by MoLD has identified the following activities to promote transparency at the local level.

1. All DDCs and municipalities which have not created a website must do so with systematic, dynamic, and interactive tools so that it can be updated easily at least on a monthly basis;
2. DDCs and municipalities which have already created websites must update their data on a monthly basis;
3. All DDCs and municipalities must create email address and operate them properly;
4. Documents and information related to the public must be available in websites;
5. All DDCs and municipalities must prepare action plans on strengthening district and municipality information and documentation centres and inform MoLD;
6. All DDCs and municipalities must make available periodic reports and board decisions to MoLD through email;
7. Training must be provided to the personnel working in information centres of DDCs and municipalities on the use of information and reporting systems; and
8. Local Development Officers and Executive Officers who regularly provide necessary information to MoLD through email and the Internet, and update website periodically, must be rewarded and provided with career development opportunities.

RTI ACT, 2007 AND LOCAL SELF GOVERNANCE ACT, 1999

According to the provisions of the RTI Act, 2007, and the Regulations, 2008, District Development Committees, Village Development Committees and Municipalities are also defined as public bodies.⁹ It is the duty of such local bodies to fully comply with the provisions of the Right to Information Act.

⁹ LSGA, 1999 defines DDCs, VDCs and municipalities as local bodies.

Based on the provisions of the LSGA, 1999 and the RTI Act, 2007 and Regulations, 2008, certain minimum conditions and performance measure indicators have been developed. Local bodies are to be provided grants only when these conditions have been met. These Minimum Conditions (MCs) and Performance Measures (PMs) are provided below.

Table 3: Comparison between the provisions of the RTI Act and regulations, and the LSGA/R

Provisions of the RTI Act and Regulations	Provisions of the LSGA - MCs and PM Indicators	Present Status
Public information should be published and disseminated through national and local means of communication (Section 3, Sub-section 3).	It is mandatory for local bodies to make information related to progress made in the previous fiscal year, income and expenditure, MCs and PMs results, audit reports, etc. public through local and national news media, as well as on notice boards.	It is the most important indicator in the MCs and PMs system.
Public bodies must update and publish important information periodically (Section 5).	Local bodies must provide updated information to the public by publishing reports of their annual programmes and budgets.	This has been made mandatory in the MCs and PMs system.
Public bodies must appoint Information Officers (Section 6, Sub-section 1).	DDCs and Municipalities must recruit or depute Information Officers for the collection and dissemination of information (PM-5 for municipalities).	This has been reinforced by the MCs and PMs system.
Public bodies must establish an information section (Section 6, Sub-section 3)	There shall be a District Information and Documentation Centre in each DDC (LSGA, 1999, Section 212), and Municipal Information Centre in each municipality (PM-5).	This is also mandatory in the MCs and PMs system.

Provisions of the RTI Act and Regulations	Provisions of the LSGA - MCs and PM Indicators	Present Status
<p>Public bodies must publish the following information:</p> <ul style="list-style-type: none"> - Programmes and projects carried out in the previous fiscal year; - Information on websites if they have been created; and - Relevant information published by others. 	<p>Local bodies must publish information in their annual progress reports.</p>	<p>This has also been made compulsory in the MCs and PMs system.</p>

Source: RTI Act, 2007; Regulations, 2008 and LSGA, 1999.

PERFORMANCE BASED GRANT SYSTEM (PBGS) AND THE RIGHT TO INFORMATION

The Ministry of Local Development has managed and overseen the Performance Based Grant System (PBGS) based on the Minimum Conditions (MCs) and Performance Measures (PMs) as a formula to assess the performance of local bodies including VDCs, Municipalities and DDCs. The PBGS generally includes an annual assessment of performance of local bodies using a set of indicators. MCs are the basic conditions with which local bodies must comply in order to access their grants. PMs are more qualitative and variable measures of the performance of local bodies, and typically go into more detail within each functional area.

In order to assess the performance of DDCs, there are 15 indicators of MCs and 62 indicators of PMs. Due to the absence of elected representatives in local bodies, two MCs and five PM indicators have been exempted until elected representatives assume office in these local bodies. Similarly, for municipalities, 15 MCs and 40 PM indicators have been fixed. Out of these, two MCs and four PM indicators are currently exempt. There are 11 MCs for VDCs. Im-

portant MCs and PM indicators relating to transparency, accountability and the Right to Information are briefly explained below.

MCs and PMs for DDCs (communication and transparency)¹⁰

1. DDCs have to inform VDCs, municipalities and related stakeholders about the approved annual programme and budget (MC-3);
2. DDCs have to establish a District Information and Documentation Centre (MC-15);
3. DDCs have to inform people about the planning process and approve budgets and programs through national and local newspapers, and FM radio (PM-39);
4. DDCs have to make public the details of annual income and expenditure through local news, FM radio, books, bulletins, etc. (PM 40);
5. DDCs have to display project information boards for projects that have a budget of over NPR 0.5 million at the project site (PM-41);
6. DDCs have to establish a District Information and Documentation Centre¹¹ and depute full-time staff to work as the Information Officer (PM-43);
7. According to Good Governance Act, 2007, and Regulation 2008, DDCs have to conduct and manage public hearings about development works and service delivery (PM-44);
8. DDCs have to carry out social audits of completed programmes of the preceding year by the first quarter of the current fiscal year (PM-46); and
9. DDCs have to establish inquiry/help desks and depute a Nodal Officer/Person to hear grievances (PM-61).

MCs and PMs for municipalities¹²

1. Municipalities have to make public citizen charters, form good governance committees and depute nodal officers (MC-9);

¹⁰ Manual for the Assessment of Minimum Conditions (MCs) and Performance Measures (PMs) of DDCs-2008, Local Bodies Fiscal Commission (LBFC), October 2010 (with some changes in the second amendment)

¹¹ Section 212 of LSGA has envisaged being one information and records centre in each DDC to identify the real situation of the district and enhance the planned development process.

¹² Manual for Assessment of Minimum Conditions and Performance Measure (MCs) of Municipalities, LBFC, 2009 (with some changes in the second amendment).

2. Municipalities have to prepare and make public details of income and expenditure of the preceding fiscal year, and make public the rates of taxes/revenues (MC-11);
3. Municipalities have to establish information units and depute staff to work in the unit to disseminate information in accordance with the provisions of the RTI Act (PM-5);
4. Municipalities have to conduct social audits and public hearings (PM-9);
5. Municipalities have to conduct public audits of the entire programme completed in preceding fiscal year (PM-26); and
6. Municipalities have to prepare and update information related to registrations of birth, death, marriage, divorce and migration (PM-40).

MCs for VDCs¹³

1. VDCs have to make public the income and expenditure of preceding fiscal year (MC-5);
2. VDCs have to carry out a financial audit of preceding fiscal year and make it public (MC-6);
3. VDCs have to update information about persons who receive social security allowances from the state (MC-9); and
4. VDCs have to prepare and update registrations of birth, death, marriage, divorce and migration (MC-10).

Resources and capacity development for information dissemination

According to the procedure laid down for DDCs and municipal grants, 2010, DDCs are eligible to spend capacity development grants to promote e-governance and the institutional development of communication and information systems; activities relating to the maintenance of transparency and accountability such as public hearings, public audits and document preparation; and the promotion of district information and documentation centres. Moreover, the DDC and VDC capacity development procedure,

¹³Manual for Assessment of Minimum Conditions (MCs) of VDCs, LBFC, 2009.

2009 has also given them authority to spend a certain proportion of capacity development grants in the areas of human resource development and reform of information management at the local level.¹⁴

At the same time, each DDC must establish an information and documentation centre and appoint responsible personnel to manage it. The performance of this centre must be assessed properly so that gaps are identified and appropriate actions are taken to make the centre more effective.

Current practices and challenges in meeting the obligations of the RTI

Most of the provisions of the RTI Act and Regulation, and the Good Governance Act (in the context of transparency and accountability), have been incorporated in the grant-making procedures for local bodies. However, due to the lack of elected representatives in local bodies and the political instability in the country, the quality of service delivery and the implementation of these provisions have not been satisfactory. Local bodies have also not been properly oriented to implement and comply with important provisions of various relevant acts and regulations related to transparency and accountability. Public awareness related to making local bodies more accountable to the people is also low. Civil society organizations are also not actively involved in articulating the issues related to RTI at the local level. Line agencies at the district and village levels are not sufficiently supported, directed or monitored in implementing the provisions of transparency and accountability as laid out in the PBGS.

On the supply-side, information and documentation centres of DDCs and municipalities have not been properly equipped, nor has training been provided to staff to collect and disseminate necessary information to people. They have also not been given

¹⁴ DDC and VDC Capacity Development Procedure, 2009, prepared by GoN/MoLD/LGCDP.

a high priority to make them more responsible and accountable towards people.

Conclusion and way forward

The Government of Nepal has given high priority to maintain transparency and accountability for reducing corruption and increasing public participation in the decision-making process. Many supportive legal provisions exist in the LSGA/Rules and local bodies grant procedures that promote the Right to Information at the local level. The Ministry of Local Development has accepted and followed the legal provisions of the Interim Constitution, 2006, the Good Governance Act, 2007, the Right to Information Act, 2007, and their respective regulations to maintain transparency and make local bodies more accountable, and ensure that they provide public services cleanly and effectively. However, it is important to ensure that the implementation of the RTI Act at the local level is improved. Some suggestions towards this are given below:

1. The PBGS-related reports of DDCs and municipalities must be reviewed urgently to assess whether MCs and PMs indicators have been followed, and to examine how effective this system is.
2. Each DDC and municipality should be encouraged and supported to prepare and implement an action plan to strengthen district and municipal information centres, respectively.
3. Each DDC and municipality must be supported in creating websites, and be made familiar with email and the Internet.
4. In order to establish a standardized reporting system, a single management information system must be installed across all DDCs and municipalities, and personnel must be trained and oriented on its use.
5. Major stakeholders at district, municipal and village level must be oriented towards, and trained on the provisions of the Right to Information Act, the Good Governance Act, and their related regulations, guidelines, and procedures.

COMBATTING CORRUPTION THROUGH THE RIGHT TO INFORMATION

Pranav Bhattarai

INTRODUCTION

A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives¹.

— James Madison, letter to W.T. Barry, 4 August 1822

Madison's statement is as fresh and valid today as it was almost 200 years ago. As access to information is an emerging phenomenon across the world today, as Madison observed, knowledge is power and those who possess it have the power to rule. Nepal was the first country in the region to grant formal constitutional recognition of the Right to Information in Article 16 of the 1990 Constitution. The Interim Constitution (2007) also guarantees RTI in Article 27. The Right to Information Act of 2007 is a further commitment towards its realization.

These constitutional and legal provisions have established that access to information is a foundation for civic empowerment. Citizens entrust their governments with power through elections, and with resources through payment of taxes. Those who are entrusted with this power bear a responsibility not only to serve but also to inform and encourage citizens to participate in decisions and actions that affect them. The right to demand information is fundamental to building trust among citizens and the state. When citizens start demanding information and details on how their governments are spending public money and resources, officials will have limited opportunities to indulge in corruption, mismanagement and misallocation of public funds.

