

Report



The First National Convention on the Right to Information



Freedom Forum and The World Bank
March 28 – 29, 2011
Kathmandu, Nepal

Executive Summary

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 from March 28 – 29, 2011. It presents a sketch of the proceedings of the Convention with an emphasis on a 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, co-organized by The World Bank and the Freedom Forum, Nepal, assumes significance for at least three reasons. One, the RTI had 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, legal practitioners 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, an initiative that was floated at the first Regional Workshop on the Right to Information held in New Delhi in April 2010, 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.¹

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 the 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 the RTI in Nepal and to suggest practical measures to strengthen the RTI regime as an instrument to improve governance and accountability in the country. The plenary sessions of the Convention nested 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*

¹ See Press Release, March 29, 2011.

➤ *RTI, Anti-Corruption and the Media*

On the conclusion of the plenary sessions, the participants of the Convention adjourned 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 society organizations, and donors. The President reiterated Nepal's commitment to the effective implementation of the right to information at the highest levels of the political system. His speech was preceded by an address by the Deputy Prime Minister who is also a member of the Maoist party and an architect of the RTI bill.

After the very pleasant 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 across 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 the 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 utilized for public service delivery issues such as minimum wages for shrimp industry workers, subsidized 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 unfolding of a practice that would enable South Asians to express their views on the RTI through the print media across South Asia.
- Utilizing 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 RTI in Pakistan. However, civil society mobilization 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 (this by Madhav P. Ghimire).
- 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 (this by Madhav P. Ghimire).
- 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 digitization 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 Constitution (this by Rohan Edrisinha).²
- 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 (this by Bipin Adhikari).
- 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 (this by Bipin Adhikari).

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 Organization 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 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 organizations 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

² See http://www.freedomforum.org.np/content/attachments/article/114/RTI-Report-Nepal%20World_Bank.pdf to access 'Implementation of the Right to Information in Nepal: Status Report and Recommendations', prepared by Toby Mendel with inputs from Rajib Upadhyay, Senior External Affairs Officer, The World Bank, Kathmandu and Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, New Delhi.

personal relationships, for example) rather than resorting to the RTI mechanism since the latter involved an arduous and time consuming process.

- The nongovernmental organizations in Bangladesh too were unenthusiastic about the RTI Act plausibly because they were also susceptible to the RTI scrutiny as they received/used foreign or public funding. However, this could not be generalized because, for instance, Research Initiatives, Bangladesh (RIB) had successfully launched a yearlong experimental programme beginning 2010 which aimed at exploring the use of RTI to ameliorate the social and economic conditions of five of the most marginalized 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 did not necessarily lead to accountability in governance. The political culture of 'patron-client' relationship between the government and citizens required to be refurbished in order to strengthen the RTI regime.
- The need to infuse the ethos of intra-party democracy by promulgating a culture of right to information within political parties could be of significance to provide a sense of what was required at the national level in Sri Lanka, and other countries of South Asia. 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 nongovernmental organizations 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 (this between Pakistan and India), the impact of the democratization process in these countries (this with reference to Bhutan, Nepal and Pakistan) and the role of the media in nabbing corruption (this 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 recognizing 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 democratization process in Bhutan, Nepal and Pakistan sought to delineate distinctive trajectories for the RTI in these countries. In Bhutan, the democratization 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 (this by Tenzing Lamsang), RTI could be fostered through collaboration between media and civil society organizations, 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 National Information Commission (NIC)

- Publicize duties and functions of NIC.
- Capacity building and training of NIC staff.
- Ensure uniformity in information and data provided by public bodies.
- Devise measures to penalize 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 Government in Implementing RTI

- Recruitment, training and autonomy in functioning of information officers at all levels of governance.
- Emphasize on 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.

RTI in Nepal: Constitutional and Legal Issues

- RTI should be guaranteed to all individuals and be operationalized at all levels of governance.
- 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 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 publicize 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 organizations to stymie corruption.

A declaration was drafted based on the 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 Act.³

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.

³ See Annex for Kathmandu Declaration.

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I. Introduction

The achievement of the Right to Information is a measure of the success of a country's democracy in creating radical possibilities for civil society to make claims that transports one to quite a revolutionary legislation that will hopefully enable citizens to recover a core component of the democratic ideal, namely accountability.

Nepal was the first country in South Asia to accord formal constitutional recognition to the Right to Information which had been guaranteed at Article 16 of the 1990 Constitution and is now found at Article 27 of the 2007 Interim Constitution. The Right to Information Act was adopted in 2007. Yet, the implementation of this legislation has been tardy.

To propel the process of regional involvement around the issue of right to information in South Asia, an initiative that was floated at the first Regional Workshop on the Right to Information (RTI) held in New Delhi in April 2010, the World Bank seeks to facilitate country level RTI development processes in the region. Against this backdrop, the First National Convention on the Right to Information was held in Kathmandu that was a joint endeavour of the Freedom Forum, Nepal and The World Bank.

That this Convention was held at a time when the Constituent Assembly was grappling with several concerns to draft a new Constitution for Nepal was significant for the RTI. The Convention was a remarkable event that brought together for the first time government, politicians and activists to consider RTI in a systematic way. The insertion of RTI in a regional setting with sixteen regional advisors from across South Asia enriched the proceedings of the Convention considerably providing opportunities for cross-learning and mutual sharing of experiences.

II. Monday, March 28, 2011

II.1 Inaugural Session

Megha Malhar Convention Hall, 7.30 am – 8.00 am

Hotel Soaltee Crowne Plaza

The First National Convention on the Right to Information was inaugurated by Dr Ram Baran Yadav, the President of Nepal; a gesture that signaled a commitment towards establishing a robust RTI regime from the highest echelons of authority in Nepal.

Welcome Address

In his address to a gathering that comprised of parliamentarians, information commissioners, civil servants, media practitioners, academics and civil society members, Mr Taranath Dahal, Chairperson, Freedom Forum, mentioned that the Convention provided a historic opportunity to all the stakeholders to deliberate on the various facets of the right to information (RTI). He noted that the right had been guaranteed by the Constitution of Nepal since 1990 that sought to make people a part of the democratization process. Mr Dahal contended that although people's participation was an imperative

towards arriving at good governance, this could not be achieved unless people had access to information.

The Convention was formally opened by Dr Ram Baran Yadav, the President of Nepal and Mr Krishna Bahadur Mahara, the Deputy Prime Minister and Minister of Information and Communications by lighting the ceremonial Panas lamp. This was followed by Mr Krishna Bahadur Mahara's address to the Convention.

Inaugural Address

Hon'ble Deputy Prime Minister and Minister of Information and Communications, Nepal

Mr Mahara, who is also a member of the Maoist party and an architect of the RTI Bill, highlighted that the restoration of democracy in Nepal in 1990 provided a fillip to the right to information movement in the country – where the right had been guaranteed both in the Constitution since 1990 and by an Act of Parliament since 2007. However, he maintained that the implementation of the RTI Act was fraught with difficulties. For instance, he pointed to the culture of secrecy prevalent in the governance structures in Nepal and the ambiguity in deciphering the legal status of the provisions in the RTI Act which contravened other prevalent laws, as impediments to its functioning.

Rt. Hon'ble President of Nepal

Dr Ram Baran Yadav, the President of Nepal, held that the Convention was of significance for several reasons. For instance, he maintained that effective governance in Nepal required public authorities to be accountable to the people, and that the RTI served as a potent tool to enable this. Again, he opined that to strengthen democracy and to make public service delivery efficacious, it was essential to introduce transparency in governance. To facilitate this, he mentioned that the implementation of the RTI legislation will need to be made more effective. Dr Yadav stated that the Constitution of Nepal guaranteed the right to information as a fundamental right and he reiterated the need to protect citizens' right to information to give an impetus to the democratization process. However, he cautioned against relying on legislation solely to usher in change in society. To develop a culture of openness in the social and political system in Nepal, he insisted that various stakeholders – media, civil society and government – utilize their resources to make access to information operative.

With this, the inaugural session came to a close.

II.2 Introductory Session

Megha Malhar Convention Hall, 8.25 am – 9.25 am

Hotel Soaltee Crowne Plaza

Chair: Susan Goldmark, Country Director, The World Bank, Nepal

Speakers: Wajahat Habibullah, Chairman, National Commission for Minorities, and former Chief Information Commissioner, India; Kanak Mani Dixit, Editor, Himal Southasian, Nepal; and Manmohan Bhattarai, Member of the Constituent Assembly and Nepali Congress leader

The session was set off with an address by Ms Susan Goldmark, Country Director, The World Bank, Nepal. She mentioned that it was a privilege for the World Bank to be associated with Nepal's efforts

towards convoking the First National Right to Information Convention. She cited several concerns that propelled the World Bank to support this initiative in Nepal. For instance, she averred that the right to information could be seen as a fundamental human right and a vital part of the building block of democracy and participation. Again, she maintained that the right to information had been accorded recognition in international laws as well as laws in constitutions of more than eighty countries worldwide; and that the World Bank's interest lay in seeing the RTI as a key tool to root out corruption and minimize waste and mismanagement in public authorities. She held that elections for local bodies in Nepal were not held since 1999 and that these local bodies were suspended in 2002. Against this backdrop, the RTI was particularly important in Nepal to enable civil society to hold the government and international bodies like the World Bank accountable.

She noted that in July 2007, Nepal adopted the RTI Act and this made it the third country in South Asia, after Pakistan (that adopted the Freedom of Information Ordinance in 2002) and India (that adopted the RTI Act in 2005), to bring out this legislation. However, she pointed out that Nepal was the first country in the South Asian region to accord formal constitutional recognition (at Article 16 in the 1990 Constitution and Article 27 in the Interim Constitution) to the right to information. Despite these achievements, she opined that the implementation of the RTI Act in Nepal was modest. For instance, she observed that the volume of requests for information was low, compliance with proactive disclosure was limited and for a variety of reasons, many of the key actors usually associated with the implementation of the RTI legislation seemed not very engaged in the process. Therefore, the Convention could be seen as a platform to draw attention to issues related with the implementation of the RTI legislation.

Ms Goldmark drew attention to the 1993 Supreme Court judgment that, on the one hand, instructed the Government of Nepal to disclose in public interest, without any charge, all information related to a project that was under consideration of funding by the World Bank. On the other, as part of the same judgment, the Supreme Court asked the Government of Nepal to enact a RTI law and until such a law was brought in, the Court set out procedures for public agencies to disclose information. The significance of this judgment, she stated, as well as the efforts towards access to information in Nepal and other countries of South Asia were that they prompted the World Bank to examine its own disclosure procedures. This led to the adoption of the World Bank Policy on Disclosure of Information in 1994 that helped ensure transparency and promote accountability. This policy was amended in 2001 and in July 2010, the World Bank Policy on Access to Information was adopted. Under this Policy, she held that an Appeals Board was constituted to consider appeals which claimed that the World Bank had improperly or unreasonably restricted access to information that it would normally disclose under this Policy. This Appeals Board, she mentioned, consisted of international experts, with Mr Wajahat Habibullah as one of its members. The Indian experience on the implementation of the RTI, she contended, could be a source of inspiration for Nepal in several ways. She took this opportunity to introduce Mr Habibullah, Chairman, National Commission for Minorities, and former Chief Information Commissioner, India, who subsequently took the floor to deliver the keynote address titled, "Five Years of RTI in India: Lessons for the Region".

Mr Habibullah mentioned 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 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 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 fulfill 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 Act. He noted that India had been through an information revolution where government control over information dissemination had been eased from 1980s – 1990s. 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 had been exempted from disclosure under Section 8 the RTI Act.⁴ 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 were exempted, though there had been a demand to bring them 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 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. As it turned out, she was demanded a fee by the Public Information Officer (PIO), although she belonged to the Below Poverty Line (BPL) category.

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 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 Monsoons, 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 the website.

⁴ See <http://righttoinformation.gov.in/webactrti.htm> for details on information exempted from disclosure under Section 8 of the RTI Act in India.

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 '*Lok Tantra*' (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 dilating the import of 'public authority'; for instance, the Punjab and Haryana High Court decreed (which was later confirmed by the Delhi High Court) that nongovernmental organizations which received financial assistance from the government or any organization could be called 'public authority' if they fulfilled a 'public' function.

Mr Habibullah then moved the focus of his address to the other 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 computerized are, within a reasonable time and subject to availability of resources, computerized 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 twenty 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, in collaboration with the World Bank, 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 computerized. Although the progress in computerization 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 had access to information online.

He highlighted that the fillip provided by the RTI Act had also helped in standardization 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. While the Ministry of Home Affairs and the National Archives could not find this information, it turned out that in an answer that was drafted 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 office, as it was surmised that before he could send across the document to the National Archives, he had been transferred.

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 on convenience efficiency 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 India and highlighted that proactive disclosure of information would make the need to file an RTI application redundant.⁵ 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 organizations and the media. To explicate 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.⁶ However, public outcry against this move aborted any such attempt by the Government. This example showed that the ownership of the RTI Act 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 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 though the Supreme Court had parted with the Resolution, it stonewalled the 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. He held that the Central Information Commission however 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.

⁵ See <http://righttoinformation.gov.in/webactrti.htm> for details on suo moto disclosure of information under Section 4 of the RTI Act in India.

⁶ 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.

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 itself. 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, yet 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 stated that “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...” to put things in perspective. 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 the 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 organizations 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's legislation, which was presently in the process of being finalized. 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 might contribute to strengthening democracy in the country. Presently the Whistleblower's Bill had been uploaded on the website of the Department of Personnel and Training in order to gauge people's perception of the Bill, he noted.

Mr Habibullah then held that in India, the political fora had generally been positive about the RTI Act; those states where the 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 fall 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 (soft) approach to terror. However, the voters came out in large numbers (the highest ever in the last fifteen years) and elected her for the third time. Similarly, the Chief Minister of Andhra Pradesh had pursued the RTI law (introduced in 2005) with fervor. 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 stymied the RTI movement in the country. He noted that although the government had been assigned the responsibility to raise public awareness on the RTI, yet precious little had been achieved. Drawing attention to the origins of the RTI movement that sparked off in the early 1990s in the villages of Rajasthan, he held that the ownership of the RTI movement ultimately rested with the people at large.

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 method of sharing a system of working together, it could take the region forward to the benefit of all.

Mr Kanak Mani Dixit, Editor, Himal Southasian, Nepal, mentioned that Nepal was going through a period of transition that involved drafting a new Constitution. He noted that while it was crucial for the country at this juncture to learn from the efforts undertaken by the neighbouring South Asian countries towards building effective RTI regimes, yet it was important for Nepal to develop its own perspective on access to information. He lauded the initiatives employed in India to extend the reach of RTI to the grassroots. He however expressed concern that information released by WikiLeaks which alleged government and corporate misconduct could prompt worried public authorities to question the necessity of the RTI itself.

He then moved his presentation to discussing several issues which were raised earlier by Mr Habibullah in his keynote address. He held that the Government of India's attempt to amend the RTI Act in 2006, as pointed out by Mr Habibullah, portended towards a resistance of public authorities to the Act; this, he noted, might be of concern to the RTI movement in Nepal. He next observed that Mr Habibullah's contention that a substantial proportion of RTI applications in India came from those who were illiterate, could be of relevance to Nepal where the literacy levels were low.

On the point raised by Mr Habibullah on the role of RTI in mitigating conflict in India, Mr Dixit made two inferences. On the one hand he held that enabling access to information at the grassroots could foster democracy, lead to redressal of people's grievances and consequently lessen conflict in society. On the other, he noted that providing access to information to the victims of more than a decade long conflict in Nepal could help bring their voices into the process of transitional justice. In this regard, he mentioned that the mandate of the Truth and Reconciliation Commission that had been set up to

provide a spur to the transitional justice process in Nepal was bereft of any kind of understanding of the notion of justice. He conceived of this as a major lapse.

Mr Dixit then turned the attention of the audience to the challenges that confronted the implementation of the RTI Act in Nepal. He held that Nepal had never been colonized; therefore, the administrative machinery was not conversant with the idea of maintaining records. So, he stated that clearing the muddy waters in this regard was imperative.

He noted that the government introduced the RTI legislation in Nepal as a consequence of toeing the line suggested to it by the international community. The need of the hour, therefore, was for activists to take ownership of the right to information movement in the country. He suggested that the conceptual understanding of the RTI needs to be nuanced so as to include within its gamut not only freedom of the media, but also decentralization of governance and poverty alleviation. He sounded a note of caution against deploying the RTI along the same lines as Public Interest Litigation (PIL), the latter being put to use in a perfunctory manner rather than being motivated by real public interest.

He then directed attention to the degeneration of local government in Nepal where elections to these local bodies were last held in 1999. Ever since these local bodies were suspended in 2002, he noted that the political landscape had been devoid of grassroots participation, owing to political rivalry and the demand of the revolutionaries for rule by the commissars. He hoped that the RTI would act as a catalyst to revive local government in Nepal. He concluded with a suggestion that as soon as political stability and democracy had been established in Nepal, the country should forge ahead with its RTI agenda; and that the assistance provided by the South Asian experts present at the Convention could propel the RTI process already in swing in the country.

Then, Mr Manmohan Bhattarai, Member of the Constituent Assembly and Nepali Congress leader, held that he was able to appreciate the wide ambit of the RTI on hearing the earlier two speakers. He contended that the politicians and political parties in Nepal had not addressed the right to information as part of their political agenda. He candidly admitted that presently the members of the Constituent Assembly in Nepal were grappling with major issues in order to draft a new Constitution, and that neither the political parties nor the government showed any commitment to carry forward the RTI initiative. However, he noted that access to information was a vital tool to hold an authoritarian state accountable, bring in transparency in governance and combat corruption – all of which lend a meaning to democracy.