¹ James Madison, "Letter to W.T. Barry, August 4, 1822" in Marvin Meyers (ed). *The Mind of the Founder: Sources of the Political Thought of James Madison*, (Indianapolis: Bobbs-Merrill, 1973), p. 444.

THE STATE OF CORRUPTION AND THE ISSUES INVOLVED

Corruption in Nepal is manifested in many forms including slow processing of files in offices, siphoning off development funds, aid ineffectiveness, low quality infrastructure, slow delivery of public goods and services, and political extortion. Transparency International's Corruption Perception Index (CPI) 2010 ranks Nepal in 146th place at par with Somalia, Afghanistan and Myanmar. Nepal was ranked 143 among 180 countries in the CPI in 2009 compared to 121 in 2008. The Worldwide Governance Indicators of the World Bank also depict Nepal as a country bogged down in a serious governance crisis. Corruption has clearly worsened in Nepal.

The roots causes of corruption in Nepal include political impunity, weak enforcement, and the uncertainties generated by the country's fragile political environment. Political parties operate in a "coalition culture" from national to local levels. The prevailing political transition and post-conflict situation has become a good excuse for political parties to hide their inefficiencies and divert their focus from anti-corruption and good governance issues. This political inattention has rendered constitutional bodies and anti-corruption agencies, such as the Commission for Investigation of Abuse of Authority (CIAA) and Office of the Auditor General, dysfunctional. Nepal has two anti-corruption agencies in place to fight public sector corruption. The CIAA is the apex constitutional body with multiple roles of ombudsman, investigator and prosecutor, whereas the National Vigilance Centre (NVC) is a statutory body mandated to focus primarily on preventive and promotional activities against corruption.

The ratification of the United Nations Convention against Corruption (UNCAC) by the Government of Nepal recently has opened doors for investigation into private sector corruption, asset recovery and money laundering. But legislations and conventions alone are not adequate in the fight against corruption. Nepal's state-led anti-corruption campaign is beset with many problems, such as

the CIAA operating without a chief commissioner since October 2006, the acquittal of defendants in high-profile corruption cases by a Special Court, and a sharp drop in corruption complaints lodged with the CIAA². Nepal is losing both state effectiveness (the ability to govern) and state legitimacy (the right to govern) because of a corrupt political system.

The CIAA had filed dozens of corruption cases against politicians, bureaucrats, former police chiefs and others at the Special Court. As per Clause 16 (1) of the Special Court Act 2002, corruption lawsuits have to be decided within six months from the date of filing. Contrary to this, many important cases have been in the court for years. The backlog of corruption cases at the Supreme Court (SC) is a painful reminder of judicial delays in dealing with corruption lawsuits. Out of 12,000 cases pending at the Supreme Court, 339 corruption cases are waiting for a final verdict. More than 100 corruption lawsuits are over four years old.³ However, the Supreme Court has exhibited some pro-activeness by convicting a former minister of corruption after six years. Painful judicial delays and corruption within courts are taking a toll on the anti-corruption campaign and the necessity to stamp out corruption from within the judiciary is also an urgent need.

Corruption has not also spared local bodies. Municipalities, District Development Committees (DDCs) and Village Development Committees (VDCs), which mobilise and allocate billions of rupees annually by carrying out development works and delivering essential public goods and services at the local level, have been without elected representatives since 2002. This protracted vacuum of elected leadership has dismantled accountability structures and created challenges resulting in the misuse of development budgets. The lack of transparency, corruption and political high-handedness are some problems that best characterize the current

² Global Corruption Report, 2009, Transparency International.

³ Karobar Daily, 26 August 2010.

state of governance from the central to the local level. The continued absence of elected leadership has jeopardised democratic functioning at the grassroots level and has increased the possibility of the misuse of public funds, thus institutionalising “consensual corruption”. A long-drawn out constitution-drafting process, growing political instability and uncertain state restructuring modalities are likely to erode governance and accountability structures at all levels for some years to come.

In such a gloomy socio-political situation, what constitutes an effective fight against corruption? How can we make best use of the Right to Information (RTI) law to enhance transparency and accountability? These questions would be worth pondering over. If we look at the experiences of other countries, we find that one way to fight corruption, besides institutional and legal reforms, is to create a public demand for accountability and transparency. The RTI law has this power and strength to create a demand for public accountability and transparency.

USING THE RTI AGAINST CORRUPTION

The government of Nepal enacted the Right to Information Act in 2007 and also promulgated the Good Governance (Management & Operation) Act in 2006 as part of the people’s right to good governance. The strength of the RTI law lies in its legal guarantee of access to information at all levels of government, and protection of whistleblowers from possible reprisals.

Civic empowerment and engagement are two important dimensions in improving good governance. RTI can play a vital role in empowering citizens and engaging them in demanding their governments to perform better and holding them to account for the public resources they spend for the larger benefit of the people and their communities.

The law offers enormous opportunities for enhancing openness, transparency and accountability without which controlling corruption becomes just a dream. Asymmetries in the flow of information between public authorities and the citizenry are barriers in the promotion of transparent governance. The RTI law has stood the test of time in correcting this asymmetry in many countries across the world. RTI can serve to detect and to deter corruption by enhancing transparency and public oversight and by exposing leakages in development aid, procurement processes, development works and service delivery.

The use of RTI enhances the people's trust in government as they feel that they have a say in government decisions and can keep a close watch on government activities regarding how it allocates and spends public monies. Therefore, the Right to Information law can play an important role in enhancing state effectiveness, credibility and legitimacy. All quarters of the society such as the citizenry, the media, the private sector and civil society can fight petty and grand corruption with this simple tool. All it takes is a little bit of courage and motivation to witness the power of real democracy.

Opportunities

The Right to Information law has the power to transform societies radically. From the development sector to service delivery to aid effectiveness, RTI can enhance transparency at all levels because it guarantees free access to information. Nepal spends billions of rupees annually in development works but due to lack of political accountability, monitoring, and the vacuum in local bodies, funds are being grossly misused and misappropriated. If people's access to information regarding mobilisation and allocation of development funds is strengthened, and proactive disclosure mechanisms are put in place, corruption in development works and foreign aid can be minimised. Towards this end, transparency and internal controls should be made a part of the development process by

adding clauses related to them in the Local Self Governance Act, 1999. Donors should also insist that their projects are fully compliant with the RTI law.

Information campaigns will have to reach the community level so that people are motivated to seek information relating to development projects and programs. In order to institutionalise transparency in the management of development funds being spent at the local level, the VDC and DDC Grants Operation Guidelines, 2010 have mandatory provisions to publish program and budget details on notice boards and hoardings, but the compliance ratio has been low. When people start keeping close tabs on government plans, programs, funds and their mobilisation using the RTI law, misuse and corruption can be minimised.

Procurement and development works are closely related. It is estimated that approximately 70 percent of the annual central government expenditure is spent on procurement or contracts. As procurement is a regular activity performed by all levels of government - from municipalities, districts and local bodies, to national governments - people can have access to copies of the entire procurement process through the use of the RTI, and see how public funds are used to procure goods and services. Cartels, collusion and rigging among bidders are common practices in Nepal, compromising the quality of development works and goods. Promoting public access to these bidding and procurement documents would help deter corruption. Public oversight and access to information will also disclose whether public procurement made by government agencies fully complied with provisions of the procurement law or not.

As Article 2 of the RTI Act covers political parties and NGOs as public bodies. Political corruption and corruption in the NGO sector can also be dealt by using the law and demanding that their functioning, funding and accounts are transparent. Corruption within the judiciary and anti-corruption agencies can also be ex-

posed by filing RTI applications as they are within the purview of the RTI law. A simple RTI application to the courts can demand the disclosure of the status of pending corruption cases and seek reasons for delays in judicial hearings. But so far there has been no information demand using the RTI law aimed at exposing corruption within the judiciary or anti-corruption agencies.

Constraints

The National Information Commission (NIC) has received around three dozen appeals since it was formed in 2009. This shows that there is a low volume of requests from the people and the immediate need is to create a demand from the grassroots. Information Officers of the Prime Minister's Office, the Supreme Court, the National Human Rights Commission, the Office of the President, the Civil Service Commission and the National Security Council have not received any applications from people asking for information.⁴

Since the law has the potential to expose corruption and mismanagement, government bodies that principally bear the obligations to disclose information are not very proactive in implementing the law. Only about 400 public bodies out of a total of 5000-6000 have appointed Information Officers as required by section 6 of the Act.⁵ There is also an absence of any nodal agency or high-level committee to oversee and monitor the compliance of public bodies with the provisions of the RTI law. As an immediate need, the government must form a high-level committee under the chairmanship of the Chief Secretary to review, oversee and monitor the compliance of public bodies with the law. In Sweden, the government itself conducted an "Open Sweden Campaign" in 2002 to increase public sector transparency, raise the level of public knowledge and awareness of information disclosure policies, and encourage active citizen involvement and debate. The

⁴ Kantipur Daily, 15 June 2010.

⁵ Mendel, T. (2011), "Implementation of Right to Information in Nepal: Status Report and Recommendations, The World Bank, Kathmandu.

Swedish government then accepted that even with the long standing existence of freedom of information in the country, there were problems with both the application of the law and the public's knowledge of their rights.

Nepal is just three years into the implementation of the RTI law. People still do not know about the law and its potential as a tool to fight corruption and red-tape. It is due to the lack of sensitisation and awareness among people that there has not been an adequate application of this law. One of the bottlenecks in the implementation of the RTI law has been the lack of awareness-building initiatives to teach people about its benefits and its power in controlling corruption. On the supply-side, the secretive and non-cooperating approach of public bodies is a barrier to RTI implementation. Political parties and government officials are misappropriating the money of taxpayers by taking advantage of the political transition. Malfeasance has percolated down to the local level. Political commitment for transparency, accountability and RTI implementation has been weak as the political class fears that its effective practice by the people will deprive them from plundering and misusing public money and other resources.

ROLE AND SCOPE OF MEDIA

The media, being the fourth pillar of a State, shoulders the responsibility to make the State and its functionaries accountable and transparent. As things stand, when most people are not accustomed to exercising their right to freedom of information, the media's role and significance in making the public aware of the possibilities of the RTI as an anti-corruption weapon becomes all the more important.

By using this legislation, the media can investigate and expose issues of wide public interest. Media, as guardians of freedom of speech, can open "closed doors" to transparency and account-

ability by disseminating information about the RTI to secure the people's fundamental right to know. Such kind of vibrant media activism, by publishing and broadcasting nationwide discourses on RTI, will eventually narrow the transparency and accountability deficit in countries like Nepal and ultimately pave the way for reducing corruption.

The use of the RTI law has already helped unearth some misuse of funds. In one case, a commission formed to investigate the killing of a local journalist was itself found to have committed irregularities such as tampering of bills and vouchers, which came to light through a RTI request. This anecdote is just a small example of how media can expose the misuse of public funds using the Right to Information law. There are many such untold stories of corruption and the misuse of taxpayers' money concealed in many government documents and reports. With the help of the RTI law, the media can access them as well. The media has played a significant role in exposing big corruption and scams since democracy was restored in the 1990s, and has become a powerful watchdog over government activities and state affairs. But when it comes to promoting and using the Right to Information law as a tool to dig out corruption cases and malpractices in the public sector, the media seems to have achieved relatively little.

One of the reasons why the media has not been able to perform an effective role in using the RTI law as a tool for investigative journalism is due to a lack of understanding about its real strengths. Except in a few cases, there has been no use of the RTI law as an anti-corruption instrument by the media. The other reason behind the media's indifference toward RTI is because of its excessive obsession with political affairs and issues. Good governance, anti-corruption and other public interest issues, such as the Right to Information, do not seem to have drawn much media attention even though some media persons actively lobbied and advocated for the enactment of the Right to Information Act.

CIVIL SOCIETY, RTI AND ANTI-CORRUPTION

Civil Society Organisations (CSOs) have performed a pivotal role in promoting and implementing the Right to Information law in many countries. One of the roles of such CSOs in other countries, popularly known as Non-Governmental Organisations (NGOs) in Nepal, has been to strengthen the demand-side of the Right to Information regime. Until a huge demand for information is created by the people through campaigns and grassroots initiatives, the supply-side (public bodies) will not bother to disclose information.

A motivated and vibrant civil society is a backbone of the campaign against corruption. As corruption is elusive, anti-corruption campaigns need to be backed by the use of the Right to Information law through civil society initiatives. If we look at the last three years, it appears that civil society is not making much use of the RTI law, which is reflected in the low demand for information from public bodies.

One of the reasons behind the lack of civil society initiatives for promoting RTI may be due to the transparency provisions mentioned in the law of NGOs themselves. The Right to Information law has treated NGOs as public bodies with an obligation to update and disclose information periodically. As NGOs in Nepal receive huge funds from the government and international donors, issues of internal transparency and corruption within NGOs have drawn policy attention and public concern. The slack shown by NGOs in creating a public demand for Right to Information may also be because of their own reluctance to make themselves transparent as required by the RTI law.

The right to information is a new concept and civil society organisations don't seem to be logistically and mentally prepared to develop internal mechanisms for proactive disclosure and transparency in their programs and funds. Many leading NGOs in Nepal

are led by a small coterie and are weak in internal governance and democracy because of which they don't have the high "moral ground" to demand and seek transparency and accountability from other public bodies. This is also a factor behind their lack of interest in initiating anti-corruption campaigns and using the RTI law.

As many civil society organisations lack financial sustainability, a proven track-record and even expertise in RTI issues, their anti-corruption campaigns have not been very effective and successful. Over the last three years, no campaigns were conducted by civil society organisations encouraging people to use RTI as an anti-corruption instrument. Civil society organisations such as the Freedom Forum, Citizens' Campaign for Right to Information (CCRI) and Good Governance Project (GGP) of Pro Public are attempting to promote RTI in Nepal. But civil society campaigns and efforts have been sporadic and lack a coordinated approach. The right to information campaigns should not be viewed as a one-time event; an iterative approach is needed over a period of time through sustained external and internal support.

Civil society organisations could operate RTI Help Desks in corruption-prone or 'wet agencies' such as revenue departments, public utility service centres, land revenue offices and transport offices to encourage people not to pay 'facilitation payment' but use RTI instead. In order to deal with people's grievances and problems right on the spot, civil society could initiate and conduct RTI Clinics in different parts of the country, including at the village level, to give them hands-on training on how RTI can resolve their grievances related to service delivery and claiming their entitlements.

Civil society is just an intermediary of the government. Thus, a big responsibility falls on the government itself which, besides allocating certain budgets annually for building the capacity of public bodies, must also operate a National RTI Helpline and RTI Infor-

mation Cells at the district level to provide technical assistance to people in filing RTI applications. Furthermore, strong internal mechanisms to monitor proactive disclosures and to process citizens' applications quickly must be put in place by public bodies to encourage people to use RTI law to demand transparency, quality in public services, and development outputs without having to pay bribes for entitlements and services.

BEST PRACTICES FROM INDIA

Implementation of the Right to Information Act in Nepal is taking place in a wider regional context. Within the region, three other countries now have Right to Information laws: Pakistan (2002), India (2005) and Bangladesh (2008). Of these, implementation in both Pakistan and Bangladesh remains weak. In India, however, which is the most important external point of reference for Nepal, implementation has been extremely strong at a number of levels.⁶ Thus, it would be interesting to see and draw lessons from Indian experiences on how the RTI is being used by the media, civil society and citizenry to fight corruption in public services, development funds and budget allocations, including a range of programs funded by public money. Thanks to the Right to Information Act 2005, and also the activism of NGOs and the media, a culture of accountability is growing. However, the media, NGOs and RTI activists can only do so much.⁷

The following case studies illustrate how civil society, media and citizens have used RTI provisions in different contexts at the grassroots to uncover corruption, foster greater transparency and exact accountability from public servants. The Indian experience over the last five years is highly informative and beneficial to Nepal when it comes to stepping up the campaign against corruption by putting

⁶ Mendel, T. (2011), "Implementation of Right to Information in Nepal: Status Report and Recommendations, The World Bank, Kathmandu.

the law into practice. These successful grassroots and urban initiatives establish a strong motivation for all of us in performing the crucial jobs of raising people's awareness and keeping surveillance on corrupt practices through effective RTI implementation.

DRIVE AGAINST BRIBE

This was a nationwide campaign organised by *Kabir*, a Delhi based RTI activist group, along with 700 other groups from 1 to 15 July 2006. The campaign encouraged and assisted people to stop giving bribes and use the RTI instead. This campaign was supported by eight media groups as partners, including NDTV, *The Hindustan Times*, *The Hindu*, among many others, in 48 cities of India. The campaign encouraged citizens to demand their legitimate rights from government departments, like getting a ration card, passport, widow's pension, or provident fund, without paying a bribe or facing harassment.⁸

The RTI approach has been successfully used by CSOs such as *Parivartan* and *Satark Nagarik Sangathan* to ensure food supply through the Public Distribution System for poor and disadvantaged communities in India. Poor people often depend on government ration shops for purchasing food at subsidized prices. However, due to rampant corruption, food meant for the poor is often sold at higher rates in the open market by making false entries in record books.

A mass awareness campaign in Andhra Pradesh involving more than 70 civil society organisations coming together as the United Forum for Right to Information in 2007 proved highly successful in disseminating information on RTI and raising awareness among communities on how to use RTI to enforce their entitlements under a host of government programs. The campaign re-

⁷ "Plug The Hole in The Bucket", *The Times of India*, 24 February 2011.

⁸ See <http://cysd.org/campaigns/drive-against-bribe>

sulted in some 8,000 requests for information being filed before various public authorities.

Another campaign spearheaded by *Kabir*, sought to file at least 300 RTI applications in five remote villages in Uttar Pradesh to gauge their impact. These applications had an immediate impact on improving service delivery and public amenities. Absenteeism in schools was reduced, basic drainage infrastructure was set up, pensions were cleared, better roads were made, electricity and street lights were installed, and improvements in the public distribution system were carried out. The finding was that when the RTI Act is widely used, it can bring about significant changes in villages, and, most importantly, prevent the misuse of funds earmarked under various welfare schemes.

The Right to Information law has been used to promote political transparency in India. As mandated by this law, major political parties including regional parties disclosed the details of their assets and liabilities following orders from the Central Information Commission a few months ago. Public disclosure under the RTI showed that the Congress Party has the highest income Rs 4.97 billion as of 31 March 2009. The Bharatiya Janata Party (BJP) and Bahujan Samaj Party (BSP) declared their income for 2009-10 at Rs 2.2 billion and Rs 1.82 billion, respectively.⁹ The positive impact of RTI in terms of better public services and improved transparency far outweighs the cost of administering RTI, as suggested by the Indian case.

RTI AND SOCIAL ACCOUNTABILITY: MAKING THE CONNECTION

Social accountability is a demand driven approach which relies on civic engagement, in which ordinary citizens and/or civil society organisations participate directly or indirectly to improve respon-

⁹ *The Times of India*, 18 August 2010.

siveness. Citizens have the right to demand accountability and public actors have an obligation to be accountable to citizens. This is a fundamental principle of democracy and a keystone of a growing movement around the world that focuses on strengthening capacities within government and civil society to make public institutions more responsive to citizens.¹⁰ Democratic governance underlies the spirit of a contract, i.e. the rulers and the ruled are bound to each other by reciprocal obligations and an effective implementation of Right to Information laws provides a foundation for such connectedness.

The Right to Information law provides both the access and space for civic engagement in which citizens, media and civil society can actively engage in holding those in power accountable and transparent for their actions, decisions and behavior. Social accountability initiatives such as Public Hearings, Public Audits and Citizen Report Card Surveys conducted by the Good Governance Project, Pro Public, over the last decade shows that public officials perceive citizens' demand for accountability and transparency as threatening in the initial stages of their implementation. As with other social accountability tools, the RTI is also encountering initial resistance from government officials.

Access to information is an important component in the fight against corruption, but the mere existence of legal instruments is not enough. Habits and cultures on both sides of the information demand and supply relationship must be changed. While public bodies ought to change attitudes of secrecy to a climate of openness to prevent potentially corrupt situations, citizens also need to capture the spirit of demanding information as their fundamental right.

The right to information regime connects citizens and officials, and enhances public access to essential information about government resources, policies, commitments, laws and regulations, budgets,

¹⁰ "Social Accountability: The Main Pillars of Good Governance", The World Bank, February 2007.

programs, actions and results. Enhancing the quantity and quality of information in the public arena, and building the capacity of citizens to digest and use that information, constitute the core elements of citizens' empowerment and social accountability.¹¹

For better social accountability, continuous coordination and convergence between different program implementing agencies, civil society organisations, local communities and other stakeholders is a prerequisite. Thus, there is a need to build the capacities of all stakeholders such as civil society, media and local communities involved in implementing and institutionalising the RTI as a social accountability tool to reduce corruption and improve governance.

CONCLUSION

Fighting corruption through a right to information regime largely depends on its full-fledged implementation and compliance by public bodies in discharging their respective obligations. Therefore, as a first prerequisite, the government should ensure that right to information remains an integral part of local and national government as it has tremendous importance for effective service delivery, development and efficient governance at the village, district and national levels. Civil society, media, citizenry and the government will have to integrate RTI as an indispensable component of their anti-corruption activities.

Recommendations

- A nationwide campaign with a slogan "Don't Give a Bribe but Use RTI" must be initiated jointly in coordination with the media, civil society organisations, private sector and other stakeholders.

¹¹ "Demanding Good Governance", The World Bank, 2010.

- RTI should be made a part of an anti-corruption campaign by civil society, media and the government itself.
- “RTI Clinics” should be organised in different parts of the country to teach people about how they can use the law instead of giving bribes to public officials.
- “RTI Help Desks” should be set up especially in ‘wet agencies’ such as the revenue department, land revenue offices, public utility services and transport offices, among others, to encourage people not to pay bribes.
- The government needs to take a proactive approach by setting up a National RTI Helpline to facilitate and answer queries of people regarding RTI applications.
- RTI Information Cells need to be established at District Administration Offices in each district to provide information to people on how they can use the RTI law.
- The government should put in place a mechanism to monitor all public bodies as defined by the Act to prepare and publish lists of all schemes, programs, funds and activities through proactive publication.
- Transparency clauses and internal control mechanisms should be included in the entire gamut of national laws, working procedures, grant guidelines and service delivery directives issued by the government.
- RTI should be promoted as a social accountability tool by building the capacities of civil society, media and citizens.
- Development partners (the donor community) need to prioritise RTI and make it a component of development initiatives such as the Program for Social Accountability in Nepal (PRAN) and Local Governance and Community Development Program (LGCDP).