After Mr Bhattarai's address the floor was opened to questions from the audience.

Questions and Answers

In this session, all the questions were raised to Mr Wajahat Habibullah.

Mr Tenzing Lamsang, News Editor, Business Bhutan, sought clarity on two issues – one on what constituted overriding public interest on the basis of which information that was disclosed could at times override the privacy clause and the other about the correlation between the Whistleblower's Bill and the RTI Act.

Mr Chiranjivi Kafle, Executive member, Freedom Forum, Nepal, raised two queries; the first on the criteria adopted by the Government of India to classify information which would help demarcate information that could be provided from that which could not and the next on the manner in which escalating costs arising from efficient information management would be met by the government.

Mr Kapil Shrestha, Human Rights activist, Nepal, had a query as to whether the process of information dissemination would lead to empowering the people and disempowering the government.

Mr Richard Holloway, The World Bank, had a question on the Government of India's perception of the claims made by media reports about the intimidation and even murders of RTI activists in India.

Mr Wajahat Habibullah provided two examples to elucidate how overriding public interest could be deciphered. One, he held that the Annual Confidential Reports (ACRs) of government officials were classified as private information to be disclosed only to the official whose report it was intended to be. Yet, if it was found that an official was being promoted despite corruption charges leveled against her, this could attract the clause of 'overriding public interest' to enable one to get access to this particular official's ACR under the RTI. In another instance, he pointed out that an information seeker could gain access to a defence contract, though it was not subject to disclosure, if an appellant had been able to persuade the authorities that an overriding public interest was involved in accessing the contract. He mentioned that the Official Secrets Act in India, which had become an anachronism, portrayed the public as an enemy of the state, when in fact, the public constituted the state. He noted that the Administrative Reforms Commission had recommended that this Act should be done away with and that the Government of India was considering an amendment to this Act. To the second query raised by Mr Lamsang, Mr Habibullah explained that the Whistleblower's Bill was an important legislation and that it was an internal way of exposing the kind of corruption which would bring into play 'public interest' in disclosing information that had been exempted from disclosure under the RTI Act.

On the question that was raised about classification of information, Mr Habibullah mentioned that that information which was subject to disclosure was clearly specified under Section 2 (f) of the RTI Act. He added however that only such information that was held by public authorities would be open to disclosure under this Act. To the second question that was raised by Mr Kafle, Mr Habibullah stated that the process of computerization of records might pose an additional burden initially, and that there was a provision in the law to meet these expenses. However, he held that once this procedure was in place, it would become easier for public authorities to disseminate information.

In response to Mr Shrestha's question, Mr Habibullah contended that though the government was shorn of its authoritarian power, yet the RTI Act had led to strengthening the government's capacity to deliver. This was because post the RTI Act, the policies formulated by the government tended to be more effective since they were predicated on substantive feedback received from the people.

To the query raised by Mr Holloway, Mr Habibullah noted that any loss of life was a matter of serious concern that required attention. He pointed out that technically a whistleblower was one who revealed wrongdoing within an organization; usually this person came from that same organization. He held that the activists in India wanted to ensure that the ambit of the Whistleblower's Bill was extended to include even those who sought information to disclose corrupt practices. While he noted that the Indian police force was meant to provide protection to those who exercised their fundamental rights (including the right to information), yet the service delivery on this front left much to be desired. He hoped that the Indian government would take up this matter seriously. With this, the session came to a close.

II.3 The Working of RTI Commissions in South Asia

Megha Malhar Convention Hall, 10.10 am – 12.10 pm

Hotel Soaltee Crowne Plaza

Chair: Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank

Speakers: Vinaya Kasajoo, Chief Information Commissioner, National Information Commission, Nepal; Muhammad Zamir, Chief Information Commissioner, Bangladesh; Shailesh Gandhi, Information Commissioner, Central Information Commission, India; and Rahela Sidiqi, Senior Advisor, Independent Administrative Reform and Civil Service Commission, Afghanistan

Mr Vinaya Kasajoo, Chief Information Commissioner, National Information Commission, Nepal commenced this session with a presentation on 'Implementing RTI Law in Nepal – Experience, Challenges and Future Strategies of the National Information Commission'. He provided an overview of the objectives of the RTI Act, the structure and functions of the National Information Commission (NIC), responsibilities of public bodies in disseminating information, the problems stymieing the implementation of the Act and recommendations to carry forward the RTI initiative.

He informed the audience that the RTI had been guaranteed both in the Constitution since 1990 and by an Act of Parliament since 2007. He delineated the objectives of the RTI Act that included engendering openness, accountability and transparency in governance, providing easy access to information to people and protecting sensitive information from disclosure, amongst others. He then moved to discussing the structure of the National Information Commission that comprised of three members, including the Chief Information Commissioner. The Commissioners were appointed for a term of five years, on the recommendation of a committee consisting of the Speaker (as the Chairperson), the Minister of Information and Communication, and the President of Federation of Nepalese Journalists as members. The Commissioners could be removed from their office if the Parliament endorsed the recommendation of the concerned committee of the Parliament. The Ministry of Information and Communication acted as a bridge to enable communication flows between the Commission and the Government. Some of the important functions of the Commission, amongst others, that were highlighted by Mr Kasajoo included observing and studying the records and documents of public importance held by public bodies, providing a time frame within which the public bodies were required to disseminate information to the applicant, protection of whistleblowers and issuing appropriate orders regarding the protection, promotion and exercise of the right to information. He mentioned that the limited number of Commissioners, the wide ambit of the RTI Act that brought government bodies, political parties and nongovernmental organizations under its purview, lack of clarity regarding the status of the Commission and budget constraints impeded the smooth functioning of the National Information Commission.

Mr Kasajoo noted that the RTI Act in Nepal covered a wide span and contained exhaustive provisions on the responsibilities of public bodies, obligation of public bodies to update information related to them for a period of at least twenty years prior to the commencement of the RTI Act, the requirement for an Information Officer in all public bodies, information that was exempted from disclosure, procedure for lodging a complaint against denial of request or incomplete information, imposition of penalties and protection of whistleblowers, amongst others.

He then apprised the audience that on the intervention of the National Information Commission, information had been disclosed in several cases, for instance, the Judicial Council provided documents related with an investigation of a district judge who had been dismissed from his post, the

Ministry of Home Affairs provided a report which was classified as confidential, and so forth.

He next drew attention to the impediments that plagued the implementation of the RTI Act, notably the absence of an implementing body/mechanism in government bodies, improper documentation system, low level of awareness amongst people, reluctance on the part of nongovernmental organizations to carry forward this initiative, and legal, political and administrative bottlenecks.

He summed up by providing recommendations to bolster the RTI regime; this envisaged positioning the RTI effectively in the new Constitution of Nepal, amending all Acts that contravened with the RTI Act, providing the National Information Commission more autonomy and including courses on the RTI in schools and colleges.

Mr Muhammad Zamir, Chief Information Commissioner, Bangladesh, began his address by stating that bureaucratic apathy towards revealing information lodged itself as the biggest hurdle in the implementation of the RTI Act. He then apprised the audience of the process that led to the passage of the RTI legislation in Bangladesh. He mentioned that the demand for the law on freedom of information was first articulated by the Press Council in 1983 as a response to the curtailment of press freedoms under a dictatorial regime. The Law Commission prepared a working paper on the RTI in 2002 and after holding several rounds of discussions with different stakeholders, the initiative was taken forward. An RTI Ordinance was adopted by the caretaker government of Bangladesh on October 20, 2008, which was later retained and improved upon by the incumbent government. At length, the RTI Act was passed in the very first session of Parliament on March 29, 2009 and received the President's assent on April 5, 2009; the Bangladesh Information Commission was established on July 1, 2009.

He delineated the import of the term 'information' found under Section 2 (f) of the RTI Act and noted that the corporate sector had been kept out of the ambit of the Act.⁷ Consequently, a large proportion of what could have been obtained by this legislation had been eroded by this aspect. He then mentioned that recurrent floods in Bangladesh tended to inundate several government offices which resulted in damaging the records maintained by them. Therefore preservation of information, a provision for which could be found under Section 5 of the RTI Act, had assumed significance in Bangladesh.

Mr Zamir then drew the attention of the audience towards violent clashes (that had begun as a land dispute) between indigenous villagers and Bengali settlers in the Chittagong Hill Tracts region of Bangladesh in 2010, which had resulted in the torching of several indigenous villages by security forces and Bengalis overnight. He mentioned that some members of the indigenous community who had sought information from the District Commissioner as to whether the intended beneficiaries had been provided compensation by the government were denied the same on the grounds of national security. However, Section 9 (9) of the RTI Act, which stated that no request for information may be totally rejected on the ground that it was associated with information which was not mandatory for publication (that is, provisions under Section 7 of the RTI Act, such as security, integrity and sovereignty of Bangladesh, for example), was invoked by the Chief Commissioner's office to provide the requested information.

He then alluded to Section 9 (10) of the RTI Act whereby a disabled person could be provided access to records and the officer-in-charge was required to provide the necessary assistance to such a person to gain access to such information.

⁷ See http://www.moi.gov.bd/RTI/RTI_English.pdf for details on the import of the term 'information' under Section 2 (f) of the RTI Act.

He mentioned that the Information Commission had established a web portal and had been monitoring its functioning closely. Telenor, a mobile operator, under corporate social responsibility did a weekly coverage of the number of visits to this web portal. He noted that 6 – 9000 pages were being downloaded per week from this web portal and the names of designated Information Officers had been uploaded on it. He spoke about specific activities by the Chief Information Commission's office that helped spread awareness about the RTI in Bangladesh. Under corporate social responsibility, two telecommunications service providers in Bangladesh – Grameenphone and Robi Axiata Limited, agreed to send across text messages without charge, to raise awareness about the RTI.

Another arrangement that he spoke of was to carry one particular news slot from Bangladesh Television (BTV) in specific popular private television channels in Bangladesh, such as Islamic TV, NTV and so forth, wherein mobile phone operators could sponsor a scroll at the bottom that would provide information on the RTI to the viewers. He also mentioned that to spread awareness, short discussions on the RTI were being broadcast on certain FM Radio stations and that the Commission had prepared a draft text in Bangla on the RTI to be carried in high school text books. He then spoke of the wide array of issues on which information was sought under the RTI Act that encompassed questions on minimum wages for shrimp industry workers, recipients of social safety networks, bank accounts, subsidized medicines and so forth.

He concluded his speech by recommending that a South Asia web portal on the RTI should be established to enable interactive engagement on access to information across the South Asian region. He also called for setting up a South Asia Information Commission and unfolding of a practice that would enable South Asians to express their views on the RTI through the print media across South Asia.

In response to Mr Muhammad Zamir's presentation, the Chair, Dr Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, mentioned that the creative experiments on RTI undertaken in Bangladesh had the potential to place the country in the lead on this front in South Asia. He held that the World Bank had been contemplating sponsoring an e-discussion group on the RTI; however there might now be a need to go beyond that and explore the possibility of establishing an

⁸ See http://www.nic.gov.np/download/rti_act_eng_official.pdf for details on information exempted from disclosure under Article 3(3) of the RTI Act in Nepal.

⁹ Toby Mendel is the Executive Director of the Centre for Law and Democracy and was part of the World Bank team that undertook a mission to Nepal in July 2010 to study the situation regarding implementation of the RTI Act and to make recommendations to strengthen it.

¹⁰ See http://www.nic.gov.np/download/rti_act_eng_official.pdf for details on Section 37 of the RTI Act 2007 in Nepal.

¹¹ See http://www.freedomforum.org.np/content/attachments/article/114/RTI-Report-Nepal%20World_Bank.pdf to access 'Implementation of the Right to Information in Nepal: Status Report and Recommendations', prepared by Toby Mendel with inputs from Rajib Upadhyaya, Senior External Affairs Officer, The World Bank, Kathmandu and Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, New Delhi.

¹² The purpose of the survey was to explore the implementation of the RTI legislation in Nepal, to study the awareness levels of citizens and the deployment of the RTI Act by civil society organizations. The respondents were selected from rural and urban areas of all five development regions of Nepal. The group comprised of school teachers, members of nongovernmental organizations and media, local businesspersons, secretaries of village development committees (VDCs) and female community health volunteers (FCHVs).

¹³ Mr Shamsul Bari, Chairman, Research Initiatives, Bangladesh (RIB), held that the five communities were chosen for this experimental programme because they had earlier been involved with RIB in participatory research activities. Therefore, they were aware of social and political mechanisms which caused and aggravated their poverty and marginalization.

¹⁴ See paper authored by Mr Lamichhane on 'Role of Local Government and Right to Information in Nepal' found in this volume.

¹⁵ See Annex for list of participants in the five thematic groups.

¹⁶ See Annex for Kathmandu Declaration.

interactive South Asia web portal on the RTI. Acceding to Mr Zamir's suggestion on sharing of views on the RTI through the print media across South Asia, he noted that an article in the Indian Express by Mahfuz Anam, a Bangladeshi journalist, managed to cut ice with the Indians, for example.

Mr Shailesh Gandhi, Information Commissioner, Central Information Commission, India, took the floor and began his address with a query about why the RTI was important. He noted that the essence of democracy, that is, respect for an individual's sovereignty, eluded the democratic project in India. He conceived of the right to information as a mechanism to plug this gap. The RTI Act had empowered an ordinary citizen to seek information from the highest authorities, the denial of which was subjected to penalty; this, he averred, had the potential of recognizing the sovereignty of an individual citizen. And it was on this count that the RTI Act had been different from all previous laws in India.

He held that fallacious reasoning on the lines that disclosure of information affected national security, invaded individual privacy and so forth did not hold water. He considered it worthwhile to allow informed citizens to take policy decisions, given that the present trajectory of state-led development had led to imbalances in the human and natural world alike. He mentioned that it was very unlikely for the government to take the lead in implementing the RTI Act, therefore, it was crucial for the Information Commission to steer the process forward. He stated that the Information Commission was responsible for interpreting and expanding the ambit of the RTI Act, insisting on suo moto disclosure and enabling speedy disposal of cases. He highlighted that 7 – 8 million RTI applications were filed in 2010 and that the Information Commission had received 1.7 – 1.8 lakh appeals the same year.

He maintained, however, that the ultimate onus rested with the people to lend meaning to this legislation. He was buoyant at the prospect that 18% - 20% of the people in India were aware of the RTI Act, considering that most other laws did not have this kind of awareness even. He held that people looked upon this legislation as a tool to not merely root out corruption, but also enable their empowerment and provide them better governance.

He concluded by bringing home the point that the RTI envisaged putting the truth, as it existed, in the open. He hoped that this would prompt institutions, governments and nations to better themselves, which would subsequently lead to deepening of democracy.

The Chair, Dr Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, acknowledged Mr Gandhi's contention that the intent of the RTI was not restricted to merely stamping out corruption, but also encompassed the fostering of good governance and people's empowerment. He also raised the issue of setting up norms for the working of information commissions (allowing for systematic comparisons across commissions) including the time taken to schedule hearings and dispose of cases.

Ms Rahela Sidiqi, Senior Advisor, Independent Administrative Reform and Civil Service Commission, Afghanistan, provided an insight into the processes in swing to usher in an access to information legislation in Afghanistan. She informed the audience that the RTI law had been drafted, which would be sent to the Cabinet for its approval after a series of consultations with the civil society and High Council of Media. She mentioned that the Law on Mass Media had however made an allusion to the right of every person to seek and obtain information and that the government had been required to provide the information sought by citizens, except that which affected national security and interests.

She held that the High Council of Media under the leadership of the Minister of Cultural Affairs and Communication in coordination with the Administrative Reforms Commission and the South Asia advisor on RTI would be reviewing and editing the draft RTI law as a specialist group. As well, the

review process would also involve a lobby group of RTI activists from the Parliament, government and civil society. She mentioned that until the law took effect, there were discussions in progress to have RTI representatives at various levels of the Civil Service Commission.

While she identified the bureaucratic culture of secrecy and low levels of awareness among the government and citizenry as impediments to the RTI movement, she hoped that the media would play a proactive role in providing a spur to this process. She was favourably disposed towards the establishment of a South Asia Commission on the RTI and agreed with Mr Habibullah's proposition that the RTI should benefit the least advantaged.

Ms Sidiqi then elaborated on the processes involved in the shaping of the draft RTI law in Afghanistan and the composition of the group which would review the draft RTI law, in response to further elucidation sought on these by the Chair, Dr Vikram K. Chand. She informed the audience that she had been active in drafting an RTI law for Afghanistan in collaboration with her colleagues at the High Office of Oversight and Anti-corruption. She explained that on being reviewed by the High Council of Media and the civil society, the draft RTI law will be placed before the Cabinet for its approval.

Then, the stage was set for questions from the audience.

Questions and Answers

In response to Mr Muhammad Zamir's suggestion to establish a South Asia web portal on the RTI, Mr Wajahat Habibullah, Chairman, National Commission for Minorities, and former Chief Information Commissioner, India, held that the Central Information Commission in India had established a website shortly after its initiation which carried its decisions as well as articles on the RTI from across the world and India. He was of the view that since most of the countries were setting up websites on the RTI, it might be useful to first establish linkages between websites already in existence before building a common South Asia web portal.

Ms Fatima, a Bangladeshi professor, posed a couple of queries to Mr Muhammad Zamir. One, she noted that while only three percent of Bangladeshis have had exposure to the internet, the setting up of a South Asia web portal might not benefit a large section of the population. The other query pertained to whether a foreign national could seek information under the RTI Act in Bangladesh.

Mr Muhammad Zamir mentioned that 82,000 community e-Centres had been developed in Bangladesh as digital flashpoints and that the UNDP had been working along with the Prime Minister's office to carry forward this initiative. He hoped that this process might help bridge the digital divide in the country. On the other question that was raised, he mentioned that foreign nationals could seek information under the RTI Act in the country.

Mr Richard Holloway, The World Bank, raised two queries; one was directed to Mr Vinaya Kasajoo as to why the civil society and nongovernmental organizations were reluctant to propel the RTI process in Nepal in contrast with their counterparts that had played a more vibrant role on this front in India. The other question was addressed to those members on the panel who had seemed to suggest that combating corruption was a minor issue and that relatively, empowering people was a more important concern to be addressed through the RTI. Mr Holloway expressed his astonishment at this because he was of the view that rooting out corruption was the primary goal of the RTI.

In response, Mr Kasajoo mentioned that nongovernmental organizations in Nepal were opaque in their functioning and the fact that they were brought under the RTI Act's ambit might explain their reluctance to push the RTI process ahead.

In reply to the other question, Mr Shailesh Gandhi and Dr Vikram K. Chand conceded that while nabbing corruption was an important issue, the ambit of the RTI extended beyond to include larger issues of better governance too.

Then, to a question raised by Mr Kedar Khadka, Director, Good Governance and Anti-Corruption, Pro Public, on the mechanisms that had been adopted to protect whistleblowers in India, Mr Shailesh Gandhi mentioned that the Information Commission notified the head of the police of those instances that portended a serious threat. Another strategy, wherein the Information Commission would take up the responsibility of releasing information that was sought by the whistleblower in the public domain, coupled with other RTI activists promptly pursuing those issues raised by the whistleblower, might provide a way out of this delirium, he noted. Throwing light on the same query, Mr A.K. Choudhary, Chief Information Commissioner, Bihar and former Chief Secretary, Bihar, stated that the Bihar state government had opened a helpline whereby anyone who was under threat of any kind for seeking information could lodge a complaint through a telephone call. Such complaints were personally supervised by the head of the police department and the Home Secretary.

At this juncture, Mr Muhammad Zamir drew the attention of the audience to a practice adopted by some nongovernmental organizations in Bangladesh, like for instance BRAC, of appointing an ombudsman to look into complaints within the organization, in a bid to bypass the RTI process. There were other nongovernmental organizations, he noted, which refrained their employees from releasing information about the organizations they belonged to beyond a point. Of the 2300 nongovernmental organizations that received foreign funding in Bangladesh, less than 200 had provided the designated information to the Information Officers. He mentioned that in his capacity as Chief Information Commissioner, he had asked the NGO bureau to cancel the registration of those nongovernmental organizations which did not accede to the provisions of the RTI Act. As well, he had requested the international development aid agencies to halt their funding to those nongovernmental organizations that did not conform to the requirements of the RTI legislation.

After this, Mr Vinaya Kasajoo informed the audience that the National Information Commission in Nepal had begun the process of identifying laws, like for instance the Civil Service Rules 2065, which contravened the RTI Act, in reply to a question raised by Mr Pranav Bhattarai, Pro Public, Nepal, about the same. Taking India's example where the RTI Act had an overriding effect on all earlier laws, Mr Shailesh Gandhi suggested that a similar provision could be incorporated in Nepal's RTI law to contend with the issue of the contravention of the RTI Act by other laws in force in the country.

The Chair, Dr Vikram K. Chand, then summed up the discussions in this session and pointed to the interesting debate that had emerged on the perception of nongovernmental organizations towards the RTI. On the one hand, the nongovernmental organizations had portrayed themselves as guardians of legitimacy and probity but spurned any attempt made to keep a tab on their accountability. On the other, nongovernmental organizations had played a positive role in steering ahead the RTI drive throughout South Asia. While he hoped that they would continue to provide a push to the RTI initiative, he expressed the need for the RTI movement to go beyond and permeate the citizenry too.

The session concluded on this note.

II.4 The Role of Government in Implementing RTI

Megha Malhar Convention Hall, 1.10 pm – 3.10 pm

Hotel Soaltee Crowne Plaza

Chair: Madhav P. Ghimire, Chief Secretary, Government of Nepal

Speakers: Ahsan Iqbal, former Federal Minister for Education, Pakistan; Sushil Ghimire, Secretary, Ministry of Information and Communications, Nepal; Sher Bahadur Dhungana, Under Secretary, National Vigilance Centre, Nepal; and A.K. Choudhary, Chief Information Commissioner, Bihar and former Chief Secretary, Bihar

The session commenced with Mr Ahsan Iqbal, former Federal Minister for Education, Pakistan, sharing his thoughts on the role of government in implementing the RTI in Pakistan. He mentioned that the RTI was undergirded on the fundamental right of a citizen to ask questions, and that paradoxically, a questioning attitude was anathema to the culture in South Asia. He set the tone for his presentation by highlighting the need for an engaging citizenry to lend meaning to the RTI legislation. He then provided an insight into the stages that led to the passage of RTI law in Pakistan; he highlighted that Pakistan was the first country in the South Asian region to have a Freedom of Information Ordinance in 2002. Though there was an earlier version of this law in 1997, it was in the form of an ordinance which lapsed in twenty days because the Parliament did not ratify it in time. Subsequently, a Local Government Ordinance was promulgated in 2001 that included a provision on the right to information to people, which was met with resistance by the local governments. He pointed out that the Freedom of Information Ordinance that was passed in 2002 applied to the federal government only.

He then apprised the audience about what stymied the RTI process in Pakistan. He explained that the right to information movement in Pakistan did not stem from an indigenous demand and was not rooted in the mainstream of national politics; it was primarily a donor-driven initiative. It therefore lacked broad based ownership. Again, he noted that although the Ombudsman was designated by the government as Chief Information Officer, yet, because he was occupied with redressal of complaints, no significant meaning could be ascribed to the Ombudsman's role as Chief Information Officer. The other dampening features were that the Ordinance had several non disclosure provisions, there was no penalty for officers who were not willing to provide information, a forum for resolution of complaints was absent, secrecy laws continued to override the Ordinance, there was low level of awareness amongst the citizenry and government officials were not trained to comply with the law.

He informed the audience that a turning point in civil society mobilization was triggered by the dismissal of the Chief Justice of the Supreme Court by the former President, General Musharraf, in March 2007. This drew flak from the lawyers, media and citizens who fought for almost two years to have the Chief Justice reinstated. It was accompanied by an extensive discourse on issues of accountability, rule of law and independence of the judiciary which was unprecedented in the history of Pakistan. He mentioned that in the absence of an effective Freedom of Information Ordinance, people relied extensively on the judiciary to redress their grievances. He then spoke of the 18th Constitutional Amendment, 2010, which introduced Article 19-A in the Constitution that guaranteed the citizen's right to information as a fundamental right. This ensured that if the government did not provide the information that was sought, citizens could resort to seeking the intervention of the Supreme Court directly. An important consequence of this amendment was that the Freedom of Information Ordinance, 2002, was being revisited by the Federal government and a new RTI law was being drafted.

He noted that this was a take off point for the RTI movement in the country and with increasing awareness amongst the citizenry of the need for accountability and so forth, the demand for the RTI law was in place. He held that Baluchistan and Sind had passed their Freedom of Information laws in 2005 and 2006 respectively, while Punjab was working at the draft version of the law.

He next turned the focus of his presentation to the challenges confronting the government in establishing an effective RTI regime in Pakistan. He dwelled on the need to establish an effective knowledge management system within the government to ensure that accurate information was being provided to citizens. He noted that the training programme of the bureaucrats required to be restructured so as to encourage them to proactively disseminate information to citizens.

He was of the view that the RTI addressed a wide range of issues that included fostering development and good governance, aside of combating corruption. He summed up his presentation by emphasizing the need to use technology, especially the cellular phone, to spread awareness about the right to information.

Mr Sushil Ghimire, Secretary, Ministry of Information and Communications, Nepal, began his presentation by delineating the evolution of the concept of the right to information. It originated with the fundamental right of freedom of expression and the United Nations General Assembly (UNGA) in 1946 and the Universal Declaration of Human Rights in 1948 accorded it the status of a fundamental human right. On the basis of these globally established norms, the Constitution of Nepal guaranteed the freedom of information as a fundamental right of the people. It adopted the Right to Information Act in 2007. Moving to the implementation of this legislation, he mentioned that citizens had the right to access information subject to qualifications specified under Article 3 (3) that contained non disclosure provisions such as those that affected the sovereignty, integrity, national security, harmonious relationship among various castes or communities and individual privacy, amongst others.⁸

To facilitate the process of classification of information, he mentioned that the RTI Act had provided for the establishment of an Information Classification Committee, which comprised of the Chief Secretary of the Government of Nepal (Chairperson), Secretary of the concerned ministry, and an expert on the concerned subject assigned by the Chairperson. The classified information was required to be kept confidential for a maximum period of thirty years. The RTI Act also provided for any person who was not satisfied with the classification made by the committee to appeal before the National Information Commission. He informed the audience that the Act guaranteed privacy of personal information, unless otherwise provisioned in law.

He held that the Ministry of Information and Communications acted as the nodal agency to implement, promote and monitor the RTI Act, although it was not provisioned in the legislation. He also ascribed an important role to the media, nongovernmental organizations and the private sector in propelling the RTI initiative in Nepal. He then mentioned that poor information management system, paucity of physical and human resources, bureaucratic apathy, limited institutional capacity and low levels of awareness among citizenry stymied the implementation of the RTI Act in the country.

He noted that information and communication technology could be utilized to engender efficiency in record keeping, to establish a web portal on the RTI, and at length to spread awareness among the people. He summed up by emphasizing the role of RTI in facilitating good governance and nabbing corruption.

Mr Sher Bahadur Dhungana, Under Secretary, National Vigilance Centre, Nepal, informed the audience about the experiences and challenges faced by information officers in implementing the RTI

Act in Nepal. He briefly compared the ambit of the RTI legislations in India and Nepal and noted that the information officers in India served as nodal officers and that every Indian state carried a website that documented the contact details of information officers and RTI activists from the civil society and nongovernment organizations. He pointed out that Assistant Information Officers in India, some of whom were post officers, were deputed for registering complaints. He held that in Nepal, which had an RTI Act since 2007 and an RTI Regulation since 2009, information officers were supposed to be deputed in all public bodies and because this was a service that public bodies had to render as per the legal provisions, civil servants of the rank of Joint Secretary to enumerators of the Statistics Branch Office served as information officers.

He then made an interesting observation that corruption had plummeted in those countries which had enforced both the RTI law and the Citizen's Charter, based on an examination of the Corruption Perception Index in these countries in 2010. He noted that prior to the implementation of the RTI Act in Nepal, the Citizen's Charter had become a simple mechanism to provide information, and that it continued to work effectively in the present. He contended that the Citizen's Charter could be considered as an effective tool to proactively disclose information under the RTI. He next turned the attention of the audience to a study undertaken by the National Vigilance Centre from January 2010 – March 2011, to gauge public awareness of the Citizen's Charter in 21 districts of Nepal. It was found that only 34% of the service recipients who had been interviewed were aware of the prevalence of a Citizen's Charter in district offices.

He mentioned that presently 12 out of 75 districts, 67 out of 75 District Administration Offices and 50 out of 75 offices of the District Development Committees in Nepal had no information officers. He then informed the audience that the bureaucratic culture of secrecy, ineffective records management, low levels of awareness among people, absence of a budget for information officers and lack of political will stifled the implementation of the RTI Act in Nepal. He concluded by prescribing suggestions to strengthen the RTI Act and also its implementation, such as raising awareness levels of the people on the RTI, amending the RTI Act so that it overrides all other laws and provision of training on the RTI to information officers, amongst others.

The Chair, Mr Madhav P. Ghimire, Chief Secretary, Government of Nepal, then shared his thoughts on the impediments to the implementation of the RTI Act and recommended measures to provide a fillip to the RTI process in the country. The need to develop standards and norms to ensure consistency in dissemination of information, the ambiguity in deciphering the legal status of the provisions in the RTI Act which contravened other prevalent laws, weak institutional capacity and archaic system of records keeping were the main constraints that he had identified. He suggested that a comprehensive strategic communications framework should be devised by the government, media and civil society to provide a spur to the RTI process, the reach of the RTI should be extended to the grassroots to lend meaning to the initiative and that interdepartmental coordination should be encouraged to implement the RTI Act effectively. He mentioned that Nepal would create a nodal agency for RTI in the Office of the Prime Minister and Cabinet Secretariat (OPMCS) to push RTI across government.

This was followed by a presentation on 'Jaankari Call Centre – A Government of Bihar Initiative,' by Mr A.K. Choudhary, Chief Information Commissioner, Bihar and former Chief Secretary, Bihar. He informed the participants that Bihar's abysmal literacy rate of 49% coupled with a wide digital divide stymied the government's efforts to extend the benefits of the RTI Act to the least advantaged. This prompted the setting up of 'Jaankari' – a unique Bihar government initiative in 2007, which employed Information and Communication Technology (ICT) to enable access to information to the common people. The system had two telephone numbers, the RTI Helpline and the RTI Application Number; the former being used if a citizen needed help on how to use the RTI, the call being charged at normal

rates. The latter was a premium number used to file an RTI application, which was charged INR 10 (the fee for the RTI application) in addition to the normal call rates for the duration of the call. The Jaankari Call Centre had been declared as an Assistant Public Information Officer by the government which enabled it to accept applications and transfer them to the concerned Public Information Officer through email, fax or registered post. A call to the RTI Application Number was voice recorded and the conversation was simultaneously typed on the computer by the call centre executive receiving the call. The applicant was also provided a unique reference number to track the progress of the application. The Call Centre staff had been adequately trained to assist and deal with cases where citizens stumbled over what type of information was sought and from which department. A Public Information Officer was given 35 days from the date of receipt of the application in the Call Centre to provide information, which once procured was sent to the applicant directly and to the Call Centre.

Mr Choudhary mentioned that an RTI applicant was provided the requested information by the Call Centre by phone, in addition to receiving the same by post from the Public Information Officer, as a measure to assist those applicants who may be illiterate. An applicant who was dissatisfied with the information received could contact the Call Centre by phone and this formed the first appeal, which was sent across to the first appellate authority in the same manner as the RTI application was in the first place. An RTI applicant was communicated the results on the first appeal by the first appellate authority as well as by the Call Centre. Further, a second appeal could be filed to the State Information Commission through the Call Centre. He stated that both the first and the second appeals had the requisite charges of INR 10 per facilitation. Several advantages accrued to the government and citizens in availing the Jaankari service. In particular, he pointed out that an RTI application could be filed effortlessly through a phone call, with commuting costs normally involved reduced to a minimum, citizens' handicap arising out of linguistic variations could be overcome by necessary screening and handholding by Call Centre executives and transparency in governance and efficiency in public service delivery could be achieved through a mechanism whereby an applicant could lodge a complaint against the Jaankari service itself, if any, which would be documented by the government for research purposes.

Between January 2007 and November 2010, the Jaankari Call Centre had received 17404 petitions, 9410 first appeals, 5460 second appeals and had provided answers to 34158 queries and 2028 other calls, he noted, and not surprisingly the Jaankari service had been adjudged the best e-Governance initiative by the Government of India in 2009. His presentation concluded with a film on Jaankari which aroused great interest amongst the audience and found a mention in the Himalayan Times the following day.

The floor was then opened to questions from the audience.

Questions and Answers

In response to a clarification sought by Mr Ishwari Prasad Poudyal, Joint Secretary and Spokesperson, Commission for the Investigation of Abuse of Authority (CIAA), Nepal, on how an effective knowledge management system could bring about a change in disseminating information, Mr Ahsan Iqbal mentioned that oftentimes, several departments within a Ministry in Pakistan were unaware that they were working on the same project which led to information mismanagement. The need of the hour, therefore, was to have an orderly database in place, which could facilitate the process of disseminating information brought about through an effective knowledge management system within the government.

On a question that was raised by Mr Rishiram Ghimire, a participant from the civil society, about

whether there was a separate committee to look into classification of information in Nepal, Mr Sushil Ghimire held that there was no such committee yet and that according to the RTI Regulation, it was the responsibility of the National Information Commission to set up such a committee.

Then, Mr Yek Raj Pathak, National News Agency, Nepal, had a couple of questions for Mr Sushil Ghimire on the number of RTI applications that were filed and responded to, since the implementation of the RTI Act, and whether a nodal agency to monitor the Act's implementation would be established in the near future. In response, Mr Ghimire mentioned that there was no provision in the RTI Act for a nodal agency and that the Ministry of Information and Communications was not a line agency and had technically not been assigned any responsibility to monitor the implementation of the RTI Act. He noted that the budgetary allocation for the National Information Commission was channelized through the Ministry of Information and Communications and that this process served as a link between the two. He stated that probably the Chief Secretary, Mr Madhav P. Ghimire's contention that a nodal agency for RTI would be set up in the Office of the Prime Minister and Cabinet Secretariat (OPMCS) might be worth pursuing since the OPMCS coordinated the activities of various ministries which had overlapping concerns with the RTI.

The next query was addressed to Mr A. K. Choudhary by a participant on how a hi-tech system such as the Jaankari Call Centre could reach out to a largely illiterate population in Bihar. In response, he mentioned that even the most illiterate person was capable of filing an RTI application through a telephone call and that the Call Centre staff had been trained to provide the necessary assistance to the poor and illiterate people in processing their applications and receiving the requested information. He also pointed out that the hi-tech component of the system was managed by the government.