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KATHMANDU DECLARATION

We, the participants of the First National Convention on Right to Information (RTI) held in Kathmandu on March 28-29, which was attended by social activists, civil society members, journalists, media professionals, lawmakers, political activists, development professionals, legal practitioners, senior government officials, educationists as well as Right to Information advisors from all South Asian nations, hereby adopt the following resolutions as the 'Kathmandu Declaration' on creating an enabling environment for the effective practice and mainstreaming of the Right to Information in Nepal:

Recalling Article 19 of the Universal Declaration of Human Rights (UDHR) as well as that of the International Covenant on Civil and Political Rights (ICCPR), which state: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers;"

Considering also the Universal Declaration on Democracy (UDD- Clause 21) which says "Democracy presupposes freedom of opinion and expression; this right implies freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers;

Noting that the Millennium Development Goals (MDG) as well as the Paris Declaration highlight good governance as being central to development and the eradication of poverty, and acknowledging that press freedom and the right to know are essential to promoting democracy and ensuring respect for all human rights and fundamental freedoms;

Affirming solidarity to the Brisbane Declaration (3rd May 2010) that reaffirms the Right to Information as an integral part of the right to freedom of expression, and both of these as fundamental underpinnings of democracy and all other rights and freedoms;

Acknowledging the Right to Information as the right of everyone to access information held by public bodies at all levels - local, national as well as international in principle;

Emphasizing that the Right to Information is critical for informed decision-making, broader social inclusion, fair monitoring of public actions, enhancing transparency and accountability, and checking corruption;

Convinced through deliberations, and also through the sharing of regional experiences of experts, that the Right to Information is instrumental in ensuring public empowerment, and strengthening civic trust, promoting social equity as well as equality, irrespective of caste, creed, gender or other differences;

Acknowledging that improved access to information also contributes to strengthening markets, increasing investment, reducing financial vulnerability and enhancing the effectiveness of development aid;

Recognizing the potential of information and communication technologies (ICTs), when accessible to all, to facilitate full realization of the Right to Information for all people, including women, marginalized, excluded and victimized peoples;

Welcoming the growing international recognition of the Right to Information, as reflected in international statements, conventions and jurisprudence, as well as in the significant recent trends to adopt Right to Information laws at the national level;

Convinced that Right to Information legislation in a country must also be backed with appropriate pragmatic tools to ensure their implementation in practice;

Honouring the efforts of all who have worked to promote and acknowledge RTI as part of fundamental human rights the world

over, and journalists and media personnel who contribute to denouncing and standing up against the acts of harassments, intimidation and threats to information seekers and providers, in any part of the nation and elsewhere in the world;

Acknowledging the Delhi Declaration of April 2010 wherein a South Asian regional gathering on the RTI set a number of agendas as Nepal's immediate priorities including "ensuring RTI as fundamental right in the upcoming Constitution, empowering the National Information Commission, making arrangements for a nodal agency in the Executive, reforming RTI regulations and promoting collaboration among Government, civil society and the media";

Convinced that effective practices and mainstreaming of the Right to Information is one of the most ideal ways towards realizing much of the people's collective dream or aspiration associated with the peace process, democratic political transition, overall societal transformation and fairness, and effective state restructuring to deliver the feel of "New Nepal," promoting openness and transparency in society;

And, encouraged and assured by the unprecedented words of commitment and assurance from the Hon'ble President who graciously inaugurated this august gathering yesterday and Hon'ble Chairperson of the Constituent Assembly (CA), Subas Nemwang;

We hereby recommend the following actions to be undertaken urgently in order to create an Enabling Environment for Effective Practice of Right to Information in Nepal:

To the government

- Immediately form a central nodal agency to ensure the smooth implementation of RTI legislations, with the power to extend branches as required nationwide;

- Develop an effective record management and archiving system to ensure that information is easily accessible, irrespective of time concerned;
- Ensure appointments of Information Officers in all offices, both at local and central levels, and that all government officials and government-funded project employees comply with RTI legislations;
- Develop and upgrade the internal communication mechanism in public agencies by harnessing modern information technologies (ICT), and also develop concise short-term, medium-term and long-term action plans to make ICT accessible to all sections of society so that it improves people's access to information;
- Hold local body elections at the earliest in order to ensure that democratically elected government is functional at local levels opening up avenues for local development, better public services, control over corruption, people's participation in governance and formulating local budgets;
- Provide frequent trainings and refresher courses and exposures to officials on the issues of the Right to Information, orienting them towards the principles and practices of RTI;
- Take bold initiatives towards reforming administration and bureaucracy as a whole by internalizing the Right to Information;
- Limit the type or scope of non-disclosable (RTI exempted) information to a minimal degree;
- Scrap the provision on the classification of information ensuring that classification should not go beyond the spirit of 'exceptions' allowed by the Constitution or law;

- Help ensure autonomy in the functioning of the National Information Commission particularly with regard to budgetary allocation and appointment of employees. The independence of the oversight body, the National Information Commission, should be ensured by due legal arrangements; and
- Put a system in place a mechanism for maintaining a record of the applications made for information, as well as information provided and not-provided on request.

To the national information commission (NIC)

- Come out with a more vigorous and proactive action plan to promote and protect RTI;
- Ensure efficiency and quick delivery of justice in cases of appeals, complaints, grievances and requests;
- Archive records of the decisions arrived at through RTI appeals across the nation and inform public bodies on the general trends of information sought, to help public bodies better manage their information.
- Liaise with government and judicial/sub-judicial bodies and Commissions to ensure better RTI practice as well as the safety and security of information seekers/ RTI activists.
- Monitor the status of and issue directives for periodical disclosure made by public agencies;
- Recognize the use of digital technology in receiving appeals; and
- Accord appropriate preferential treatment to appeals coming from remote areas and those filed by people from, marginalized communities.

To civil society/NGOs

- Build strong, independent and credible alliances and networks to steer the process of RTI mainstreaming;
- Engage in awareness, advocacy, and education on RTI and exert pressure on concerned agencies to get the RTI legislation implemented meaningfully;
- Build the capacity of all stakeholders and use existing networks to spread information;
- Organize “Door-to-Door” information campaigns at the grassroots;
- Set up RTI Help Desks and information centres/digital libraries in “wet agencies” i.e. customs, land revenue, transport, utility service providers as well as other places wherever possible;
- Take initiatives to monitor and undertake a mapping of RTI Actions across Nepal;
- Conduct a Survey on the Status of RTI Use and System Test in order to garner data/evidence to improve the use of the RTI and design future initiatives;
- Incorporate the RTI as a cross-cutting development issue in every intervention by Civil Society Organizations (CSOs);
- Conduct a Pilot RTI exercise in Local Bodies; and
- Promote social audits, public hearings and citizen score cards in all public agencies.

To the parliament/constituent assembly

- Position the RTI strongly in the new Constitution (retain it as fundamental right of people as well as make it subject to the RTI law.);
- Ensure the RTI Act's overriding strength by amending all Acts that contravene with the RTI Act so that the RTI Act supersedes all other Acts;
- Include the phrase "Free Flow of Information" in the preamble of the New Constitution;
- Exceptions to the Right to Information should be managed by the constitution itself. The Right to Information should be guaranteed to all individuals, not only to Citizens; and
- The Right to Information should be guaranteed at all tiers of the federal structure.

To the media

- As a key promoter of the RTI in Nepal, the media sector should keep up campaigns to further the issue of RTI through their outlets;
- Promote RTI-friendly coverage and enable community journalism;
- Inculcate the advantages and importance of RTI amongst readers/audience;
- Encourage in-depth coverage by using the RTI Act; and
- Highlight RTI success stories.

To universities/academic institutions

- Include RTI as a multidisciplinary branch of study in academic curricula;

- Conduct academic research works on RTI; and
- Equip libraries/ learning centres with sufficient reading / audio-visual materials on RTI.

To political parties

- Political parties as change agents should come up with campaigns to make the Right to Information as their prime agenda for the overall democratization process to embolden the issues of social, political transformation, empowerment, inclusion and poverty alleviation;
- Maintain internal book-keeping, auditing and disclose the sources of income and expenditure details publicly;
- Ensure transparency in internal election processes in choosing party leaders, portfolio allocation and selection of committee members;
- Develop an information management system with the provision of information officer; and
- Shift from a 'culture of secrecy' to 'greater openness', and reinforce commitment through tangible actions.

Lastly, the convention also mandates formulating an action monitoring and steering committee represented by diverse sectors to follow up and exert pressure on the concerned stakeholders to ensure that the recommendations made by this convention are translated into practice. It is mandated to place the secretariat office at Freedom Forum to take these efforts forward.

March 29, 2011
Kathmandu

**Address by the Honourable President Dr. Ram Baran Yadav
at the Inaugural Ceremony of the First National Convention
on the Right to Information (RTI) in Kathmandu**

Ladies and Gentlemen,

First of all, I would like to extend my gratitude to the organisers for providing me this opportunity to inaugurate the First National Convention being held on a very significant and current issue - the Right to Information (RTI).

It is a fundamental notion of democracy that there should be easy access of citizens to information in order to promote people's confidence in the State system and to make public bodies accountable to the people. Citizens' Right to Information is essential because only access to information, and rights and its use creates strong public opinion, and a healthy public opinion functions as the basis of democracy, legitimacy of the government and the source of State power.

Adhering to universal declarations on human rights and democratic norms and values, the existing Constitution of our country has enshrined the RTI as a fundamental right and the RTI law has been formulated accordingly. I do believe that the RTI law is central to make government activities effective regarding the services people are entitled to receive, and their concerns over the value and quality of services. Similarly, it is useful to maintain transparency of projects implemented with the taxes that people pay, curb corruption and maintain good governance. However, these goals cannot be achieved till RTI laws are implemented effectively. Society does not change merely by the formulation of laws. People's awareness, interest and pressure are essential for change to occur. An active engagement of all concerned sectors is imperative for building an information culture in line with democracy.

We are in a time of constitution-writing in order to institutionalize a federal democratic republic. If the constitution is not written in time, it will be difficult to ensure people's rights. Constructive support from an aware and proactive citizenry is a must to make this stage meaningful.

Finally, I extend my cordial wishes for the success of the Convention and wish that presentations on the working papers, the subsequent discussion on these papers, and the conclusions would contribute significantly to institutionalise and consolidate democracy and a democratic constitution which guarantees citizens' rights.

May Nepal be good, may Nepalis be well. Thanks!
Monday, 28 March 2011 (2064 Chaitra 14)

Address by the Honourable Deputy Prime Minister and Minister for Information and Communications, Krishna Bahadur Mahara, at the Inaugural Ceremony of the First National Convention on Right to Information (RTI) in Kathmandu

The basis to assess whether any governance system is democratic is whether or not citizens are informed about every activity of the government and public bodies. Not only the people's right to elect their representatives, but also their right to control, invigilate and influence the State is guaranteed in a true democracy. Citizens' access to information held by the State machinery should be set up so that citizens are entitled to enjoy all other rights easily, and practically make them the owners of the State.