In response to a query raised by Mr Shiva Lamsal, General Secretary, Nepal Press Union, on whether the RTI Act could be effectively implemented in Nepal in a scenario where the public authorities were averse to disclosing information, Mr Sushil Ghimire held that those citizens who were not provided information by information officers or were not satisfied with the information provided by public bodies could lodge a complaint with the National Information Commission.

To a question raised by Mr Krishna Sarbahari, freelance journalist, Nepal, on the number of calls received at the Jaankari Call Centre and whether, given the linguistic diversity in Bihar, the information that was sought was provided in the language understood by the RTI applicant, Mr Choudhary mentioned that in 2010, out of the 110000 RTI applications that were received in Bihar, 38000 arose through the Jaankari Call Centre which attested to its tremendous popularity in the state. He also clarified that although an applicant could register a complaint in a language that was known to her, yet the application was written out in Hindi.

In response to queries raised on whether the Jaankari Call Centre had helped the intended beneficiaries and the attitude of the public to this service in Bihar, Mr Choudhary mentioned that people from remote parts of the state who were unable to even formulate a question had taken advantage of this service and that the streamlining of the application and information dissemination process had appealed to people, public information officers and appellate authorities alike.

This was followed by a question by Mr Rudra Pangen, journalist, Himalayan Times to Mr Sushil Ghimire on the plight of the journalists in Nepal who were denied information by the information officers and whose concerns were not redressed by public authorities. To this, Mr Ghimire replied stating that though the RTI Act directed an information officer to readily provide the information that was sought, yet it was important for the information seekers to take cognizance of the problems faced by the information officers in disseminating information.

With this, the session came to a close.

II.5 RTI in Nepal: Constitutional and Legal Issues
Megha Malhar Convention Hall, 3.30 pm – 5.30 pm
Hotel Soaltee Crowne Plaza

Chair: Hon'ble Nilambar Acharya, Chair, Constitutional Committee, Constituent Assembly, Nepal

Speakers: Bipin Adhikari, Constitutional lawyer, Nepal; Tanka Aryal, General Secretary, Citizens' Campaign for Right to Information (CCRI), Nepal; Rohan Edrisinha, Constitutional expert, Sri Lanka; and Radheshyam Adhikari, Constituent Assembly (CA) Member, Nepal

The session was set off with a presentation by Mr Bipin Adhikari, Constitutional lawyer, Nepal, on 'RTI under the Draft Constitution 2011'. He mentioned that the 1990 Constitution which explicitly guaranteed the right to information opened up a new discourse on fundamental rights in Nepal. Several landmark judgments by the Supreme Court post 1990 provided it the opportunity to dilate the import of the RTI in Nepal's context and set the stage for the manner in which this right would be perceived by the judiciary in the future. He then briefly discussed some of these important judgments.

The first case that triggered further jurisprudence on the RTI was one where a petitioner went to the Supreme Court requesting for information on the membership and profile of political parties registered with the Election Commission. While the Court adjudged that the petitioner had the right under Article 27 of the Constitution to seek this information, yet it maintained that the information commission could assist only in such cases where there was availability of a database.

The next judgment that provided a shot in the arm to the RTI movement in the country was one where the Supreme Court had held that confidential information such as whether the ambassadors were appointed by the King on his discretion or on the aid and advice of the Council of Ministers, could be sought by an information seeker if the government had decided to bring this information out in the public domain. In *Bal Krishna Neupane v Prime Minister Girija Prasad Koirala*, popularly known as the Tanakpur case, the Supreme Court foiled the then Prime Minister Girija Prasad Koirala's attempt to bypass a constitutional stipulation that required any agreement signed by the government to be ratified by two-thirds majority of the Parliament. The Supreme Court had ruled that the Tanakpur agreement between India and Nepal involved a division of responsibilities and a liability on the part of the contracting parties which accorded it the status of a 'treaty', and not an 'understanding', as had been alleged by Mr Koirala. Therefore, since the Tanakpur agreement was a treaty, it came under the purview of the RTI Act and was also subject to the Parliamentary ratification process.

Again, he noted that the Supreme Court judgment in the Arun-3 Hydropower Project in Nepal was a watershed for the right to information movement in the country. The Court had issued guidelines, in the absence of a suitable legislation for the implementation of the RTI and directed the Finance Ministry to release information on queries sought by a petitioner on this project. The aforementioned judgements illustrate well the role of the Supreme Court in expanding the ambit of the RTI.

Mr Adhikari then moved the focus of his presentation to examining the right to information under the draft Constitution wherein Article 12 stipulated that "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.” He noted that this provision was akin to Article 27 of the 2007 Interim Constitution and that the explanatory memorandum attached to Article 12 guaranteed the RTI to every citizen and not to every person and as such, citizens could access only such information which was available with the functionaries of the state. The proviso to Article 12 however qualified that information which related to national security, individual privacy, monetary secrecy, crime investigation and was of national importance could not be sought under this provision.

He pointed out that 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 right to information.

Drawing attention to the lacunae in the provision for the right to information under the draft Constitution, he held that this right was guaranteed only to citizens and that it applied only to information deemed to be of public importance and not to all information held by public authorities, regardless of whether or not it was deemed to be of public importance. He also found it problematic that it was for a public authority to assess whether information sought by an individual related to a matter of public importance.

He mentioned that a more robust alternative to the existing RTI provision under the draft Constitution could be found in Toby Mendel’s prescription which held that “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”.⁹ He concluded on this note.

Mr Tanka Aryal, General Secretary, Citizens’ Campaign for Right to Information (CCRI), Nepal, focused his presentation on the key features of the existing RTI Act 2007 in Nepal, its major legal shortcomings and plausible amendments to fortify this legislation.

Tracing the evolution of the RTI legislation across (and beyond) South Asia, he noted that only fourteen countries around the world had specific RTI laws by the early 1990s. Within South Asia, the RTI was legally and constitutionally guaranteed in Nepal and Pakistan, legally ensured in India and Bangladesh, constitutionally recognized in Bhutan, Maldives and Afghanistan and neither legally nor constitutionally mandated in Sri Lanka.

He then dwelled on the main provisions of the RTI Act, notably, the wide ambit of the term ‘public body’ that encompassed not only state institutions but also nongovernmental organizations and political parties, obligation of public bodies to proactively disclose and update information, penalties imposed on public bodies and information officers on grounds of refusal to provide, delay in providing or providing erroneous information and the subsequent compensation to those RTI applicants who were subjected to losses owing to such lapses, the setting up of a National Information Commission to implement the RTI Act and protection of whistleblowers under Section 29 of the Act.

He identified the extensive list of information that had been exempted from disclosure under Section 3 (3) of the RTI Act, prevalence of laws which were inconsistent with the RTI Act such as the Civil Service Rules 2065 and the Public Service Commission Act 2066, amongst others and Section 37 that heightened the ambiguity in deciphering the legal status of the provisions in the RTI Act which contravened other prevalent laws, as the major legal impediments to its functioning.¹⁰ In particular, he held that the manner in which information was classified was incongruous with the notion of openness

in governance.

In conclusion, he suggested that an independent role for the National Information Commission should be carved out, the clause requiring an information seeker to assign reasons for his query should be obliterated, overriding effect of the RTI Act over other laws should be legally mandated and a nodal agency to implement the RTI Act should be established.

Mr Rohan Edrisinha, Constitutional expert, Sri Lanka, then took the floor and apprised the audience of the constitutional and legal bottlenecks that stymied the efforts towards the establishment of an effective RTI regime in Sri Lanka and Nepal. He mentioned that the constitutional and legal architecture of a country had a bearing on the effective implementation of the RTI legislation. For instance, the constitutional apparatus in Sri Lanka had invested the Executive President with authoritarian powers that meant that the executive would fall outside the RTI radar. He considered that this vital interconnection between the overall constitutional structure and the efficacy of the RTI movement could be factored into while drafting a new constitution for Nepal.

Taking cognizance of contextual polarities in the political situation in Sri Lanka and Nepal, he however noted that politicization of key state institutions stigmatized the RTI initiative in these countries in an equal measure. The judiciary in Sri Lanka, for example, which functioned as the Executive's stooge was predominantly unsympathetic to people's grievances. Also, the Establishment Code in Sri Lanka, a code of ethics for civil servants, sought to bring in more opaqueness in governance.

He mentioned that the World Bank Report on the implementation of the RTI in Nepal had importantly pointed to the dilemmas involved in drawing a line between engendering openness and maintaining confidentiality while disseminating information; a concern that was of much relevance to Sri Lanka.¹¹ In setting out a limit on the information that could not be disclosed, he suggested that 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 right to information provision in its draft Constitution.

He then informed the participants that since 1996 there had been discussions on the need for an RTI legislation in Sri Lanka and that several drafts had been prepared by the government in the process. However, lengthy non disclosure clauses and absence of an independent commission to monitor and implement the legislation had compelled the civil society in Sri Lanka to acquiesce with a situation of not having an RTI law instead of having an ineffective legislation.

Summing up his presentation, Mr Edrisinha recounted that his interaction with Maoist leaders in Nepal had revealed that they were aggrieved with the conventional Westminster system of governance. Since the RTI movement did not conform to this tradition, he hoped that in Sri Lanka and Nepal, a grassroots based RTI initiative could emerge as an alternative way of empowering people.

Mr Radheshyam Adhikari, Constituent Assembly (CA) Member, Nepal, commenced his presentation by taking note of the role played by the judiciary in providing a fillip to the RTI movement in the country. He noted that the RTI was accorded constitutional recognition in 1990 and had been legally guaranteed through the enactment of the RTI Act in 2007. On his view, bureaucratic apathy and lack of political will impeded the effective implementation of the Act; as well, Article 12 under the draft Constitution had narrowed down the scope of the RTI in Nepal. To bolster the RTI initiative in the country, he recommended that freedom of the media and independence of the judiciary should be ensured. He also noted that Bihar's Jaankari service, the call-in request system for RTI, had set a precedent that could be emulated by Nepal. With this, he brought his presentation to a close.

The floor was then opened to questions from the participants.

Questions and Answers

In response to a question that was raised by a participant at the Convention on the specific factors that precluded any substantive involvement of the media and civil society in the RTI movement in Sri Lanka, Mr Rohan Edrisinha mentioned that although people were aware of the merits of the RTI and that the judiciary had read into the freedom of speech and expression to provide a thrust to this right, yet the dilemma in Sri Lanka was more of a strategic one. He pointed out that the authoritarian political system in Sri Lanka which focused largely on national security issues had been unsympathetic towards the RTI initiative. Therefore, the dilemma that confronted civil society organizations and academics in Sri Lanka was whether to introduce the RTI legislation after the political context had undergone a change or to bring in this law within the present scenario. He noted that currently there had been an emerging consensus within Sri Lanka to first set the stage for the introduction of this legislation by learning from the experiences of India and other countries of South Asia. He contended that the RTI law might fall short of international standards if brought in at this juncture.

The Chair of the session, Mr Nilambar Acharya, Chair, Constitutional Committee, Constituent Assembly, mentioned that although the RTI Act was introduced in Nepal in 2007, yet its implementation was fraught with difficulties. He held that the Constitutional Committee had been grappling with several concerns of importance to Nepal in drafting the new Constitution and was in the process of taking up new suggestions too. He considered the RTI as a potent tool to nab corruption, foster democracy and empower people and hoped that the Convention would provide a fillip to the drive towards the RTI in the country. With this, the session concluded.

III. Tuesday, March 29, 2011

III.1 Building Coalitions for RTI – Civil Society, Local Governments and

Political Parties

Megha Malhar Convention Hall, 9.00 am – 11.30 am

Hotel Soaltee Crowne Plaza

Chair: Mohamed Latheef, Human Rights Ambassador, the Maldives

Speakers: Basu Dev Neupane, Development Consultant, Nepal; Shamsul Bari, Chairman, Research Initiatives, Bangladesh; Paikiasothy Saravanamuttu, Director, Centre for Policy Alternatives, Sri Lanka; Hem Raj Lamichhane, Executive General Secretary of the Association of District Development Committees of Nepal; Sanjeeb Ghimire, Freedom Forum, Nepal; and Sudip Pathak, Chairman, Human Rights Organization of Nepal

Mr Basu Dev Neupane, Development Consultant, Nepal, commenced the session with an address on 'Role of Citizens in Promoting Right to Information in Nepal' and held that the RTI was a powerful tool to enable people's empowerment and foster democracy. A rapid survey that had been conducted by Mr Neupane and his team in 2011 in the rural and urban areas of five development regions of Nepal revealed that nearly half of the respondents perceived of the RTI as a freedom of expression and that

only around 7.7 percent thought of it as a right to keep a tab on the work of public agencies.¹² Also, the survey showed that nearly half of the respondents felt that the government was principally responsible for promoting the RTI and that a mere 10 percent of the respondents ascribed this responsibility to civil society organizations in Nepal. Again, one fourth of the respondents were unaware of their potential role as citizens in promoting the RTI and nearly half of the respondents attributed their role in promoting RTI to consulting the media to access information. On awareness levels, 47 percent of the respondents indicated that they had not heard about the Act.

He identified low awareness levels amongst citizenry, weak institutional capacity, inefficient records management and the pervading culture of secrecy in the bureaucracy as the main impediments to the implementation of the RTI Act. He concluded by suggesting that active government involvement, documentation and dissemination of best practices in the implementation of the RTI, strengthening of existing networks among civil society organizations to raise awareness levels on the RTI, social auditing and media mobilization, amongst others, could provide a spur to the RTI initiative in Nepal.

Mr Shamsul Bari, Chairman, Research Initiatives, Bangladesh, then apprised the audience of the initiatives undertaken in Bangladesh to establish an effective RTI regime. He mentioned that the RTI Act, 2009 had potentially been the most powerful law passed by the Bangladesh Parliament to establish people's sovereignty over the State. Among the three sides of an RTI regime – the information seekers (demand side), the information providers (supply side) and the information commission (dispute resolution side), he noted that the latter had been the easiest to set up and operationalize. He held that beginning February 2011, the Information Commission in Bangladesh had begun hearing grievances of information seekers and though not a large number of complaints had been received (35 according to the Chief Information Commissioner), it had nevertheless marked the beginning of the Commission's experience in this field. He however pointed out that the Chief Information Commissioner's estimate of 29,000 applications for information received since 2010 and more than one million Takas being deposited in the Bangladesh treasury as a result could not be effectively translated into demand for information. He surmised that the type of information sought by people according to the aforementioned estimate could not be ascribed to transparency or corruption related issues, since these concerns did not have the potential to generate revenue. It was probably information in the open realm, which could have been obtained without recourse to the RTI that contributed to such a large number of such applications, he noted.

He then turned the focus of his presentation to examining the role of the demand side – the information seekers – in providing a thrust to the RTI movement in Bangladesh. He admitted that the RTI had a long way to go before it could produce tangible benefits for society at large in Bangladesh and expressed concern over the direction that the RTI movement was heading towards. While he recognized that people were the key players in providing a fillip to the RTI initiative, he did not see much enthusiasm amongst the civil society, media, the educated classes and individual RTI activists, who were the initial drivers of this process, to effectively steer the application of the RTI law forward. He maintained that the role of the government and the information commission would be rather limited if the demand side remained inactive. For those in the media, the term 'information' held different ramifications than what it was earlier understood to be after the enactment of the RTI Act in Bangladesh. Some of them preferred obtaining information through traditional means, that is, through personal relationships and so forth than taking recourse to the RTI law. The latter, they held, involved an arduous and time consuming process, with a probability of leading to a confrontation with authorities at times. He noted that Bangladesh could learn from the Indian experience where the situation on this front had improved significantly – an area that could thereby benefit from regional cooperation. He was of the view that the civil society, educated classes and concerned citizens were largely unaware of the RTI legislation and those who knew of it were skeptical of the efficacy of the

legal system in the country, thereby preferring other means to seek information. He pointed out that his interaction with students from key public universities revealed that fear of retaliation by university authorities deterred them from subscribing to this law.

The nongovernmental organizations in Bangladesh too were unenthusiastic about the RTI Act plausibly because they were also susceptible to the RTI scrutiny as they received/used foreign or public funding. He mentioned that some of the nongovernmental organizations were even wary of deploying the RTI mechanism against governmental authorities so as not to be inflicted with retaliatory measures by them under the same law. However, he held that it might be erroneous to conclude that nongovernmental organizations had played a negligible role in carrying forward the RTI initiative. For instance, Research Initiatives, Bangladesh (RIB) had launched a yearlong experimental programme beginning 2010 which aimed at exploring the use of RTI to ameliorate the social and economic conditions of five of the most marginalized communities of the country (that primarily belonged to the *dalit* or socially excluded category).¹³

Mr Bari mentioned that the members of these communities were sensitized to the RTI Act by animators chosen from within these communities, who were in turn trained by RIB on the basics of the RTI. The groups then embarked on identification of issues on which to seek information. After this, the other challenging task for the RIB and the animators was to instill confidence amongst the members of the communities to seek information by making them cognizant of the safeguards prevalent in the RTI law to protect their interests against the wrath of authorities from whom information was sought. To facilitate this process, a booklet that contained an easy explanation of the provisions of the RTI Act was prepared by the RIB, which was interestingly utilized not only by the members of these communities but also by government officials to acquaint themselves with this law. He pointed out that of the queries raised by the members of these communities, 39.6 percent pertained to the government's safety net programmes for the poor, 12.1 percent related to issues of government-owned land and how it was distributed, 12.1 percent centred around governmental health services and 7.7 percent focused on scholarships provided by the government for students from the economically backward classes amongst others. Over a year later it was found that over 230 applications for information were submitted to the *upazila* (sub-district level), 65 appeals were submitted to the higher authorities at the district level and 15 complaints were submitted to the information commission (the majority of the complaints dealt with by the information commission till then originated from RIB supported groups). He noted that such figures may not be impressive in a populous country like Bangladesh, yet its significance could not be underestimated because it showed the efficacy of the RTI Act in empowering the poor. This exercise also generated a great deal of interest among other communities which became evident when the animators (who were part of the programme) were invited by other communities to train them and assist with their petitions.

On the supply side, he mentioned that the information commission was required to play a pivotal role to ensure that applications, appeals and complaints on information sought were responded to by the respective authorities. However, the RIB's experience on this front had been that the designated information officers (DIOs) in various public offices were not fully conversant with the aims, objectives and processes of the RTI. He noted that while much needed to be accomplished to provide a spur to the RTI movement in Bangladesh, yet the initial inertia on the part of the government to reveal information was slackening. He concluded his presentation by recommending that greater awareness on the RTI among people and public authorities, an independent and neutral information commission that established norms and standards to govern its functioning, efficient information management and a proactive civil society and bureaucracy could help steer ahead the drive towards the RTI in Bangladesh.

Then, Mr Paikiasothy Saravanamuttu, Director, Centre for Policy Alternatives, Sri Lanka informed the audience that Sri Lanka had come close to enacting the RTI Act in 2003 when representatives from the civil society, media and political parties had provided a spur to draft a law in this regard. However, the Parliament was dissolved before the draft Bill could be placed before the Cabinet. Ever since, the Executive in Sri Lanka had been apathetic towards an RTI legislation and its relationship with civil society organizations that worked on issues related to governance, accountability and human rights had steadily deteriorated. He pointed out that presently in Sri Lanka it was ironical that though the government had adequate information about the functioning of certain civil society organizations, yet it engaged in denigrating them on grounds of not being adequately transparent and accountable. Clearly, access to information was not the bone of contention.

He apprised the participants that Sri Lanka had emerged out of a three decades old ethnic conflict and that presently the country was nested in a post war situation. The Sri Lankan government was conversant with the fact that the war was waged without any witnesses except those chosen by the government and it insisted that minimal casualties were incurred during the war. Therefore, the moot point that arose was whether it was possible to have reconciliation without accountability, and access to information in this sense assumed tremendous significance in Sri Lanka. To look into this issue, he mentioned that the UN Secretary General had established a panel to inquire into the allegations of war crimes committed by the militant outfit, Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan government.

Mr Saravanamuttu then highlighted that a key component of the RTI was to empower citizens. The political culture in many South Asian countries, including Sri Lanka, was however undergirded on a patron-client relationship between the authorities and the governed. While on the one hand it was important for governments to treat citizens as voters too, on the other there was a growing perception amongst citizens to be treated as partners of the state in the governance process. Therefore, he suggested that the political culture would need to be refurbished in order to strengthen the RTI regime in the South Asian countries.

Next, he contended that it was erroneous to expect political parties in countries across South Asia to behave like democratic outfits when they wielded power, primarily because party leaders and political functionaries possessed little experience of working in a democratic organization. Hence the need to infuse the ethos of intra-party democracy by promulgating a culture of right to information within political parties could be of significance to provide a sense of what was required at the national level in these countries. In this regard, he noted that the necessity for a more meaningful RTI regime must also take into cognizance the freedom of association and given the security concern in most of the South Asian countries, restrictions on information that could be released might assume importance.

Another area that required attention, specifically in Sri Lanka, was the need to usher in greater grassroots participation in governance. In Sri Lanka, local governments were subsumed by the Central government in a move to keep a tab on the functioning of the lowest levels of governance. He held that though the Central government in Sri Lanka had recently attempted to create Jana Sabhas to oversee developmental work at the local levels, yet these institutions would at best function as creatures of the Centre. He concluded by suggesting that any meaningful coalition to bolster the RTI initiative across South Asia would necessitate enhanced citizens' participation at the local level.

This was followed by a presentation by Mr Hem Raj Lamichhane, Executive General Secretary of the Association of District Development Committees of Nepal, on the 'Role of Local Government and Right to Information in Nepal'. He highlighted that local democracy could flourish effectively by building norms of trust between the local authorities and the community, training and transferring resources to

the members of the community so as to enable them to be part of the local governance processes. After the restoration of democracy in Nepal in 1990, the present structure of local governance was put in place in line with the Local Self Governance Act 1999. He mentioned that Nepal had a two-tier system of local governance, with 3915 Village Development Committees and 58 Municipalities at the lowest level and 75 District Development Committees above this level. All civil servants who headed the various tiers of the local governance structures were appointed by and were solely dependent for grants upon the Central government and therefore owed their allegiance to it. This translated into lack of accountability and responsibility towards people at the lowest level of governance. Although the 2007 Interim Constitution carried an explicit provision to hold local elections that could be found at Article 139 (1), the Government of Nepal had not conducted local elections since July 2002 as a result of which there had been no elected representatives in the local government.

He alluded to the Local Governance and Community Development Programme in Nepal, a donor funded programme for the period 2008 – 2012 that had been executed by the Ministry of Local Development. This programme, which was implemented by community organizations and nongovernmental organizations identified by the local bodies, sought to engender grassroots participation in local governance and develop the institutional capacity of local governments for effective service delivery. Mr Lamichhane drew home the point that good governance and the right to information were driven by a similar commitment to bringing in openness and transparency in governance. He made a reference to certain provisions in the Local Self Governance Act 1999 that delineated the attempt made by local bodies to comply with the provisions of the RTI Act in Nepal. Some of these required all Village Development Committees, District Development Committees and Municipalities to prepare periodic and annual plans in a participatory manner, the information on selected projects to be made public among the inhabitants of the village, municipal and district levels through various means and the setting up of an information and records centre in each Municipality and District Development Committee to maintain and disseminate information, amongst others.

He then brought the attention of the participants to the Local Bodies grants procedure 2010 that carries provisions which ensures that grants are allocated to the Village Development Committees, Municipalities and District Development Committees on the basis of conforming to good governance and transparency measures.¹⁴ For the fiscal year 2010/2011, four Municipalities (including Kathmandu Metropolitan City) out of 58 and 11 District Development Committees out of 75 were not allocated their budgets under the performance based grant system (the Ministry of Local Development assesses the performance of local bodies against certain minimum conditions and performance measures). He also mentioned that in 2010 – 2011, only 5.13 percent of the national budget was assigned to the local governments. He then presented an interesting account of how local governance practices such as publishing of the audit and budget reports in local and national newspapers, recruitment of an information officer at the district and municipal levels to hear grievances and so forth were in tune with the provisions of the RTI Act 2007 in Nepal. He summed up his presentation by recommending that capacity gaps in the functioning of local bodies should be plugged, information centres at various local governance levels should be better equipped and awareness levels on the RTI amongst the grassroots and representatives of local government and nongovernmental organizations should be raised, to usher in greater transparency and accountability in local governance.

Mr Sanjeeb Ghimire, Freedom Forum, Nepal, then examined the implications of the RTI for reforming political parties in Nepal. He mentioned that though political parties in Nepal lacked awareness of the governance process and did not subscribe to a tradition of intra-party democracy, yet the Constituent Assembly elections 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. He then dwelled at length on the various legislative arrangements in Nepal, such as the 2007 Interim Constitution, the Political Party Act 2002, the Election Commission Act 2007 and the RTI Act 2007 that provided distinct guidelines for routine disclosure of information by political parties. He identified a hierarchical, leader-centric and centralized party structure, non-transparent financing of election and non-election party expenses, absence of a norm to choose party leaders, lack of a formal mechanism to disclose information, and an overbearing culture of secrecy, amongst others, as the main challenges faced by political parties to subscribe to the principles upheld by good governance and the RTI. In conclusion, he ascribed roles to various stakeholders such as the government, civil society, media, the National Information Commission and so forth to democratize political parties. As examples, he suggested that political parties could opt for internal elections to choose their candidates in a transparent manner, the government could provide public funding to political parties and assist them in managing their records, the civil society could raise awareness about intra-party democracy and monitor the working of political parties to ensure transparency in their functioning and the National Information Commission could draw up information disclosure guidelines for political parties in collaboration with the Election Commission, amongst others.

This was followed by a presentation by Mr Sudip Pathak, Chairman, Human Rights Organization of Nepal, who drew a sketch of the RTI landscape in Nepal, identified the lacunae in the implementation of the RTI Act and suggested measures to fortify the access to information initiative. He set off his presentation by examining the enforcement of the RTI law at the grassroots and pointed out that local government elections had not taken place since 2002. He held that it was imperative to build a culture of openness and transparency in governance whereby, for instance, political parties and local bodies would need to be made accountable in their functioning to people. To strengthen the implementation of the RTI Act he recommended the need for greater awareness among citizens about this law, increased grassroots participation in governance and active involvement of nongovernmental organizations.

After his presentation, the panelists took questions from the audience.

Questions and Answers

The Chair, Mr Mohamed Latheef, Human Rights Ambassador, the Maldives, invited Muhammad Zamir to respond to the queries raised by Mr Shamsul Bari, before questions could be taken from the participants. Mr Zamir explained that for a populous country like Bangladesh, his estimate of 29,000 RTI applications was far from impressive. He pointed out that from Narayanganj district alone around 9,500 RTI applications were received, but on a closer scrutiny it was found that the queries pertained to front desk questions on land records. So these applications along with others of such a nature were obliterated from the final count of 29,000 applications. 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. He noted that until March 2011, around 450 queries were unanswered and that out of less than 35 appeals that were placed, 27 had been heard.

Mr Richard Holloway, The World Bank, raised a query on the complete change in stance of the speakers in the present session that seemed cynical about the potential of the RTI in comparison with a more optimistic position adopted the previous day. This was followed by a question from Mr Ishwari Prasad Poudyal, Commission for Investigation of Abuse of Authority, Nepal, for Mr Shamsul Bari on the mechanisms that need to be deployed to generate enthusiasm among the civil society and local bodies to implement the RTI Act in Bangladesh. In response to both these questions, Mr Bari held that

he was specifically alluding to lack of enthusiasm among those who were expected to be at the forefront of the RTI drive in Bangladesh. Where the mandate of the RTI was applied at the grassroots, it yielded a positive response.

These included some of the prominent questions that were raised, after which the session came to a close.

III.2 RTI, Anti-Corruption and the Media *Megha Malhar Convention Hall, 11.45 am – 1.30 pm* *Hotel Soaltee Crowne Plaza*

Chair: Dharmendra Jha, Chairperson, Federation of Nepali Journalists (FNJ)

Speakers: Shekhar Singh, Convenor, National Campaign for People's Right to Information, India; Tenzing Lamsang, News Editor, Business Bhutan; Ahmed Bilal Mehboob, Executive Director, PILDAT, Pakistan; Pranav Bhattarai, Pro Public, Nepal; Yek Raj Pathak, National News Agency, Nepal; and Ram Krishna Regmi, Senior Journalist and Educator, Nepal

Mr Shekhar Singh, Convenor, National Campaign for People's Right to Information, India, commenced this session by adopting a sanguine disposition about the implementation of the RTI Act in India. He took cognizance of the fact that the execution of this legislation was fraught with difficulties, which even led to intimidation and murders of RTI activists. Yet, he considered it phenomenal that governments in Nepal, Bangladesh, Pakistan and India had brought out this law which sought to make them more accountable and transparent in their functioning. He noted that the RTI had a wide ambit and that it could be significantly deployed to untangle three distinct manifestations of lack of accountability and justice in most countries of South Asia – ineffective delivery and support system of the government, class oppression and corruption. He then illustrated three cases from rural and urban India, where the RTI was effectively deployed to explicate that the remit of the RTI was expansive. He however regarded these as interim success stories and held that justice could be reached only when the necessity to file an RTI application would seem redundant (since the system had begun functioning well). He summed up his presentation with a quote by an East African President that held 'when some people go hungry it is not food that is in short supply, it is justice'.

Mr Tenzing Lamsang, News Editor, Business Bhutan, then made a presentation on 'RTI, Anti-Corruption and the Media' with reference to Bhutan. While Bhutan is yet to have an RTI Act in place, he pointed out that as a journalist with the Indian Express from 2006-2008, he (probably the first Bhutanese reporter) had the opportunity to use the Indian RTI Act to seek information about the unpaid water and electricity bills of parliamentarians. He held that Bhutan's transition from a monarchy to a constitutional democracy post the first major democratic elections in March 2008, though a far sighted move by the leadership, did not evince much enthusiasm initially. This was partly because the South Asian experience with democracy had been sobering and also that Bhutan had performed well on the economic and political fronts under a monarchy. However, the functioning of democracy for the past three years had augured well for the country, and he specifically looked at its relevance for the media, the RTI movement and the anti-corruption drive.

The media in Bhutan was earlier defined by the state owned Bhutan Broadcasting Corporation TV and

radio channel, and the fairly independent but state owned national paper, Kuensel. Presently, as a consequence of the democratization process, there were 7 private papers including a business paper, 5 private radio stations, upcoming private news channels and so forth. This expansion of the media kick-started a process of demanding more information from public authorities as a right and not a favour. However, the bureaucracy continued to remain evasive in terms of providing information. Mr Lamsang mentioned that in the midst of this drive to seek information, he came across the draft RTI Bill that was brought out in the public fora for discussion. While parliamentarians and the public supported the draft RTI Bill, interestingly, the Public Policy Division (PPD) heads (the spokespersons of Ministries), dreaded this measure.

He pointed out that though the RTI Bill that was drafted by the judiciary in 2007 had been sent to the Ministry of Information and Communications for any revisions by the elected government, it had not yet materialized largely owing to bureaucratic apathy. However, this stance had only emboldened the media to push for the RTI Act and presently the government had been compelled to accept stakeholder consultation on the RTI. In the absence of the 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. This fearlessness among the media had a spillover effect on the people who had now started demanding services and information from public authorities rather than requesting for them. The government on its part used information technology to provide services online in a bid to cut down on red-tapism. The democratization wave in Bhutan was thereby setting the stage for the much awaited RTI legislation in the country.

He summed up his presentation by suggesting that media cooperation across the South Asian region could help in stifling corruption. To elucidate this, he cited the example of the collaboration between Business Bhutan and Malayala Manorama, a newspaper from the Indian state of Kerala, which uncovered a Bhutan lottery scam in Kerala that subsequently resulted in a Central Bureau of Investigation (CBI) inquiry into the matter.

This was followed by a presentation by Mr Ahmed Bilal Mehboob, Executive Director, PILDAT, Pakistan, who informed the audience that the RTI had not sparked off enthusiasm in Pakistan primarily because people were unaware of the import of this legislation. While half the population associated the RTI with freedom of the media, the rest of them thought it was of no consequence for the poor. However, on the basis of a study on the assessment of the quality of democracy undertaken by the Pakistan Institute of Legislative Development and Transparency (PILDAT) in 2011, he contended that Pakistan provided an ideal terrain for the RTI initiative to take roots. The study showed that weak governance and poor service delivery, corruption, citizens apathy towards democracy, inability of the media to get reliable information and an overworked judiciary saddled with the responsibility of extracting information from the government epitomized what democracy had come to mean in Pakistan. He concluded by suggesting that these findings showed that the RTI was essential to remedy what ailed Pakistan's democratic set up.

Mr Pranav Bhattarai, Pro Public, Nepal, then took the floor and made a presentation on the 'Anti-corruption Campaign through RTI' in the context of Nepal. He informed the audience that the 2010 Corruption Perception Index and the Global Competitiveness Index ranked Nepal 146 and 130 respectively, and that the World Bank's Worldwide Governance Indicators project described Nepal as being hit by a serious governance crisis. Briefly dwelling on the main reasons for corruption in Nepal, he mentioned that key state organs such as the Commission for the Investigation of the Abuse of Authority (CIAA) had no commissioners since 2006, the office of the Auditor General was without a Chief, the judiciary adopted an apathetic stance towards corruption, anti-corruption laws were poorly

enforced and the local bodies had no elected representatives.

He then brought the attention of the participants to how the RTI can be used as an effective tool to nab corruption. He elucidated that the RTI Act legally guaranteed access to information that made citizens aware of the prevalence of corruption in government, political parties and nongovernmental organizations and also provided protection to whistleblowers. However, weak political commitment, low levels of awareness on the RTI law, paucity of information campaigns and grassroots initiatives on the RTI, meager demand for transparency and accountability among citizens and the bureaucratic culture of secrecy stymied the efficacy of the RTI Act to curtail corruption. He held that nongovernmental organizations that had provided impetus to the RTI movement had been slow in effectively utilizing this legislation, in sensitizing people about it and shied away from treating it as an anticorruption tool. He ascribed this diffidence to the fact that nongovernmental organizations that were opaque in their functioning shuddered being brought under the RTI scanner through this legislation.

He maintained that the RTI Act strengthened the ability of the media to empower people through greater information dissemination that had at length led to infusing transparency in governance. He cited the example of the media's use of the RTI Act to bring to the fore misuse of funds by the Investigation Commission, which had been formed to inquire into Mr J.P. Joshi's (a local journalist) murder. However, the media in Nepal could have achieved much more had it grasped the real intent of the RTI Act, he noted. He concluded by prescribing key recommendations to civil society, media, government and development partners to fortify the RTI initiative in Nepal. Some of these included holding RTI awareness campaigns at the grassroots and national level, setting up RTI help desks in revenue departments, transport and public utility services offices so as to encourage people not to pay bribes and establishing a National RTI Helpline, amongst others.