There are various models of democracy in the world and it is wrong to adhere to a special model as ultimate and sovereign. Models of democracy require changes and amendments in line with social development and a nation's needs. A state where its works and programs are open and transparent, a state where the government and public bodies are accountable to the people, a state which guarantees to citizens the Right to Information, where citizens are made the real owners of State information, can be a democratic state.

We are discussing the Right to Information today. We will engage in profound discussions with colleagues from other countries. The conclusions from this discussion will provide significant suggestions to the government.

The concept - 'information must be acquired', arose in Sweden in 1766 and was accepted by other countries after the Second World War in the middle of the 20th century. So far, around 100 countries have passed RTI laws. Nepal too has a long history of efforts at the citizens' level to bring RTI into effect. This was, however, impos-

sible during the Panchayati autocracy in Nepal. At the same time, Rup Chandra Bista had informed people launching the '*Thaha*' (Let's Know) movement at that time. Although the 1991 Constitution (2047 BS) (promulgated after the end of the Panchayat system and restoration of the multi-party system with monarchy) spoke of RTI, the state machinery did not make any fundamental changes. It was impossible to formulate a related act and implement it. Journalists prepared and submitted a draft of the Act to the state with the initiative of the Federation of Nepali Journalists, but in vain.

After the success of the People's Movement of April 2006 (2062/063 BS) based on the 12-point Comprehensive Peace Accord (CPA) reached between the UCPN-Maoist and the seven parliamentary political parties, the 1991 (2047 BS) Constitution was abolished, the Interim Constitution 2007 (2063 BS) promulgated, and an interim government formed. The citizens' right to seek information on issues related to themselves or of public importance was guaranteed under Article 27 of the Interim Constitution 2007. When I was the Minister for Information and Communications, the concept of people's access to information held by the government and of public importance was put forward as per the spirit of the Interim Constitution. The process to formulate the RTI Act was initiated at that time. We were successful in passing the Act through the Interim Legislature on 21 July 2007 (2064 Saun 5). Similarly, the National Information Commission (NIC) was formed by the government on 4 June 2008 (2065 Jesth 22) in order to promote RTI and monitor the RTI Act. On 9 February 2009 (2065 Magh 27) the RTI regulation was passed by the Council of Ministers.

Currently, the RTI Act is in the implementation phase. However, it has not been implemented as expected. There is little pressure and no effective measures have been taken for the implementation of the Act. This Act must be abided by not only government

bodies, but also by non-governmental bodies, political parties and public bodies. The RTI Act in our country has made the provision that the information held by the government and public bodies should be disclosed mandatorily without the need to visit any offices to seek information. Information must be updated every three months. In this connection, various decisions taken by the Information Commission are laudable. Some important decisions are - students have the right to see their answer sheets, employees can see their internal evaluation forms, and any concerned person can get information about decisions of the Judicial Council. However, the objectives of the Act have not been met by either the demand-, or the supply-side. People have not developed the thinking that information can be demanded from public bodies if voluntary disclosure of information by the government and public bodies has not been carried out effectively. In such a situation, we must take initiatives to change the thinking around both demand- and supply-sides. The goals of the RTI Act can never be achieved until we reach a stage where there is no need to demand information, and no limitations in the provision of information.

In the past, people regarded those in power as rulers and themselves as the ruled. That is to say, people were the ruled (dominated) class. The state never regarded people as its owners. The people's views towards government, leaders and bureaucracy are still the same. The so called culture of secrecy and non-transparency is still prevalent. Similarly, the feudal structure of state authority is still the same. People want to see changes in this practice. This is possible through the concerted efforts of the government and the people.

Finally, it is the government's priority to fully implement the RTI Act in the country. It is necessary to abrogate any law inconsistent with the RTI Act, and amend the Act if necessary to make the process to disclose information easy. Let us all - government, political

parties and organisations - make a common resolution to implement the Act. There is no alternative to working hand in hand and putting our resolution into practice. I want to say goodbye with the belief that the government is ready to move ahead and cooperate in this endeavour.

Thank You.

Monday, 28 March 2011 (2064 Chaitra 14)

Summary of the keynote address delivered by Mr. Wajahat Habibullah at the First National Convention on the Right to Information held in Kathmandu, Nepal¹

“Five Years of RTI in India: Lessons for the Region”

Mr. Habibullah began his address by mentioning that having served as the first Chief Information Commissioner of India, he had witnessed the nurturing of the RTI law and seen it grow to how it stood today. Although the RTI law had not yet achieved what it had set out to, nevertheless, he noted that the efforts towards implementing the law had been considerable. He stated that the presence of representatives from various countries of South Asia and beyond at the Convention attested to the fact that the RTI movement had not been confined to India only. He conceived of the World Bank’s new disclosure policy to make it in line with the provisions of the RTI legislation in India and other countries of South Asia, a point raised earlier by Ms. Susan Goldmark in her speech, as a contribution made by South Asian countries to enlarging the ambit of the information disclosure policy.

Reflecting on the process that led to the enactment of the RTI Act in India, he apprised the audience that Dr. Manmohan Singh, the incumbent Prime Minister of India had alluded to Mahatma Gandhi’s concept of Swaraj (self government) which held that “real Swaraj will not come by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused”, in his speech while presenting the RTI Bill in Parliament on May 11, 2005. At this juncture, Dr. Manmohan Singh had also held that the passage of the RTI Bill in India “will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth

¹ Mr. Habibullah is the Chairperson of the National Commission for Minorities, Government of India, as was India’s first Chief Information Commissioner at the Central Information Commission.

flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man's concern to the heart of all processes of governance, an era which will truly fulfil the hopes of the founding fathers of our Republic."

Delineating the main components of the Indian RTI Act, he stated that inclusive growth, an informed citizenry and transparent and accountable governance formed the cardinal constituents of democracy according to the Indian RTI Act. He noted that India had been through an information revolution where government control over information dissemination had been eased since the 1980s onwards. Presently, the strategy on information disclosure rested on fundamentally restructuring the debate to focus on what information could not be revealed and not what should be revealed (as had been the case earlier). Consequently, the key elements of the RTI law in India included transparency and accountability in the working of every public authority, the right of every citizen to ask for information, and the corresponding duty of government to reveal information except that which is exempt from disclosure under Section 8 the RTI Act.² Throwing light on the latter, he mentioned that while the Parliament, the Judiciary, the Indian Army and so forth had been brought under the RTI scanner, the paramilitary forces, in addition to intelligence agencies, were exempted, though there had been a demand to bring these paramilitary forces too under the RTI Act's purview.

Dwelling on what kind of information should be subjected to disclosure, he mentioned that a discussion on this issue with the regional group of advisors present at the Convention brought out that if the primary objective of the RTI law had been to serve the poor, then the requirements to give information would be simple. To explain this point, he illustrated a story of a slum dweller in Delhi whose RTI application on the status of her kerosene license went

² See <http://righttoinformation.gov.in/webactrti.htm> for details on information exempted from disclosure under Section 8 of the RTI Act in India.

unanswered. However, a notice issued by the Central Information Commission to the Food and Supplies Department of the Delhi Government ensured that she got her license. He said that albeit her grievance had been redressed, yet she returned to him with another plea. This uneducated, illiterate, slum-dwelling widow wished to ensure that having treated her in the way that it had, no other citizen of her status would be subjected to such treatment by the government Department. As it turned out, she was asked to pay a fee by the Public Information Officer (PIO), although she belonged to the Below Poverty Line (BPL) category, and had the necessary papers.

Mr. Habibullah maintained that the RTI Act should be directed to helping such people. He then informed the participants about a study undertaken by the National Campaign for People's Right to Information in 2008 in India which showed that 40 percent of those who sought information under the RTI Act were uneducated. To provide an insight into the nature of requests for information that were received by the Central Information Commission, he took Delhi's example where the queries raised pertained to the situation of roads that were annually built in the slums which could not withstand the onslaught of the monsoon, people who illegally built houses on the plots reserved for Scheduled Castes and Scheduled Tribes, the status of ration cards for the Below Poverty Line category and so forth. He pointed out that information on these issues had now been uploaded on websites.

Then, focusing on the way 'information' had been defined in the RTI Act in India (which excluded the private sector from information disclosure), he held that in a democracy, it was crucial for people to have access to information, and that if '*Loktantra*' (the term for democracy in Hindi) meant government of the people, all information that was accessible to the government should be available to the people.

On the question of what constituted 'public authority' under the RTI Act, he mentioned that though the Supreme Court and the

High Courts in India upheld the definition as stated in the Act, they however interpreted it as a mere illustration. The courts had gone further than the Central Information Commission in expanding the import of 'public authority'; for instance, the Punjab and Haryana High Court decreed (which was later confirmed by the Delhi High Court) that even nongovernmental organisations which did not receive financial assistance from the government or any government financed organisation could be called 'public authority' if they fulfilled a 'public' function.

Mr. Habibullah then moved the focus of his address to another important aspect of the RTI Act, that is, Section 4 which stated that 'every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the Right to Information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated'. He held that the record keeping mechanism in India was rooted in the pre-British era of the Mughals; this meant that a record room was maintained to keep records. Under the Indian RTI law, information that was more than 20 years old too had to be disclosed; therefore, locating such information from the record room was not an easy proposition.

He mentioned that the Central Information Commission in India had started a scheme to the tune of INR 23,000 crores to bring about e-governance within the Government of India. The Government of India had in turn, in collaboration with the National Informatics Centre, designed a work flow system which enabled one to apply for information, request for appeals and get responses online. He held that this scheme was limited by the fact that information contained in the records had not yet been computerised. Although the progress in computerisation of records had been sluggish amongst the countries of South Asia, yet they possessed the means and capacity to move ahead in this direction, he noted. For instance, he

held that the Ministry of Panchayati Raj in India had been making efforts towards ensuring that every panchayat (village council) had access to information online.

He highlighted that the fillip provided by the RTI Act had also helped in standardisation of procedures and made it easier for the government departments to access information. To elucidate this point, he took the example of an RTI application filed by Mr. Jaswant Singh, who formerly served as Defence, Foreign Affairs and Finance Minister, to get access to documents related to the abolition of privy purses to princely states in the 70s. While the Ministry of Home Affairs and the National Archives could not find this information, it turned out that in drafting an answer by the then Joint Secretary to a Parliamentary question which had been raised fifteen years ago, the document relating to privy purses had been called for. This document was finally found in the then Joint Secretary's cupboard, and it was surmised that he had been transferred before he could send across the document to the National Archives.

Mr. Habibullah pointed out that the Central Information Commission had been able to convince the Government of India that the Right to Information was an imperative if the Government hoped to continue with its e-governance initiatives. He was hopeful that the village panchayats would act as a focal point to enable dissemination of information. He then elaborated on a system wherein information on schemes, citizen surveys, fiscal situation and so forth could be provided to the village panchayats by the Government. From here, information on the aforementioned issues would be spread to citizens as individuals. These individuals would, in turn, provide feedback to the village panchayats. He held that this mechanism could also be a means to ensure devolution of authority to the panchayats, in that, they could provide over the counter services, licenses, ration cards and so forth to the villagers.