This was followed by a presentation by Mr Yek Raj Pathak, National News Agency, Nepal, on the 'Role of Press in the Promotion of RTI'. At the outset, he mentioned that the right to information was a fundamental human right which had been implicitly guaranteed through the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966). In Nepal, the right had been guaranteed both in the Constitution since 1990 and by an Act of Parliament since 2007. The provisions of the RTI Act such as proactive disclosure and broad coverage of public agencies that were brought under the RTI scanner facilitated the media in accessing a wide array of information and placing it in the public domain. He however steered clear of the popular perception in Nepal that the RTI Act was available only to the media and stressed that the media primarily acted as a bridge between people and public agencies. The media could also play a vital role in promoting awareness on the RTI and reporting on corruption, people's grievances and cases where the RTI had been effectively implemented. In practice, however, 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. He then alluded to initiatives undertaken by the media in India, for instance, the column – Express initiatives – carried by the Indian Express that informed citizens about where the RTI had been successfully/unsuccessfully deployed, in an attempt to spur the media in Nepal to tread a similar trajectory.

Then, he apprised the audience of the constraints that impeded the media from taking recourse to the RTI Act, such as the bureaucratic culture of secrecy, poor records management, low awareness levels on the RTI and absence of information officers in public agencies, amongst others. He delineated key recommendations to be factored into by media houses, reporters, civil society organizations, public bodies, the National Information Commission and Universities to steer ahead the RTI initiative in

Nepal. Some of these included collaboration between media and civil society organizations to promote the RTI, more coverage on RTI related information by media, establishment of a nodal agency to implement the RTI Act, monitoring proactive disclosure by public agencies and adequate training of information officers.

Mr Ram Krishna Regmi, Senior Journalist and Educator, Nepal, then provided an insight into the socio-political context in Nepal which he held was not yet amenable to the drive towards the RTI. Importantly, in a scenario where people desisted from questioning authority and the bureaucracy donned the veil of secrecy, the media had been largely incapable of utilizing the RTI Act. He expressed concern over the absence of elected representatives at the local level and mentioned that any effort towards building an effective RTI regime in Nepal should begin at the grassroots. In conclusion, he attributed a vital role to the media in goading Central and local level public authorities to be accountable to people.

The floor was then opened to questions from the audience.

Questions and Answers

A couple of questions were raised by a participant for Mr Shekhar Singh – one on the amount of money that had been retrieved through utilizing the RTI mechanism to rein in corruption in India and the other about his assessment of Bihar's Jaankari service (the call-in request system for RTI). Alluding to the first query, Mr Singh mentioned that there had been no pan-India survey to examine what amount had been recovered on using the RTI Act to seize corruption. However, in some states, such as Andhra Pradesh, on extracting information through the RTI mechanism about the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act in 2010, INR 110 crores had been recovered. In another instance, where INR 200 crores had initially been utilized for a drought relief programme in Rajasthan, it was interestingly found that after an RTI application had been filed to seek information on the implementation of the same programme, its budget was slashed to INR 150 crores. On the Jaankari service, Mr Singh held that though this scheme had enabled people to file their RTI applications with ease, an aspect where the Government of Bihar had scored well, yet after this initial phase, the usual process of seeking information operated.

A query was then raised by Mr Kapil Shrestha, Human Rights activist, Nepal, for Mr Tenzing Lamsang, on whether Bhutan's experiment with democratization had been inclusive given that the Bhutanese government had indulged in harassment and expulsion of ethnic Nepali population who they regarded as a demographic and cultural threat. In response Mr Lamsang mentioned that the treatment meted out to the ethnic Nepalis beginning 1990s was condemnable and that he could not speak for the government's action since he represented the private media. He held that probably the Bhutanese government reacted as such owing to national security concerns. However, Bhutan's Parliament and Cabinet had accorded representation to Nepalis, he noted.

These were some of the prominent questions raised, after which this session came to a close.

III.3 Breakout Group Discussions on Defining Priorities

Various Rooms, Megha Malhar Convention Centre, 2.30 pm – 4.00 pm

Hotel Soaltee Crowne Plaza

The participants of the convention adjourned in groups to hold discussions on five thematic areas with

specific reference to Nepal – Role of National Information Commission; Role of Government in Implementing RTI; RTI in Nepal: Constitutional and Legal Issues; Building Coalitions for RTI – Civil Society, Local Governments and Political Parties; and RTI, Anti-Corruption and the Media.

III.4 Presentation of Findings by the Breakout Groups

Megha Malhar Convention Hall, 4.00 pm – 5.00 pm
Hotel Soaltee Crowne Plaza

The highlights of the discussions of the breakout groups are as under.¹⁵

Role of National Information Commission

- ❖ Make available in the public realm the functions, duties and powers of the National Information Commission through the print media.
- ❖ Set up a 'help desk' at the regional level to lend a spur to the implementation of the RTI.
- ❖ Raise awareness on the RTI in collaboration with various stakeholders at the regional and district levels. Establish mobile teams that provide on the spot information to people.
- ❖ Strengthen the National Information Commission's physical infrastructure and human resources through capacity building, training, and recruitment of additional staff.
- ❖ Facilitate journalists to secure the necessary information from public authorities and assist in tracking down the source in cases where the reporters held that a source refused to provide information.
- ❖ Uphold and prioritize humanitarian and welfare principles while disseminating information.
- ❖ Ensure uniformity in information and data provided by public bodies.
- ❖ Learn from best practices across countries on the implementation of the RTI.
- ❖ Adopt measures to penalize public authorities that deliberately provided erroneous information.
- ❖ Assess the impact of the flow of wrong information on people.
- ❖ Provide training on the RTI to nongovernmental organizations and insist on its adherence in their functioning.
- ❖ Brief the media on the initiatives undertaken by the National Information Commission to implement the RTI Act, preferably once a month.

Role of Government in Implementing RTI

- ❖ Recruitment, training and autonomy in functioning of information officers, starting from the

lowest tier of governance.

- ❖ Establish an agency invested with the responsibility of bringing out publications on RTI related issues.
- ❖ Amend legislations that contravene and lend ambiguity in deciphering the legal status of the provisions of the RTI Act.
- ❖ Emphasize on voluntary disclosure of information by governmental authorities.
- ❖ Propel the process of enacting a Privacy/Secrecy Act.
- ❖ Protect and provide incentives to whistleblowers within a government department.
- ❖ Provide a thrust to the initiative of establishing a nodal agency under the Office of the Prime Minister to implement the RTI Act.
- ❖ Devise a procedure to be followed by information officers in disseminating information.
- ❖ Impart training on the RTI to government officials.
- ❖ Exhort political parties to abide by the RTI Act.
- ❖ Information disclosure to be in consonance with benefitting not only the media but also the poor.

RTI in Nepal: Constitutional and Legal Issues

Constitutional Imperatives

- ❖ Preamble to the Constitution should guarantee the right to information.
- ❖ Constitution to contain provisions on exceptions to the right to information.
- ❖ The RTI to be guaranteed to individuals and not merely to citizens.
- ❖ The RTI to be ensured at all levels of the federal structure.

Legal Issues

- ❖ The gamut of the RTI to be broadened so as to enable information dissemination not only on grounds of public importance but also individual interest.
- ❖ The RTI Act to have an overriding effect over other laws.

- ❖ A nodal agency to implement the RTI Act to be legally mandated.
- ❖ Legal provision to ensure maintenance of a record of RTI applications filed and the information provided therein by public authorities.
- ❖ Classification of information to not exceed the limit prescribed by the Constitutional provision on exemptions from information disclosure.
- ❖ Autonomy of the National Information Commission and the oversight body to be legally ensured.

It was suggested that the initiative to take forward these constitutional and legal issues rested with the Constituent Assembly and the government; the Supreme Court, the National Information Commission and the legislature were required to interpret these provisions.

Building Coalitions for RTI – Civil Society, Local Governments and Political Parties

- ❖ Building coalitions among stakeholders was considered vital so as to enable the RTI to be a cardinal principle at all levels of governance, especially the grassroots.
- ❖ The coalition was expected to kick-start as a small group that was meant to be autonomous, non partisan and inclusive.
- ❖ The coalition was to act as a monitoring body to ensure the effective implementation of the RTI Act; it would deploy the Information, Education and Communication (IEC) mechanism to spread awareness on the RTI.
- ❖ The coalition would be required to create interlinkages with other institutions and organizations, and its remit was to extend to the grassroots.

RTI, Anti-Corruption and the Media

- ❖ Devise appropriate incentives for journalists working on the RTI.
- ❖ Print media to carry editorials and publicize achievements on RTI related issues.
- ❖ Media to conduct baseline surveys on awareness levels and implementation of the RTI Act.
- ❖ Public authorities engaging in intimidation of media persons to be liable to penal action.
- ❖ Media to play a proactive role in disseminating information on the RTI Act at the national, regional and local levels. Community radio could be employed as an effective mechanism to achieve this.
- ❖ Media to forge networks with civil society organizations in the drive towards anti-corruption.
- ❖ Periodic information disclosure by public agencies to be reviewed by the media.

III.5 Adoption of the Convention Declaration

Megha Malhar Convention Hall, 5.30 pm – 6.30 pm

Hotel Soaltee Crowne Plaza

The participants reconvened after the breakout group discussions for the adoption of the Kathmandu Declaration.¹⁶ The draft Declaration was read out by Mr Chiranjivi Kafle, Executive member, Freedom Forum, which was adopted after incorporating the suggestions brought forward by the participants at the convention.

III.6 Closing Ceremony

Megha Malhar Convention Hall, 6.45 pm – 7.30 pm
Hotel Soaltee Crowne Plaza

Panel: Chief Guest, Subas Chandra Nembang, Chairman, Constituent Assembly, Nepal; Susan Goldmark, Country Director, The World Bank; and Vinaya Kasajoo, Chief Information Commissioner, National Information Commission, Nepal

Mr Taranath Dahal, Chairperson, Freedom Forum, opened this session by providing an overview of the proceedings of the convention that brought forward insights of experts and stakeholders on the right to information. He informed the audience that a regional advisory group comprising of members from across South Asia had been constituted for the first time which met alongside the convention to share information and experiences about the efforts towards the RTI. He held that the Kathmandu Declaration, which emanated from the discussions at the convention, provided an impetus to the RTI initiative in Nepal.

Mr Vinaya Kasajoo, Chief Information Commissioner, National Information Commission, Nepal, mentioned that the deliberations at the convention catalyzed various stakeholders across South Asia – the government, National Information Commission, media and civil society organizations – to steer ahead the move towards access to information in their respective countries.

The Chief Guest, Mr Subas Chandra Nembang, Chairman, Constituent Assembly, Nepal, then addressed the audience and drew home the point that though the adoption of the Kathmandu Declaration had brought the convention to a close, yet it had set off a dynamic process to propel the effort towards a right to information regime in Nepal. He specifically agreed to consider the Convention's recommendations on how to treat RTI in Nepal's new Constitution as well as introducing an override provision in the RTI Act.

Mr Rajib Upadhyaya, Senior External Affairs Officer, The World Bank, Nepal, finally thanked all the participants for their contributions to the convention and mentioned that with the adoption of the Kathmandu Declaration, the convention had achieved what it had set out to.

Annex 1: List of Participants in Breakout Groups

Role of National Information Commission

1. Kasajoo, Vinaya, Chief Information Commissioner, Nepal
2. Jha, Dharmendra
3. Mishra, Bijaya Prasad
4. Yadav, Murali Prasad
5. Adhikari, Karuna
6. Saha, Dharendra Prasad
7. Dhungel, Ramesh
8. Adhikari, Hari Binod
9. Dahal, Ramji Dahal
10. Kuinkel, Rajan
11. Lamsal, Hom
12. Swanr, Manmohan

Role of Government in Implementing RTI

1. Bhandari, Kebal, Secretary, National Women's Commission
2. Ghimire, Balkrishna, Assistant Secretary, National Information Commission, Nepal
3. Tiwari, Puruhottam Prasad, Under Secretary, Ministry of Science and Technology, Nepal
4. Bhandari, Lok Bahadur, Section Officer, Office of the Vice President, Nepal
5. Basnet, Dan Dhwaj, Under Secretary, National Vigilance Centre, Nepal
6. Pokharel, Sudeb Kumar, Section Officer, National Vigilance Centre, Nepal
7. Niraula, Pradip Kumar, Under Secretary, Ministry of Environment, Nepal
8. Nepal, Rajendra, Deputy Training Chief, Judicial Service Training Centre, Nepal
9. Acharya, Diwas, Under Secretary, National Information Commission, Nepal
10. Gyawali, Min Prasad, Under Secretary, National Vigilance Centre, Nepal
11. Dhungana, Sher Bahadur, Under Secretary, National Vigilance Centre, Nepal
12. Panta, Roshan Nath, National Vigilance Centre, Nepal
13. Prajapati, Kedarman, Senior Division Engineer, National Vigilance Centre, Nepal
14. Subedi, Gyanraj, Under Secretary, National Information Commission, Nepal

RTI in Nepal: Constitutional and Legal Issues

1. Adhikari, Bipin
2. Ghimire, Gopal Krishna
3. Aryal, Tanka
4. Bhandari, Sabita
5. Ghimire, Rishi Ram
6. Pant, Roshan N.
7. Poudel, Lila Mani
8. Nepal, Rajendra
9. Pathak, Tilak

Building Coalitions for RTI: Civil Society, Local Governments and Political Parties

1. Neupane, Basu Dev, Development Consultant, Nepal
2. Shrestha, Kapil, Human Rights Activist, Nepal
3. Lamsal, Basanta, Development Consultant, Nepal
4. Lamichhane, Hem Raj, Acting General Secretary, ADDCN
5. Acharya, Sanat, Secretary, Freedom Forum
6. Sapkota, Bed Prasad, Development Professional, Nepal
7. Sapkota, Keshab Prasad,, Development Professional , Nepal

RTI, Anti-Corruption and the Media

1. Pathak, Yek Raj
2. Gaire, Jhapendra
3. Bagchand, Umid
4. Aryal, Upendra
5. Paudel, Pashupati
6. Nepali, Mohan
7. Thapa, Trishna
8. Vishwakarma, Binod K.
9. Rijal, Asmita
10. Luitel, Gamala
11. Paudel, Sushma
12. Paudel, Rishi Ram
13. Bhutel, Dinesh
14. Sarbahari, Krishna Raj
15. Dahal, Lokendra P.
16. Shrestha, Raju
17. Kopila, Chhabilal
18. Magar, Surendra
19. Ghorasaini, Gokul
20. Sah, Laxmi
21. Ranabhat, Madhav
22. Pokharel, Gokul
23. Khadka, Kedar
24. Bhattra, Pranav
25. Ranjit, Raj Kaji
26. Paudel, Tulsi P.

Annex II: Convention Participants

S.N	Name	Affiliation
1.	Aditya Man Shrestha	NSRC
2.	Agni Kharel	CA Member
3.	Akkal Kumar	Sagarmatha TV
4.	Aneeta Dahal	
5.	Anil Pariyar	Radio Kantipur
6.	Anirudra Neupane	Freedom Forum
7.	Anup Sharma	
8.	Archana Adhikari	
9.	Arun Poudel	US Embassy
10.	Ashok Bikram Jairu	NNSWA
11.	Asita Regmee	KCC
12.	Asmita Rijal	KCC
13.	Avilok Devkota	Digo Paribartan Nepal
14.	Babita Basnet	Sancharika Chairperson
15.	Badri Sigdel	Nepal Press Union
16.	Bal Krishna Ghimire	NIC
17.	Balaram Dahal	CCRI
18.	Basanta Lamsal	VDRC Nepal
19.	Bashu Pandey	Nepal Bar Association
20.	Basu Dev Neupane	Paper Presenter
21.	Bed Prasad Sapkota	SamuhikAbhiyan
22.	Bharat Bdr Khadka	ADDCN
23.	Bharat Khadka	Journalist
24.	Bhaskar Ojha	Nagarik Daily
25.	Bhola Paswan	Samata
26.	Bijay Kumar Mishra	TU
27.	Bijaya Mani Paudel	
28.	Bin Kumar Biswokarma	Freedom Forum
29.	Binod Bhattarai	Himal Association
30.	Binod K. Vishorakarma	HURFON
31.	Bishnu Hari Paudyal	Samuhik Abhiyan
32.	Bishnu Pukar Shrestha	CHAURAST, Nepal
33.	Bishnu Sharma	Freedom Forum
34.	Bishnu Sharma	Freedom Forum
35.	Bonod K.C	MOGA
36.	Chandra Kishwor Jha	Journalist
37.	Chandra P Rijal	
38.	Chandra Prava Upadhaya	NTV
39.	Charan Prasai	Human Right Activist
40.	Chhabi Lal Kopila	Freelancer
41.	Chiranjibi Kafle	TU

42.	Dal Bdr. Dhami	West Nepal Law
43.	Damayanti Joshi	
44.	Dan Bdr Karki	Freedom Forum
45.	Dan Dhoj Basnet	NVC
46.	Deek P. Ghimire	NMRC
47.	Deep Raj Sanyal	RSS
48.	Deepak Shrestha	Solve -Nepal
49.	Deependra Joshi	Equal Access
50.	Devendra K.C	RADER
51.	Dhan Raj Gyawali	MOIC
52.	Dhan Raj Pokhral	
53.	Dharma Raj Nirula	C.A Member
54.	Dhirendra Bdr.Shrestha	C.A Member
55.	Dilip Datt Pant	
56.	Dilip K. Khawas	SSN
57.	Dinesh Thapa	Privacy Nepal
58.	Dipak Gautam	M.T.V.
59.	Divas Acharya	NIC
60.	Dr. Kiran Shrestha	NMA
61.	Durga Bdr Rana	Hamro Aviyan Nepal
62.	EdwinBerry	UNDP
63.	Er. Binod Dhakal	CAN
64.	Gamala Luitel	Studio Mandala
65.	Gaurab Tandul	NSC
66.	Gayan Raj Subedi	Under Secretary, NIC
67.	Ghanshyam Bhandari	Radio Dailekh
68.	Gokul Ghorsaine	Nepal F.M.
69.	Gokul Pokhrel	Freelance Journalist
70.	Gopal Krishna Ghimire	Nepal Bar Association
71.	Hari binod Adhikari	Freedom Forum
72.	Hari Dawadi	MORP
73.	Hariher Bihari	Journalist
74.	Harsha Man Mahrjan	Martin Chautari
75.	Hem Raj Lamichhane	ADDCN
76.	Hom Pd Lamsal	Image T.V
77.	Indu Ghimire	Ministry of Local Development
78.	Ishwar Maharjan	NTV
79.	Jagadish Poudel	Press Council
80.	Jagadishwor Narshing KC	CA Member
81.	Janak Tiwari	REP
82.	Jiwan Bdr Shahi	ADDCN
83.	Jyoti Baniya	FOCR
84.	Kamal Gurung	Freedom Forum
85.	Kanak Mani Dixit	Journalist

86.	Kapil Shrestha	TU
87.	Karuna Thapaliya	FOHRID
88.	Kebal P. Bhandari	NWC
89.	Kedar Khadka	Pro Public
90.	Kedar Pd Dahal	Freedom Forum
91.	Kedar Prajapati	NVC
92.	Keshab Sapkota	Freelancer
93.	Krishna Raj Sarbarihari	Freelancer
94.	Krishna Sapkota	Freedom Forum
95.	Kumar Chaulagain	RSS
96.	Kumar Luitel	Right Activist
97.	Kumar Regmi	Advocate
98.	Kunti Shahi	CA Member
99.	Laxmi Shah	F.N.J Bara
100.	Lila Mani Poudel	Supreme Court Bar
101.	Lokendra Pd Dahal	Freedom Forum, Surkhet
102.	Madhusudan Rijal	MUAN
103.	Mamata K.C	RADER Rukum
104.	Man Mohan Swar	NHRC
105.	Manamohan Bhattarai	CA Member
106.	Manju Ojha	Freedom Forum
107.	Manju Shakya	
108.	Manoj Karki	RSS
109.	Meera Dhungana	FWLD
110.	Milan Shrestha	T.U
111.	Min Pd Gnyawali	N.V.C
112.	Mina Pun	C.A Member
113.	Mohan Nepali	KCC
114.	Mohan Singh Lama	Gorkha F.M
115.	Murali Pd Yadav	Journalist, Saptari
116.	Narayan Ghimire	Freedom Forum
117.	Narayan Regmi	MOIC
118.	Natikaji Maharjan	Rising Nepal
119.	Nava Raj Adhikari	World Vision Advocacy Forum
120.	Nawaraj Lamsal	Radio Nepal
121.	Nirmal Raj Poudel	Welcome Advertising
122.	Nsamash Karki	Nepal Bar Association
123.	Padam Sing Karki	IPi Nepal
124.	Parshuram Kafle	Naya Patrika Dailly
125.	Parshuram Upadhaya	NAVIN
126.	Prajwal Sharma	IOM
127.	Pranav Bhattra	Pro-Public
128.	Raghu Mainali	NEFEJ
129.	Rajan Bhattra	Annapurna Post

130.	Rajan Kuikel	Image Channel
131.	Rajan Kuikel	Image TV
132.	Rajendra K. KC	MOD
133.	Rajendra Nepal	Judicial Service Trading Center
134.	Rajesh K.Pathak	KCC
135.	Rajib Vpadhya	World Bank
136.	Rajiv Timalisina	KCC
137.	Raju Shrestha	CIF, Jhapa
138.	Ram Kumar Koirala	RSS
139.	Ramesh Dhungel	Image FM
140.	Ramesh Poudel	Pokhara
141.	Ratna Shrestha	
142.	Reeshi Ram Ghimire	Advocate
143.	Rem Bdr B.K	Jagaran Media Center
144.	Rishi Kesh Tiwari	PCDS
145.	Rishi Ram Poudel	FNJ, Sindhupalchwok
146.	Roshan N. Pant	N.V.C
147.	Sabin Shrestha	SLOVE -Nepal
148.	Sabita Bhandari	NIC
149.	Sakriya Pathak	
150.	Samar Thapa	Pro-Public
151.	Samir Jung Shah	Journ0alist
152.	Samjhana Aryal	Nepal FM
153.	Sanat Acharya	Freedom Forum
154.	Sangeeta Rana	World Bank
155.	Sanjeeb Ghimire	Freedom Forum
156.	Sanjeeb Ghimire	Freedom Forum
157.	Sher Bdr Dhungana	NVC
158.	Sher Bdr K.C	Nepal Bar Association
159.	Shiva Lamsal	Image T.V
160.	Shreedhar Gautam	Director, Dept of. Information
161.	Som Bdr Thapa	CA PAC
162.	Sudip Pathak	HURON
163.	Suman Dahal	Ministry of Local Development
164.	Sunil K. Mallick	MINAP , Janakpur
165.	Surendra Thapa Magar	Advovate
166.	Suresh Acharya	Freelance
167.	Surya Adhikari	
168.	Surya Chandra Basnet	RSS
169.	Surya Pd Dahal	CCRI
170.	Surya Pd. Sharma	Ministry of Youth and Sport
171.	Susma Poudel	HDF Nepal
172.	Tanka Aryal	CCRI

173.	Tara Bdr Bhandari	SumudayikSarathi
174.	Tara Nath Dahal	Freedom Forum
175.	Taranath Dahal	Freedom Forum
176.	Tej Kumar Sharma	KCC
177.	Tritha Thapa	World Bank
178.	Tulasi P Poudel	VDRC-Nepal
179.	Umid Bagchand	FMDC Kailali
180.	Upendra K. Neupane	Advocate
181.	Vijaya P. Mishra	NNRC
182.	Yak Raj Bhandari	CA Member
183.	Yek Raj Pathak	RSS

Annex III: Convention Agendas

DAY ONE: Monday, March 28, 2011		
7.00 am-	Floor Taking by Participants, Guests and Invitees	
7.30 am	Arrival of the Chief Guest Rt. Hon'ble President of Nepal Dr. Ram Baran Yadav	
7:30-8:00 am	Inaugural Session <ul style="list-style-type: none"> • Batch and Program Schedule to the President (7.32 a.m.) • Welcome Address by Taranath Dahal, Chair, Freedom Forum (7.34 a.m.) • Lighting of the Ceremonial Lamp by the Rt. Hon'ble President (7.44 a.m.) • Address by the Hon'ble Deputy Prime Minister and Minister of Information and Communications, K.B. Mahara (7.46 a.m.) • Address by the Rt. Hon'ble President of Nepal (7.53 am) • Departure of the Rt. Hon'ble President (7.58 am) 	Plenary
8:00-8:25a.m.	TEA BREAK	
8:25-9:25 a.m.	<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	BREAK FAST	
10.10 a.m. 12.10 p.m.	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 p.m.	LUNCH	
1.10-3.10 p.m.	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 p.m.	TEA BREAK	
3.30-5.30 p.m.	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 a.m.	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
1.30-2.30pm	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 - 7.30pm	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 Upadhyaya, the World Bank 	Plenary

Annex: IV

DECLARATION OF NATIONAL CONVENTION ON RIGHT TO INFORMATION

1st National Convention on Right to Information

Kathmandu, Nepal, March 28-29, 2011

FIRST NATIONAL CONVENTION ON RIGHT TO INFORMATION

28-29 MARCH, KATHMANDU

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 'Kathmandu Declaration' on enabling environment for effective practice and mainstreaming of 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 legislations in a country must also be backed with appropriate pragmatic tools to ensure their implementation in practice;

Honoring 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 RTI set a number of agendas as Nepal's immediate priorities including "ensuring RTI as fundamental right in upcoming Constitution, empowering National Information Commission, making arrangement of 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 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;

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And, encouraged and assured by the unprecedented words of commitment and assurance from Rt. 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 Government

- Immediately form a central nodal agency to ensure 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 a 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, corruption control, people's participation in governance and formulating local budget.
- Provide frequent trainings and refresher courses and exposures to officials on the issues of Right to Information, orienting them towards the principles and practices of RTI.
- Take bold initiative 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.
- Provision on the classification of information should be scrapped and classification should not go beyond the spirit of the 'exception' allowed by Constitution or law.
- Help ensure autonomy in the functioning of the National Information Commission particularly with regard to budgetary allocation and appointment of employees. Independence of the Oversight Body, National Information Commission should be ensured by due legal arrangement.
- Put system in place for maintaining a record of the applications made for information and information provided and not-provided on request.

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To National Information Commission (NIC)

- Come out with a more vigorous and proactive action plan to promote and protect RTI,
- Ensure work 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, so that it will help public bodies to 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 the 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.
- Accord appropriate preferential treatment to appeals coming from remote areas and those filed by backward, marginalized or victimized people.

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 RTI legislations implemented in meaningful measures.
- Capacity building of all stakeholders and use of existing networks to spread information.
- Organize "Door-to-Door" information campaigns at the grassroots
- Set up RTI Help Desks and information centers/digital libraries in "wet agencies" i.e. customs, land revenue, transport department, 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 Status of RTI Use and System Test in order to garner data/evidence to focus out efforts to facilitate the use of RTI and design future initiatives.
- Incorporate RTI as a cross-cutting development issue in every intervention by the Civil Society Organizations (CSOs)
- Conduct a Piloting of RTI exercise in Local Bodies:
- Promote social audit, public hearing and citizen score cards at all public agencies

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To Parliament /Constituent Assembly

- Position RTI strongly in New Constitution (retain it as fundamental right of people as well as make it subject to RTI law.)
- Ensure RTI Act's overriding strength, by amending all Acts that contravene with RTI Act so that RTI Act supersedes all other Acts.
- Include the phrase "Free Flow of Information" in the preamble of the new constitution.

- Exception of right to information should be managed by constitution itself. Right to Information should be guaranteed to individuals, not to Citizens only.

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Right to Information Should be guaranteed at all tiers of federal structure. **To Media**

- As a key promoter of RTI in Nepal, 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 advantage and importance of RTI to readers/audience
- Encourage in-depth coverage by use of RTI Act
- Highlight RTI success stories

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To Universities/Academic Institutions

- Include RTI as a multidisciplinary branch of study in academic curriculums.
- Conduct academic research works on RTI
- Equip libraries/ learning centers with sufficient reading /audio-visual materials on RTI

To Political Parties

- Political parties as the change agent should come up with campaigns to make the right to information as their prime agenda for the overall democratization process being embolden to the issues of social, political transformation, empowerment, inclusion and poverty alleviation.
- Maintain internal book-keeping, auditing and disclosing the sources of income and expenditure details publicly.
- Ensure internal election processes and its transparency for choosing party leaders, portfolio and respective committee members.
- Develop an information management system with the provision of information officer
- Shift from 'culture of secrecy' to 'greater openness', reinforcing 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 put secretariat office at Freedom Forum to put these efforts forward.

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March 29, 2011

Kathmandu

Annex V

1st National Convention on Right to Information

*Enabling environment for effective practices of
right to information in Nepal*

Kathmandu, March 28-29, 2011

Reading Materials

Organized by : Freedom Forum

in collaboration with : World Bank

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3. Experience and Challenges of Information Officers in the Right to Information Laws Implementation. *Sher Bahadur Dhungana* (sherbahadurdhungana@yahoo.com)
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9. Anti-Corruption Campaign through RTI. *Pranav Bhattarai* (pbhattarai2001@gmail.com)
10. Role of Press in the Promotion of RTI. *Yek Raj Pathak* (pathakyekraj@yahoo.com)

C. Toby Mendel, Consultant to the World Bank

Disclaimer

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Background of

RTI Initiatives in Nepal

1st National Convention on Right to Information
Kathmandu, Nepal, March 28-29, 2011

1. Introduction

Right to Information or Freedom of Information is regarded as a fundamental human right in modern days. 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 to which the United Nations is consecrated."

Basically, Right to Information (RTI) underscores the fact that all citizens have the right of access to official documents held by government and other public bodies. In general, 'right to information' laws define a legal process by which government information is 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 government to account and checking corruption. It is recognized in international law, as well as the laws and constitutions of more than eighty five 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 constitutional recognition of the right to information, as this right was explicitly guaranteed at Article 16 of the 1990 Constitution. The Interim Constitution also guarantees RTI in its Article 27.

The Nepalese Legislature-Parliament endorsed the Right to Information Act acknowledging several points. The Act's Preamble says law was endorsed "giving insight into the spirit and aspiration of the Right to Information legislation,: 'As a legal arrangement 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 public interest; in order to protect the 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, the Right to Information movements stress on 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

2. Background of RTI Movement in Nepal

The Constitution of Kingdom of Nepal 1990 guaranteed the right to information as a fundamental right for the first time, which set ground for RTI Act.

The Federation of Nepalese Journalists (FNJ) lobbied for RTI law, considering it an important asset for journalists to get information on all public bodies and check wrong doings in public authorities.

Although the government showed little interest in the formulation of Right to Information (RTI) Act in the post-1990 scenario, the judiciary played an important role

1. Puddephatt, Andrew. Right to Information Practical Guidance Note (unpublished report 3.2.1). UNDP, Bureau for Development Policy, Democratic Governance Group. 2004.

in the interpretation of 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 the dispute about the use of water resource of two rivers in Nepal. The first dispute was related to the construction of Tanakpur dam unilaterally by India in 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 nations 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 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 in this matter. In the same judgment, the SC described the importance of RTI and directed the government to enact RTI law as soon as possible. Further, the court also set eight-point procedures to provide copy of documents by public agencies until any such law was enacted.³ The government neither reacted nor complied with the ruling.

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

In 1997, media organizations took initiative to get a new draft bill tabled. A seven-member independent RTI law drafting team, comprising 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 was lost to oblivion due to political bickering and dissolution of the parliament. Maoist insurgency and the Royal Palace massacre further led to stagnation in all other areas of development.

The RTI campaign gained momentum again after the restoration of Parliament, following the successful popular Movement also known as 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 the constitutionally protected right.

A group of civil society organizations, including Freedom Forum, an organization working for the freedom of expression and media rights, Federation of Nepalese Journalists, an umbrella organization of Nepalese journalists, and Nepal Press Institute, an NGO working for the promotion of media rights, were 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 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

² *Advocate Gopal Siwakoti '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 but 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, Nepal Congress.

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 remained inspiration for 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 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 resolved easily. No substantial dissent arose since this process was taking place immediately after the Popular Movement. The government had some sorts of reservations on the Bill prepared by the Taskforce and made certain amendments before tabling it in the Parliament.

The parliament endorsed the RTI draft bill with some amendments on 18 July 2007 and the Act came into force on 19 August 2007. Since this time, Nepal has an RTI Act.

3. RTI and 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 the right over personal information.

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

3.1 Scope

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

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 under government funding or controlled by government. It also covers political parties and organizations, and non-governmental organizations (NGOs) which operate with funds obtained directly or indirectly from the Nepal government, a foreign government, or an international organization.

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

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

3.2 Exemptions

The Act provides five categories of interest that could justify a refusal to disclose information. The list includes national security, information affecting 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 that from the information that cannot be released.¹⁰

3.3 Application Process

Each public body must appoint an Information Officer (IO) who will be 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 with the safety of the life of any person.¹³

⁸ Article 2(b)

⁹ Article 3(3)

¹⁰ Article 3(4)

¹¹ Article 7(1)

¹² Article 7(3)

¹³ Article 7(4)

3.4 Appeals against Denials

The Act includes a detailed provision on appeals against refusal to provide access to 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 'complaint'.¹⁵ After investigating such a complaint, the head shall order the Information Officer to provide information as demanded by applicant if it is found that the information was denied or partially provided or wrong information was provided, or make a decision that information cannot be provided.¹⁶ In the latter case, he has to provide a notice stating the reasons 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 and take their statement, review evidence and inspect any document held by 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

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

3.5 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 concrete 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 the public bodies may use different national languages and mass media while publishing, broadcasting or making information public.²¹

3.6 National Information Commission (NIC)

The Act provides for a National Information Commission, a permanent mechanism to hear complaints in cases relating to the right to information. The Commission comprises three members headed by Chief Information Commissioner. Members of the Commission are appointed by the Government at 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 much broader role for the National Information Commission 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

¹⁴ Article 9 and 10

¹⁵ Article 9 (1)

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

¹⁷ Article 9 (4)

¹⁸ Article 34

¹⁹ Article 4(2)(a)

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

²¹ Article 4(3)

²² Article 11(1)-(4)

issue orders for the public agencies, provide recommendations and suggestions to the government and other public bodies; prescribe timeframe to the public bodies to provide information.

The Commission's budget is provided by the government²³. An annual report of the Commission's activities must be published and laid before Parliament every year.²⁴

3.7 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 nevertheless penalised.

3.8 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 the public agencies proactively, describes the procedures for an appeal to the Commission and gives a template of appeal. It also sets the time limit for the head of public agencies to respond to the complaint made by an applicant, thereby filling the gap existing in the Act.