Then he delineated the provisions on *suo moto* disclosure of information under Section 4(1)(b) of the Right to Information Act in In-

dia and highlighted that proactive disclosure of information would make the need to file an RTI application redundant.³ He alluded to Lord Meghnad Desai's contention at a previous Annual Convention on the RTI where he had held that Information Commissions should only be required to look into esoteric kind of information sought by an individual and that common information must be disclosed by public authorities to all. However, Mr. Habibullah held that the implementation of the RTI Act was not the responsibility of the government only, but also of all citizens, nongovernmental organisations and the media. To elaborate this point further, he stated that after being rebuffed by the Central Information Commission on its claims that file notings were outside the ambit of the RTI Act, the Government of India in 2006 made attempts to exclude file notings from information which can be sought for disclosure through an amendment of the Act.⁴ However, public outcry against this move aborted any such attempt by the Government. This example showed that the ownership of the RTI Act had passed from the hands of the Government to the people; therefore, all stakeholders were responsible for the implementation of this Act.

He then apprised the audience that although the Right to Information had not been specifically included in the Constitution of India, yet the Supreme Court had repeatedly held that the RTI was a fundamental right implicit in the Freedom of Speech and Expression found at Article 19 (1)(a) of the Constitution. He quoted a landmark Supreme Court judgment, *State of U.P. v Raj Narain* (1975), where Justice Mathew stated on behalf of the Bench that "In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their

³ See <http://righttoinformation.gov.in/webactrti.htm> for details on suo moto disclosure of information under Section 4 of the RTI Act in India.

⁴ File notings refer to the note sheets (attached to the main file) where most of the discussions, recommendations and decisions on the subject/matter being discussed are recorded.

public functionaries... to cover with veil of secrecy the common routine business, is not in the interest of public". He pointed out that although the Supreme Court and the High Courts in India had played a proactive role in expanding the remit of the RTI, yet there had been much resistance shown by Supreme Court judges to declaring their property statements.

Based on a Supreme Court Resolution passed in 1997 which held that every judge was required to make a declaration of assets, he held that an RTI applicant sought a copy of the Resolution and wanted to know if the judges had complied with this Resolution and whether the High Court judges had declared their assets to their respective Chief Justices. He pointed out that although the Supreme Court had parted with the Resolution, it stonewalled other queries. It was argued by the Supreme Court officials during the hearing that the declaration of assets submitted by the judges of the Supreme Court was confidential and that the information had been provided to the Chief Justice of India in a fiduciary relationship and, as such, its disclosure was exempted under the RTI Act. Mr. Habibullah stated that however, the Central Information Commission opined that the appellant was not seeking a copy of the declarations or the contents therein or even the names of the judges filing the declaration; he was merely seeking information as to whether any such declaration of assets had ever been filed by the judges of the Supreme Court or High Courts and therefore what he was seeking could not be held to attract exemption under the RTI Act.

The Supreme Court challenged this decision in a writ petition before the Delhi High Court and a Single Judge Bench of the High Court ruled against the Supreme Court order. The Supreme Court then filed an appeal before the Full Bench of the Delhi High Court, which upheld the earlier decision of the Single Judge Bench and ruled that the Office of the Chief Justice of India came within the ambit of the RTI Act. At length, he stated that this verdict of the High Court would be taken up by a Full Bench of the Supreme Court – a rare case of an appeal by the Supreme Court before it-

self. In this manner, he reiterated that the judiciary had helped in broadening the spectrum of the RTI Act.

He held that the RTI Act sought to protect the privacy of an individual, and in doing so, it also provided avenues for information disclosure. For instance, he held that while information on income tax returns could be seen as private information, the courts had ruled that information on property statements can be provided, if sought in public interest. In this regard, he made a reference to Section 8 (1)(j) of the RTI Act which exempts "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information...". He also pointed to the severability clause under Section 10 of the RTI Act, which dealt with cases where the request for information had partly been covered by the exclusion clauses; in such cases that part of the request which could be complied with was to be entertained. Therefore, he contended that the span of RTI Act was wide.

Mr. Habibullah then steered his presentation towards looking at how the RTI could be vital to the South Asian countries afflicted by conflict. He held that conflict in the North Eastern states and Jammu and Kashmir could be mitigated by making people feel that they were in charge of their own lives; this, he felt, could be induced by providing people access to information. He mentioned that Jammu and Kashmir had adopted the RTI Act in 2004, but the legislation's impact was sobering in that there were no penalties prescribed for non disclosure of information and even public authorities were clueless about the prevalence of this Act. The demand for a new RTI Act was among the election manifesto goals of Omar Abdullah, the incumbent Chief Minister of Jammu and Kashmir, and a new legislation, which was more effective than the

RTI Act at the Centre, was passed in 2009, shortly after he came to power. He maintained that even in the North Eastern states, access to information had played a key role in empowering people, engendering accountability in governance and developing respect for human rights. With respect to the latter, he made a reference to Section 24 of the RTI Act, which stated that “nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule... provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section”. Therefore, he noted that the RTI Act did not violate the principles enshrined in any international charter on human rights. He highlighted that in the post conflict situation, commendable work had been done by the Truth and Reconciliation Commission (TRC) in South Africa and the mandate of the TRC, which was to gain access to information or the truth, was similar to that of the RTI Act.

He mentioned that in India active intimidation (and murders) of well known RTI activists had propelled the government to push a whistleblower legislation, which was presently in the process of being finalised. He held that the RTI movement had prompted the Government of India to concede that before any law moved to its final stages (that process not being subject to disclosure), the draft version of the Bill would be placed before the public. This was an effective way to ensure political inclusion that would contribute to strengthening democracy in the country. Presently the Whistle-blowers Bill had been uploaded on the website of the Department of Personnel and Training in order to gauge people’s perceptions on the Bill, he noted.

Mr. Habibullah then held that in India, political fora had generally been positive about the RTI Act; those states where political authority had stood behind the law had fared well and this had also enabled the ruling parties in those states to come back to power. For instance, he mentioned that in Delhi, where the RTI Act was

introduced in 2002, the incumbent Chief Minister, Ms Sheila Dixit, had been consistently winning elections and the people's mandate because of increased people's participation through the Bhagidari scheme. But, after the Mumbai terror attacks in November 2008, people had expected Delhi's Congress-led government (which also ruled at the Centre) to be voted out in the elections that were held a day after this deadly terror strike, partly due to the anti-incumbency factor and partly due to disenchantment with the Congress party's allegedly 'soft' approach to terror. However, voters came out in large numbers (the highest ever in the last 15 years) and elected her for the third time. Similarly, the Chief Minister of Andhra Pradesh had pursued the RTI law (introduced in 2005) with fervour. During the elections that were held in 2009, the Chief Minister was elected back to power partly because of the effective implementation of the RTI Act. He held that the RTI Act had also garnered effective support from the leadership in Bihar.

He next examined the impediments that have limited the RTI movement in the country. He noted that although the government had been assigned the responsibility to raise public awareness on RTI, yet precious little had been achieved, and that largely through the efforts of NGOs. Drawing attention to the origins of the RTI movement in the early 1990s in the villages of Rajasthan, he held that the ownership of the RTI movement ultimately rested with the people.

He then brought the attention of the audience to the next question that arose once information that was sought had been received – the need for an ombudsman to enforce justice in society. In conclusion he held that although the countries in South Asia were at different levels of progress on the establishment of an RTI regime, yet if the South Asian region could adopt a system of working together, it could take the region forward to the benefit of all.

First National Convention on the Right to Information

Hotel Soaltee Crowne Plaza, Kathmandu

28-29 March 2011

DAY ONE: Monday, March 28, 2011		
7.00 am	Participants, Guests and Invitees take their seats.	
7.30 am	Arrival of the Chief Guest Rt. Hon'ble President of Nepal Dr. Ram Baran Yadav	
7:30-8:00 am	<ul style="list-style-type: none"> • Inaugural Session • Badge and Program Schedule to the President (7.32 am) • Welcome Address by Taranath Dahal, Chair, Freedom Forum (7.34 am) • Lighting of the Ceremonial Lamp by the Hon'ble President (7.44 am) • Address by the Hon'ble Deputy Prime Minister and Minister of Information and Communications, K.B. Mahara (7.46 am) • Address by the Hon'ble President of Nepal (7.53 am) • Departure of the Hon'ble President (7.58 am) 	Plenary
8:00-8:25 am	TEA BREAK	
8:25-9:25 am	<ul style="list-style-type: none"> • Keynote Address: "Five Years of RTI in India: Lessons for the Region" by Wajahat Habibullah, Former Chief Information Commissioner, India • Q&As • Chair: Susan Goldmark, Country Director, World Bank, Nepal 	Plenary
9.25-10.10 am	BREAKFAST	
10.10 am 12.10 pm	The Working of RTI Commissions in South Asia <ul style="list-style-type: none"> • Muhammad Zamir, Chief Information Commissioner, Bangladesh • Vinaya Kasajoo, Chief Information Commissioner, Nepal • Shailesh Gandhi, Information Commissioner, Central Information Commission, India • Rahela Siddiqui, Senior Adviser, Independent Administrative Reform and Civil Service Commission (IARCC), Afghanistan • Chair: Dr. Vikram K. Chand, the World Bank 	Plenary

12.10 -1.10 pm	LUNCH	
1.10-3.10 pm	The Role of Government in Implementing RTI <ul style="list-style-type: none"> • Ahsan Iqbal, Former Minister of Education, Pakistan • Sushil Ghimire, Secretary, Ministry of Information and Communications, Nepal • Sher Bahadur Dhungana, Under Secretary, National Vigilance Centre, Nepal • A.K. Choudhary, ex-Chief Secretary of Bihar, now Chief Information Commissioner, Bihar, on “Jaankari” • Chair: Mr. Madhav P. Ghimire, Chief Secretary, Government of Nepal 	Plenary
3.10-3.30 pm	TEA BREAK	
3.30-.530 pm	RTI in Nepal: Constitutional and Legal Issues <ul style="list-style-type: none"> • Bipin Adhikari, Constitutional Lawyer, Nepal • Tanka Aryal, General Secretary, Citizens’ Campaign for Right to Information (CCRI) • Rohan Edrisinha, Constitutional Expert, Sri Lanka • Radheshyam Adhikari, Constituent Assembly (CA) Member, Nepal • Chair: Hon’ble Nilambar Acharya, Chair, Constitutional Committee, Constituent Assembly 	Plenary
DAY TWO: Tuesday, March 29, 2011		
9.00 – 11.30 am	Building Coalitions for RTI – Civil Society, Local Governments and Political Parties <ul style="list-style-type: none"> • Paikiasothy Saravanamuttu, Director, Centre for Policy Alternatives, Sri Lanka • Shamsul Bari, Research Initiatives for Bangladesh • Basudev Neupane, Development Consultant • Hemraj Lamichhane, Executive General Secretary of the Association of District Development Committees of Nepal • Sanjeeb Ghimire, Freedom Forum, Nepal • Dr. Surya Dhungel, Constitutional Adviser to the President • Chair: Mohammad Latheef, Human Rights Ambassador, the Maldives 	Plenary

11.30-11.45 am	TEA BREAK	
11.45 am-1.30 pm	RTI, Anti-Corruption, and the Media <ul style="list-style-type: none"> • Shekhar Singh, National Campaign for the People's Right to Information, India • Pranav Bhattarai, Pro Public Nepal • Yek Raj Pathak, National News Agency of Nepal • Tenzing Lamsang, News Editor, Business Bhutan • Ram Krishna Regmi, Senior Journalist • Chair: Dharmendra Jha, Chairperson, Federation of Nepali Journalists (FNJ) 	Plenary
1.30-2.30 pm	LUNCH	
2.30-4.00 pm	Breakout Groups	
4.00-5.00 pm	Presentation of Findings	Plenary
5.00-5.30 pm	TEA BREAK	
5.30-6.30 pm	Adoption of Convention Declaration	Plenary
6.30-6.45 pm	TEA BREAK	
6.45 -7.30 pm	Closing Ceremony <ul style="list-style-type: none"> • Summing up: Taranath Dahal, Freedom Forum • Chief Guest: Subas Chandra Nembang, Hon'ble Chairperson, Constituent Assembly (CA) • Vote of Thanks: Rajib Upadhya, The World Bank 	Plenary

Summary of Proceedings of the First National Convention on the Right to Information in Nepal, Kathmandu, 28-29 March 2011.

This report looks at the key issues raised by the participants at the First National Convention on the Right to Information (RTI) held in Kathmandu, Nepal on 28-29 March 2011. It presents a sketch of the proceedings of the Convention with an emphasis on session-by-session discussion of the concerns that were brought to the fore. This summary weaves together the overall conclusions emanating from the sessions, and the Convention, as a whole.

Significance of the convention

The First National Convention on the Right to Information in Nepal, organised by Freedom Forum, Nepal with the support of the World Bank, assumes significance for at least three reasons. One, the RTI has been accorded centre stage in the discourse on transparency and accountability in governance in Nepal for the first time. The Convention attracted a considerable degree of interest among parliamentarians, bureaucrats, RTI officials, media practitioners, academics and civil society members in Nepal, and across South Asia.

Also, to propel the process of regional involvement around the issue of Right to Information in South Asia, a regional advisory group was constituted for the first time alongside the Convention. The creation of this informal group of RTI advisors from the South Asian region, facilitated by the World Bank, enabled sharing of information and experiences about ways to engender effective RTI regimes in Bangladesh, India, Pakistan, the Maldives, Bhutan, Sri Lanka, Nepal and Afghanistan. Another mandate of the regional advisory group was to assist country-level RTI development processes by holding its meetings in parallel with a major in-country event. Significantly, their meetings in Kathmandu culminated in adopting a resolution that delineated the advisory group's constitution, objectives and vision for the future.

Finally, that the Convention was held at time when the Constituent Assembly in Nepal was wrestling with various issues in drafting Nepal's new Constitution augured well for the RTI. For instance, the Chairman of the Constituent Assembly, Mr. Subas Chandra Nembang, in his address at the Convention's closing ceremony, specifically agreed to consider the Convention's recommendations on how to treat RTI in the new Constitution as well as introduce an override provision in the RTI Act.

Objectives of the convention

The purpose of the Convention was to draw high level attention to issues affecting implementation of RTI in Nepal and to suggest practical measures to strengthen the RTI regime as an instrument to improve governance and accountability. The plenary sessions of the Convention focused on the following themes:

- The Working of RTI Commissions in South Asia
- The Role of Government in Implementing RTI
- RTI in Nepal: Constitutional and Legal Issues
- Building Coalitions for RTI: Civil Society, Local Governments and Political Parties
- RTI, Anti-Corruption and the Media

On the conclusion of the plenary sessions, the participants of the Convention met in groups to hold discussions on the aforementioned five thematic areas with specific reference to Nepal.

Broad conclusions emanating from the sessions at the convention *Inaugural and Introductory Sessions*

The Convention was inaugurated by Dr. Ram Baran Yadav, the President of Nepal and Mr. Krishna Bahadur Mahara, the Deputy Prime Minister and Minister of Information and Communications, Nepal, to a packed audience comprising of Constituent Assembly members, top civil servants including the Chief Secretary, civil so-

ciety organisations, and donors. The President reiterated Nepal's commitment to the effective implementation of right to information at the highest levels of the political system. His speech was preceded by an address by the Deputy Prime Minister, a member of the Maoist party and an architect of the RTI bill.

After the inaugural ceremony, the convention settled down to the first substantive session with Mr. Wajahat Habibullah, Chairman, National Commission for Minorities, and former Chief Information Commissioner, India speaking on the lessons from his five years at the helm of India's Central Information Commission for countries setting out on the road to RTI. He was introduced by Ms Susan Goldmark, Country Director, The World Bank, Nepal. Mr. Habibullah noted the important role that the Indian courts had played in expanding the remit of the RTI Act in its first few years; he noted the emergence of problems, such as the active intimidation (and murders) of well known RTI activists, for example.

This was followed by the plenary sessions that spanned two days.

The Working of RTI Commissions in South Asia

The panelists for this session included Mr. Vinaya Kasajoo, Chief Information Commissioner, National Information Commission, Nepal; Mr. Muhammad Zamir, Chief Information Commissioner, Bangladesh; Mr. Shailesh Gandhi, Information Commissioner, Central Information Commission, India; Ms Rahela Sidiqi, Senior Advisor, Independent Administrative Reform and Civil Service Commission, Afghanistan, and Dr. Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, as the Chair.

The predominant conclusions drawn from this session included:

- Beefing up physical and human resources of Information Commissions.
- Information Commissions to take the lead in steering ahead the RTI initiative (due to governmental apathy), especially in

interpreting and expanding the ambit of the RTI law, insisting on *suo moto* disclosure of information and enabling speedy disposal of cases.

- Intent of the RTI to be not restricted to merely stamping out corruption but also to encompass the fostering of good governance and people's empowerment. In Bangladesh, for example, the RTI was utilised for public service delivery issues such as minimum wages for shrimp industry workers, subsidised medicines and so forth.
- Setting up of an interactive South Asia web portal on the RTI to enable engagement on access to information across South Asia.
- Establishment of a South Asia Information Commission and development of a community of practice that would enable South Asians to express their views on the RTI through the print media across South Asia.
- Utilising information and communication technology (ICT) to spread awareness on the RTI.
- Seeking active intervention of the judiciary to expand the ambit of the RTI.
- Developing norms for the working of Information Commissions, including the time taken to schedule hearings and dispose of cases.
- In Nepal, the absence of a nodal agency to implement the RTI Act, improper records management, lack of clarity regarding the National Information Commission's role and ambiguity in deciphering the legal status of the provisions in the RTI Act, which contravene other prevalent laws, stymied the implementation of the RTI Act.

The Role of Government in Implementing RTI

The panel comprised of Mr. Ahsan Iqbal, former Federal Minister for Education, Pakistan; Mr. Sushil Ghimire, Secretary, Ministry of Information and Communications, Nepal; Mr. Sher Bahadur Dhungana, Under Secretary, National Vigilance Centre, Nepal;

Mr. A.K. Choudhary, Chief Information Commissioner, Bihar and former Chief Secretary, Bihar; and Mr. Madhav P. Ghimire, Chief Secretary, Government of Nepal, as the Chair.

The key points that emerged from this discussion are the following:

- A weak Freedom of Information Ordinance 2002 that was applicable to the federal government only, coupled with a largely indifferent citizenry to this Ordinance, stalled the drive towards the RTI in Pakistan. However, civil society mobilisation triggered by the lawyers' strike that began in March 2007 had improved the prospects for the RTI in the country.
- In Nepal, no information officers in a large proportion of District Administration Offices and District Development Committees (this by Sher Bahadur Dhungana), absence of standards and norms that ensured consistency in dissemination of information and poor information management system halted the implementation of the RTI Act.
- A comprehensive strategic communications framework should be devised by the government, media and civil society to lend a spur to the RTI initiative.
- Nepal to create a nodal agency for the RTI in the Office of the Prime Minister and Cabinet Secretariat (OPMCS) to push RTI across government.
- Interdepartmental coordination within the government should be encouraged to implement the RTI Act effectively.
- Vital role accorded to information and communication technology (ICT) as a tool to enable access to information to the common person (the *Jaankari* service, a call-in request system for RTI in Bihar, for example), to help in the digitisation of records and to spread awareness on the RTI.
- Training on the RTI to be provided to government officials.
- The reach of the RTI to extend to the grassroots.

RTI in Nepal: constitutional and legal issues

In this session, the members on the panel included Mr. Bipin Adhikari, Constitutional lawyer, Nepal; Mr. Tanka Aryal, General Secretary, Citizens' Campaign for Right to Information (CCRI), Nepal; Mr. Rohan Edrisinha, Constitutional expert, Sri Lanka; Mr. Radheshyam Adhikari, Constituent Assembly (CA) Member, Nepal and Hon'ble Nilambar Acharya, Chair, Constitutional Committee, Constituent Assembly, Nepal, as the Chair.

The main issues that arose comprised of the following:

- Absence of a clear override clause in Nepal's RTI Act and the Interim Constitution, while guaranteeing RTI as a fundamental right, also made it subject to "other laws".
- Manner in which information was classified was incongruous with the notion of openness in governance.
- In setting out a limit on the information that could not be disclosed, Toby Mendel's prescription of imposing "reasonable restrictions" in that, those that were necessary and crucial only, could be adopted by Nepal in framing the RTI provision in its draft Constitution¹.
- Article 12 of the draft Constitution introduced contentious clauses such as the RTI had been granted only to citizens and it was for a public authority to assess whether information sought by an individual related to a matter of public importance.
- The preliminary draft of the Committee on Judiciary granted important powers to a legislative committee consisting of politicians to interpret the Constitution and look into issues of appointment, transfer and dismissal of judges. This arrangement could lead to an erosion of judicial independence and subsequent judicial protection of fundamental rights, including the RTI.

¹ See 'Implementation of the Right to Information in Nepal: Status Report and Recommendations' available in this volume.

Building coalitions for RTI: civil society, local governments and political parties

The speakers on the panel included Mr. Basu Dev Neupane, Development Consultant, Nepal; Mr. Shamsul Bari, Chairman, Research Initiatives, Bangladesh; Mr. Paikiasothy Saravanamuttu, Director, Centre for Policy Alternatives, Sri Lanka; Mr. Hem Raj Lamichhane, Executive General Secretary of the Association of District Development Committees of Nepal; Mr. Sanjeeb Ghimire, Freedom Forum, Nepal; Mr. Sudip Pathak, Chairman, Human Rights Organisation of Nepal; and Mr. Mohamed Latheef, Human Rights Ambassador, the Maldives, as the Chair.

The highlights of this session were:

- The Bangladesh Chief Information Commissioner's (CIC) estimate of 29,000 applications for information received since 2010 did not find favour with Mr. Shamsul Bari, who surmised that the type of information sought by people according to this estimate could not be attributed to transparency or corruption related issues. However, Mr. Muhammad Zamir, the CIC of Bangladesh, later clarified that this estimate had been reached after obliterating those queries that did not pertain to RTI related issues specifically. On the type of questions raised, Mr. Zamir mentioned that community health care, old age pension, management of educational institutions, vulnerable group feeding and so forth constituted a substantive proportion of issues that were brought up.
- Mr. Bari seemed to imply that the Information Commission in Bangladesh was more interested in forcing nongovernmental organisations to comply with the law rather than the government.
- There appeared to be a lack of enthusiasm among civil society and media, who were the initial drivers of this process, to effectively steer the application of the RTI law forward in Bangladesh. Members of civil society and media preferred

traditional means to obtain information (through personal relationships, for example) rather than resorting to the RTI mechanism since the latter involved an arduous and time consuming process.

- The nongovernmental organisations in Bangladesh too were unenthusiastic about the RTI Act plausibly because they were also susceptible to RTI scrutiny as they received/used foreign or public funding. However, this could not be generalised because, for instance, Research Initiatives, Bangladesh (RIB) had successfully launched a year-long experimental programme beginning 2010 which aimed at exploring the use of RTI to ameliorate the social and economic conditions of five of the most marginalised communities of the country (that primarily belonged to the dalit or socially excluded category).
- In Sri Lanka RTI assumed significance since reconciliation in the post war phase but did not necessarily lead to accountability in governance. The political culture of 'patron-client' relationship between the government and citizens required transforming in order to strengthen the RTI regime.
- The need to infuse the ethos of intra-party democracy by promoting a culture of Right to Information within political parties. It was, however, pointed out that the Constituent Assembly elections in Nepal in 2008 led to a federal restructuring of the state and the establishment of a mixed electoral system that accorded representation to socially excluded groups in society. This change in the party structure coupled with the fact that political parties were brought within the scrutiny of the RTI Act 2007, had contributed to a party building process in Nepal.
- It was suggested that any meaningful coalition to bolster the RTI initiative across South Asia would necessitate enhanced citizens' participation at the local level. Also, the presenters agreed that a strong elected local government was crucial to fostering use of RTI to monitor government programs and schemes; Nepali presenters decried the lack of elected local

governments in the country which they saw as a key explanation for why RTI had not taken off.

- There emerged a consensus among Nepali presenters that because non-governmental organisations were brought under the RTI scanner, they were reluctant to embrace it, fearing that the law could be used against them.

RTI, anti-corruption and the media

The speakers in this session included Mr. Shekhar Singh, Convenor, National Campaign for People's Right to Information, India; Mr. Tenzing Lamsang, News Editor, Business Bhutan; Mr. Ahmed Bilal Mehboob, Executive Director, PILDAT, Pakistan; Mr. Pranav Bhattarai, Pro Public, Nepal; Mr. Yek Raj Pathak, National News Agency, Nepal; Mr. Ram Krishna Regmi, Senior Journalist and Educator, Nepal; and Mr. Dharmendra Jha, Chairperson, Federation of Nepali Journalists (FNJ), as the Chair.

This session brought forward interesting comparisons amongst India, Pakistan, Bhutan and Nepal in terms of their experience with the implementation of the RTI Act (between Pakistan and India), the impact of the democratisation process in these countries (with reference to Bhutan, Nepal and Pakistan) and the role of the media in nabbing corruption (with reference to Bhutan and Nepal).

- While the speaker from India adopted a sanguine disposition about the implementation of the RTI Act in India (although recognising the difficulties involved, for example the active intimidation and murders of RTI activists), the scenario in Pakistan looked grim on this front, primarily owing to lack of awareness and a largely apathetic citizenry.
- The democratisation process in Bhutan, Nepal and Pakistan sought to delineate distinctive trajectories for the RTI in these countries. In Bhutan, the democratisation wave led to an expansion of the media (emergence of private newspapers and

television channels). This kick-started a process of demanding more information from public authorities as a right and not a favour among the media and citizens. In some ways, Bhutan's transition to democracy had set the stage for ushering in the RTI legislation. In contrast, the democratic project in Pakistan and Nepal had been crippled by weak governance and ineffective service delivery; and it was hoped that the RTI's intervention could ameliorate the situation.

- In the absence of an RTI law, the Bhutanese media had been playing a proactive role in providing information to citizens, employing the tools of investigative journalism to combat corruption and engender transparency in the system. In stark contrast, the media in Nepal had very rarely sought information under the RTI Act with a view to bringing it in the public realm. It had also not made any efforts to prevail upon public authorities, including the National Information Commission, to implement the Act.
- A common thread that bound India, Pakistan, Nepal and Bhutan was the prevalence of a bureaucracy that was largely averse to disclosing information.
- It was suggested that media cooperation across South Asia could help in stifling corruption (Tenzing Lamsang), RTI could be fostered through collaboration between media and civil society organisations, the media should provide more coverage on RTI related issues, and the media had a vital role in goading public authorities to be accountable to people.

After the plenary sessions came to a close, the participants adjourned in groups to deliberate on each theme discussed at the Convention, with specific reference to Nepal.

Main findings of the breakout groups

Role of the national information commission (NIC)

- Publicise duties and functions of the NIC.
- Capacity building and training of NIC staff.
- Ensure uniformity in information and data provided by public bodies.
- Devise measures to penalise public authorities that deliberately provide erroneous information.
- Raise awareness on the RTI in collaboration with stakeholders at the regional and district levels.

The role of the government in implementing the RTI

- Recruitment, training and autonomy in functioning of information officers at all levels of governance.
- Emphasise voluntary disclosure of information by governmental authorities.
- Amend legislations that contravene the RTI Act and propel the process of enacting a Privacy Act.
- Protect and provide incentives to whistleblowers within a government department.
- Establish a nodal agency under the Office of the Prime Minister and Cabinet Secretariat to monitor the RTI Act's implementation.

The RTI in Nepal: constitutional and legal issues

- The RTI should be guaranteed to all individuals and be operationalised at all levels of governance.
- The RTI Act to have an overriding effect over other laws.
- Ambit of the RTI to be broadened to provide information on matters related to individual interest too.
- A nodal agency and autonomy of the NIC should be legally mandated.

Building coalitions for the RTI: civil society, local governments and political parties

- The coalition should act as a monitoring body to ensure the effective implementation of the RTI Act.
- It should establish interlinkages with other institutions and its remit should extend to the grassroots.

RTI, anti-corruption and the media

- Print media to carry editorials and publicise achievements on RTI related issues.
- Media to conduct baseline surveys on awareness levels and implementation of the RTI Act.
- Media should forge networks with civil society organisations to stymie corruption.

A declaration was drafted based on recommendations emerging from these breakout sessions and then presented to the house for adoption. This set the stage for the final session during which the Kathmandu Declaration was presented to the Chairman of the Constituent Assembly who specifically agreed to consider the Convention's recommendations on how to treat RTI in the new Constitution as well as introducing an override provision in the RTI Act².

The adoption of the Kathmandu Declaration was a seminal event, setting the framework on how to proceed with RTI in Nepal with the approval of all key players and political parties.

² See the Kathmandu Declaration in this volume.

NOTES ON AUTHORS

Bipin Adhikari

Dr. Adhikari is a lawyer and a constitutional law expert.

Tanka Raj Aryal

Mr. Aryal is the General Secretary of the Citizens' Campaign for Right to Information (CCRI), an organisation that has been working to promote access to information through research, advocacy and awareness raising.

Pranav Bhattarai

Mr. Bhattarai is the Deputy Director of the Good Governance Project, Pro Public. He has been involved in media advocacy and campaigns against corruption for nearly a decade and has authored numerous articles and publications on issues of corruption, the Right to Information and good governance in Nepal.

Tara Nath Dahal

Mr. Dahal is the Chairperson of Freedom Forum. He is a prominent RTI activist in Nepal. He was the member of the Task Force that drafted the RTI Bill (now the RTI Act 2007). He has been campaigning for the effective implementation of the RTI Act individually as well through Freedom Forum.

Sher Bahadur Dhungana

Mr. Dhungana is the Under Secretary and Information Officer at the National Vigilance Centre, which is a government body working to promote good governance and to control corruption through preventive measures.

Sanjeeb Ghimire

Mr. Ghimire is an Executive Member of Freedom Forum. He has been working for many years in the areas of political party and electoral reforms, federalism, and democracy.

Sushil Ghimire

Mr. Ghimire is the Secretary of the Ministry of Information and Communications, Government of Nepal.

Chiranjibi Kafle

Mr. Kafle is a Lecturer at Tribhuvan University. He is also an Executive Member of Freedom Forum and has been working to promote RTI in Nepal.

Vinaya Kumar Kasajoo

Mr. Kasajoo is currently the Chief Information Commissioner in the National Information Commission (NIC) of Nepal. He has been a development journalist for over 30 years and has published several books and articles on pro-people media and information technology.

Hem Raj Lamichhane

Mr. Lamichhane is the Executive Secretary General of the Association of District Development Committees of Nepal (ADDCN). HE has been deeply involved for many years with issues of local governance, planning and fiscal decentralization in Nepal.

Toby Mendel

Mr. Mendel is an international expert on RTI.

Basu Dev Neupane

Mr. Neupane is a development consultant and trainer and has been working on institutional governance issues.

Yek Raj Pathak

Mr. Pathak is a Senior Editor for the *Rastriya Samachar Samiti* (RSS), the national news agency of Nepal. He is also a faculty member for the Master's Degree Programme in the Department of Mass Communication and Journalism at Purbanchal University. He is also the author of *Suchana Sangharsha* (Struggle for Information) published by Freedom Forum.

Bed Prasad Sapkota

Mr. Sapkota is the General Secretary of Samuhik Abhiyan, an NGO working towards developing a responsible civil society. He has been involved for many years in the capacity building of NGOs and CBOs in Nepal, including initiatives related to the Right to Information.

Ram Krishna Timalseña

Dr. Timalseña is the Spokesperson of the Supreme Court of Nepal. He is an authority on the Right to Information especially with respect to legal and constitutional perspectives.

RTI National Convention

Kathmandu Declaration Drafting Committee

Coordinator: Mr Taranath Dahal

Members: Mr Chiranjibi Kafle
Mr Krishna Sapkota

Freedom Forum is an independent, non-governmental and not-for-profit civil society organization working for the cause of democracy and human rights focused on press freedom, freedom of expression and right to information in Nepal.

Incepted in February, 2005, Freedom Forum has emerged as a prominent national organization in promoting access to information and freedom of expression through dialogue, research, training, public advocacy and campaign and programme implementation.

With its firm conviction and untiring efforts to establish Right to Information in practice, the Forum has stood itself in the forefront of RTI movement in Nepal since its establishment.

Among the major initiatives the Forum carried out to establish RTI better practices include proactive involvement in the RTI bill drafting process, public awareness and advocacy for the enactment of RTI Act, strategic information campaign, RTI use process facilitation, capacity building, sensitization and mainstreaming RTI efforts through holding of First National Convention on Right to Information-2011 and subsequent adoption of the Kathmandu Declaration.

The Forum has brought out numerous books, research journals, newsletters, periodic reports and analytical papers on different dimensions of RTI and is effortful to establish it as a crosscutting issue of empowerment and transformation.



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