3.9 Obligations

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

- To honor and uphold citizen's right to information (RTI Act: 4.2)
- To maintain updated record of information, at least up to 20 years before the coming of the Act (RTI Act 5.2).
- To appoint information officers (IO) 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 RTI Act 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 be tough.

²³ Article 23

²⁴ Article 25

²⁵ Article 29

3.10 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 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)).

4. Current Status

Several achievements have been made in Nepal after the adoption of the RTI Act in 2007. Notably, the National Information Commission was formed, an RTI Regulation charted out, and efforts made to some extent to spread awareness among people to highlight the significance of RTI. Unfortunately, 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 cases of 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) is very actively engaged on this issue in Nepal.

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

Civil society organizations 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.

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 five to six thousand, 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, 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.

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 yearly 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

4.1 Constraints for RTI Implementation

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

- **Lackluster 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 epoch-making constitution drafting process through Constituent Assembly (CA) and for managing the political transition. Ironically, the government has failed to come up with any institutional design to implement the Act since it seemingly felt that its responsibility was over with the promulgation of the Act.

- **Weak Political Commitment**

It has been proved by international experience that RTI could be an effective public tool to foster 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 RTI law. Unambiguous 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--an indication that political parties are either at a loss or pretend to be at loss in this regard.

- **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 materialized. The reason: There is neither a strong mechanism to enforce the law nor any system to monitor whether the Act is being implemented in line with its objectives.

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

Culture of secrecy is still prevalent in our civil service and bureaucracy. Ironically, employee's competence is often gauged on the basis his/her capacity to maintain secrecy. This orientation of the employees is all-pervasive in this service as specified in the Civil Service Act which does not encourage authorities to provide the information held by public agencies on demand. This culture has remained as one of the challenges in the implementation of the RTI Act.

- **Limited Civil Society Campaign:**

Even after a considerable time 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 utilize 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 organizations have not fulfilled their obligations to stimulate the demand side of the implementation of the RTI. Until and unless people realize the power of this tool, it will just remain a mere piece of paper. Additionally, civil society has to increase their monitoring role in the implementation and devise coordinated and concerted efforts to help mechanisms to implement RTI law.

- **Lack of Financial, Administrative and Infrastructural Support**

Challenges to the RTI are also associated with the absence of human resources, financial and infrastructural developments at the public agencies including NIC. RTI laws require public agencies to meet certain fundamental legal requirements such as appointment of IO, proactive disclosure and regular publication of reports. However, the government has not earmarked budget and administrative setup to ensure these requirements. It has resulted difficulties for the RTI implementation (CCRI, *Needs Assessment Report*, August, 2010).

- **Absence of Nodal Agency**

The government has not yet appointed a nodal agency or a 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. This has also hindered the implementation of the RTI Act in a satisfactory manner.

5. Delhi Declaration

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

- Providing feedback to the constitution drafting process for including RTI as a fundamental right in tune with international standards.
- Strengthening and empowering the National Information Commission.
- Reform the RTI regulations in collaboration with civil society organizations.
- 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 government, parliament, public bodies, civil society, international community and the National Information Commission of Nepal. The report 'Implementation of the Right to Information in Nepal: Status Report and Recommendations' was prepared by international consultant Toby Mendal with inputs from Rajib Upadhyay and Vikram K. Chand. The recommendations, which also reflected the RTI implementation status 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 information officers (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 the 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 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, a documentary, International Right to Know Day activities and training for NGOs.
- Pilot a programme of RTI Friends at about ten different public bodies, to create and publicise model implementation practices.

6. Freedom Forum and Right to Information

Freedom Forum has engaged itself for the cause of Right to Information in Nepal ever since its inception. Its involvement in preparing the groundwork for the drafting of RTI bill, and the sustained advocacy thereafter has remained crucial for the developments leading to the endorsement of the Bill by Parliament and subsequent Regulations for implementing the RTI Act.

6.1 Pre-RTI Campaign

In 2005, as part of its active 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 organizations, activists, and international and intergovernmental organizations 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 organizations and the media fraternity on the issues to be included in the nationwide campaign.

The initiative taken in 2007 included a number of activities - 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 Right to Information were held in all five development regions followed by a remarkable national seminar in Kathmandu spread across three and half months beginning the third week of January 2007. The initiative sought to spread awareness on 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 periodical publications such as *Free Expression* and the *Voice of Freedom* provide much space, promoting the causes of RTI.

6.2 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 RTI ACT-2007 in February 2008, furnishing several recommendations to bring the law in line with international standard and practices. The recommendations were massively disseminated among journalists, rights activists and organizations working for media rights. Under the campaign of promoting information culture in Nepal, Freedom Forum facilitated process in registering application to seek information from the public bodies in consistent with RTI Act.

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 January 11, 2008, demanding mandamus when the Election Commission denied furnishing the detail information about the amount and assistance provided by government and donor agencies to carry out the Constituent Assembly (CA) elections and copies of application from the political parties with signature of 10,000 voters needed for the registration of party not represented in the parliament. A single bench of Justice of Supreme Court (SC), Damodar Sharma, issued show cause order in the name of EC to furnish reply to the SC within 15 days. Advocates Shambhu Thapa, Sher Bahadur KC, Bhimarjun Acharya, Tikaram Bhattarai among others pleaded on behalf of Freedom Forum.

In the similar vein, advocates duo, Rishee Ram Ghimire and Krishna Pokharel on behalf of the Forum filed an application in the Office of Prime Minister and Council of Ministers on September 5, 2008 demanding that the report of the commission formed to probe the killing of CPN-UML candidate from Surkhet district, constituency-1, Rihsi Prasad Sharma, be made public. The government had formed the probe commission on the premiership of Judge of Surkhet District Court, Purusottam Parajuli to investigate into the incident that had taken place in the run-up to CA elections.

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

Similarly, Freedom Forum facilitated Gyanendra Raj Aran in the process of registering application in the defense Ministry, seeking official copy and digital copy of details of the killings of Nepali Army (NA) personnel during the Maoist insurgency. Information seeker Aran registered application in Magh 10, 2064 BS.

Biswomitra Khanal, stringer for Nepal Television, also took facilitating assistance from the Forum while demanding information about the decision the NTV management took regarding his remuneration as a journalist. Khanal registered application on Asoj 23, 2064 BS (October, 2007).

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

6.3 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), also aired by national radio and some community/FM stations across the country)

7. Agendas of National Convention

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

The thrust of the convention is to develop a workable national strategic plan, to define the specific roles of stakeholders and to sensitize the state actors, non-state actors and political parties for the effective practice and implementation of RTI in Nepal. This convention plans to present and discuss papers on RTI associating it with various other sectors. The papers are expected to assess and highlight the role of government, NIC, civil society organizations, political parties, including other stakeholders so that the convention could present a trajectory of strengths, weaknesses, opportunities and threats facing the RTI initiatives in Nepal. Further, it will furnish a comprehensive set of recommendations to different sectors responsible for a better practice of RTI law and related exercises.

The convention is planned to bolster political will and support from stakeholders in length and breadth to enable an environment where access to information is easy and prompt. Panel discussions will be held on different thematic papers on RTI where sharing of national and international practices will be given a high focus. The findings and recommendations of the convention will be duly documented.

We hope it would not be too much to expect that the dignitaries of this convention would do all they can to ultimately garner support from all sides and boost up political will for the effective implementation of the RTI law.

Keeping in mind the inconvenience to bring participants from all across the country, we have also planned three regional conventions to be held outside the Capital. Preparations for the regional conventions shall take place following the accomplishment of the national convention.

7.1 Objectives

The National RTI Convention has the **general development objective** to enable environment for an improved access to information in Nepal by charting out workable national strategic paper, and sensitize state and non-state actors. **Whereas, the immediate objectives include a set of goals such as awareness raising, supporting improved understanding of the RTI as a tool for public accountability, empowerment and guarantee of other fundamental rights, enhancing greater coordination and consensus among stakeholders and enforcing mechanism to facilitate better implementation of RTI.**

7.3 Presentations, deliberation

The convention will deliberate extensively on a number of issues ranging from the current status of RTI implementation and legal framework to the various measures that could aid reform in implementation, including the strategies to be taken in the future.

Basically, there are ten exclusively prepared thematic papers, written by professionally qualified scholars in the concerned areas. The papers have been developed in a professional way incorporating respective issues comprehensively and explicitly.

Here's the list of papers scheduled for presentation and deliberation in the Convention:

1. Implementing RTI Law in Nepal: Experience, Challenges and Future Strategies of the National Information Commission (NIC)

Focus areas:

- Legal and administrative constraints, current possibilities and challenges; implication for the implementation of RTI, and the perceived measures to remove constraints
- Political and financial impediments, if any; political support; strategies and measures to raise fund (especially to remain aloof from political pressure and interest)

- Cooperation and support from the government and other stakeholders; linkage and coordination with different agencies to tap resources or execute its program?
- Manpower structure and institutional capacity; status of knowledge management, capacity building measures
- Mechanism of complaints and appeals and their hearing
- Promotional activities being carried out to protect, promote RTI and enhance information culture); Discussion, directives and their implementation
- An assessment of Government's preparedness and weaknesses in building infrastructure and other supporting things for the effective implementation of RTI
- Positive/exemplary achievement on RTI, if any, and lessons learned;

2. Government responsibility in implementing RTI: Structural Arrangement, Regular Monitoring and Effective Coordination

Issues:

- Government preparedness (previously for the law and now for its implementation); coordination and mobilization of subordinate bodies for effective implementation of RTI; information management system; internal communication among the government bodies; record keeping/evaluation system; budgetary structure
- Appointment of nodal agency; international experience
- Training/orientation program for government employees, especially in public offices; extent of proactive disclosure of information currently practiced in government offices;
- Classification mechanism and its propriety; comparative study of the practices in other countries); public hearing; first complaint process
- ICT promotion for transparency (Government's initiative towards promoting information and communication technology for transparency)
- Political will and bureaucratic support (Is there any resistance from political parties to ensure effective implementation of RTI? Is the bureaucracy supportive towards advancing the RTI issue? Are the political parties willing to make constitutional reforms regarding RTI provisions?

3. Implementing RTI Laws: Experience and Challenges of Information Officers

Issues:

- Role and duty of Information Officers as specified in the RTI Act-2007; Compliance by public agencies; Obstacles faced by PIOs (Public Information Officers) in discharging their duties;
- Appointment process of Public Information Officer (PIO) and their Terms of Reference (TOR)
- PIO-time, resource, capacity and support (How much time a PIO should allocate to address information related cases? Resources for PIOs, Capacity of PIOs and Support to PIOs)
- PIOs and internal communication; existing information management system and its efficacy towards prompt delivery of information; extent of the flow of applicants, nature of application mostly sought.

- Spokesperson, political leadership, secretary, office chief and Information Officer (Relation/Duplication/Overlapping/Miscommunication)
- Political or other kinds of pressure;
- Mindset and understanding (What is the mindset and understanding of bureaucracy regarding information? Does the culture of secrecy exist in bureaucracy? What is its level or extent?)
- Legal constraints and problems facing IO (PIO) to discharge their duty and responsibilities

4. Role of Press in RTI Promotion

Issues:

- Media as an advocate in RTI Movement (History and law making process); media as a promoter of RTI (e.g. in promulgating RTI Act); use of RTI for news data (or RTI to promote credible journalism, investigative reporting, etc)
- Problem of perception in Media and RTI (There is no clear understanding regarding the relation of media and RTI. There is misconception that RTI is only for media workers.
- RTI-Procedural problems and limitation in practical journalism (Why RTI is not being used massively by media in course of reporting? Are there any procedural obstacles or other causes?)
- Coverage of model cases (Are there any model cases developed by media using the RTI?)
- Livelihood issue (Coverage of livelihood issues in media with the use of RTI)
- Issues of corruption and misuse of power (Coverage in media through the use of RTI)
- Expectation versus impact (what media thought and what they got through RTI)
- Initiative on the part of a journalist, media and media organizations for the promotion of RTI
- Campaign and media (What is the media coverage on the campaigns conducted for the promotion of RTI? Do media demonstrate ample support to highlight the issues and pile pressure for the effective implementation?)
- Credibility and professionalism (Status of the use of RTI by media to foster their credibility and professional development)

5. Role of citizens in the implementation of RTI:

Issues:

- Level of RTI awareness among people; advocacy and campaigns; extent of activeness of the demand side (seekers of information)
- The role of consumers and consumer welfare organizations in promoting RTI
- Campaign of social watch groups (Campaigns from the side of various social watch groups, pressure groups and constituents of the society)
- Campaign on anti-corruption (Is there any campaign in place from citizens' side on anti-corruption?)
- NGO mobilization (What is the current role of NGOs in promoting RTI particularly with regard to creating public awareness and educating public to demand information from various public agencies? Have NGOs directed their

efforts to advance information culture? Has RTI been the agenda of NGO across the country?)

- Openness and accountability of I/NGOs (governance practices).
What types of governance practices NGOs and INGOs are adopting? Are their practices consistent with the letter and spirit of RTI? Are there any applications submitted to any I/NGOs demanding information? Are they following the provisions specified by the RTI Act as a public agency such as routine disclosure of information?)
- Social movement (Is there any social movement for RTI promotion from community in Nepal? What type of social movement is necessary for its effective headway?)
- Development users (What is the dynamics of development users in the promotion of RTI? Are they conscious and active to use RTI as a tool to enhance their access to information?)
- Users groups and resources (Group dynamics in Nepal is very good for empowerment at local level. How can the group dynamics be best used in enhancing their access, control and ensure people's ownership on resources through the use of RTI?)
- Citizens' Network (Is there any citizens' network working for the cause of RTI or social accountability? Are they aware on RTI as a weapon to empower various segments of society and to make state functionaries accountable? What are the activities being carried out by such citizens' network? International experiences on how citizens' networks are working for the cause of RTI?)
- Citizens' campaign (What is the effect of citizens' campaign in RTI promotion? Are the citizens' campaigns equally active after the promulgation of RTI as they were while waging struggle for the RTI in the past? What are the reasons that citizens' campaign could not take a lead to put forward the RTI issues consistently?)
- Role for piloting and role model (Citizens' role to pilot any innovative ideas of RTI and make any village a role model for others)

6. RTI and good governance: Perspectives from Local government and Development

Issues:

- Role of DDC as a local government in increasing public access to information; Trend analysis of applications submitted to DDC; DDC attitude on disclosing information; Public service delivery mechanism and public concerns through RTI. Use of RTI to check irregularities prevailing in local governments.
- Municipal bodies and their roles; status of routine disclosure of public information; RTI sensitive requests and responses; using RTI to seek information on state-offered services such as senior citizen allowance, scholarship quota for dalits, minorities etc)
- Village Development Committee -VDC and local perspective of RTI; Information for social equity and equitable development. Increasing credibility of the services of local government through RTI
- Governance situation of the local governments from agenda setting to planning, implementation
- Information system (What is the prevailing information system in local governments? Is it effective to address the demand side?)

- Resources and capacity (Existing resources and capacity of the local bodies with regard to information dissemination to public)
- Corruption (How RTI can be utilized to expose corruption practices rife in local bodies?)
- Policy, implementation, planning, aid effectiveness (RTI to promote people's participation in planning and implementation and its effectiveness)
- Services and budget (Use of RTI in seeking effective service and improve service delivery mechanism, Is there any practice in local bodies to use RTI to track budget and know the budgetary allocations in different sector. Do people have know-how about the services they are entitled to get as a citizen?)
- Development planning and implementation (Role of information in engaging people in development planning and implementation and developing sense of ownership to the interventions)
- Health, Education, Social Welfare (RTI to improve services on health, education and social welfare related sector and enhance access of people on these services)
- Women, Indigenous Nationalities and Dalit (RTI for the empowerment of backward and minorities)
- RTI as a cross-cutting issue in development sector (RTI has not been deemed as a cross-cutting issue in development sector. It has very significant role to empower citizens, check corruption, make public agencies accountable. How can it be developed as a cross-cutting issue in every development intervention?)
- People's participation in planning, implementation, monitoring and evaluation (RTI promotes this. How tactfully it is used to ensure civic engagement in development?)
- Facilitators of local people (Local bodies are the facilitators of local people to ensure their access to services and facilities. What are the political, administrative, resource and knowledge constraints in local bodies to serve this role effectively and efficiently?)

7. Anti-corruption campaign through RTI

Issues:

- Level of corruption (Use of RTI to expose corruption at different levels - policy, implementation, planning and RTI campaign to reduce the extent)
- Information Campaigns (Implication of RTI to get information from corruption watch bodies such as Commission for Investigation of Abuse of Authority (CIAA), National Vigilance Centre, Audit System, and National Planning Commission, International agencies and their aid effectiveness and other private and public sector; Are there any information campaigns successful to expose corruption and embezzlement?)
- Social accountability (how RTI can be practiced to enhance the role of organized civil society in helping to put in place stable, responsive and accountable state institutions? Promoting engagement of active citizens and civil society organizations in governance reform? Strengthening the capacity of citizens, civil society organizations and non-state actors to hold the state accountable?)

8. RTI as a fundamental right in the context of new constitution and state restructuring and judiciary's role to ensure it

Issues:

- Explanation of existing constitutional provisions on RTI
- Fundamental rights provisions and implementation (What are the constitutional provisions regarding the fundamental rights and its implementation status? What should be addressed by the new constitution to consolidate citizen's access to information? How RTI could be guaranteed to all citizens in the context of state restructuring? Is there any preparation in his regard keeping in mind the context of new constitution drafting and federal states?)
- Openness and responsibility of the court (Does the court play effective role in promoting RTI culture? International experience on the court's role in promoting openness in society.)
- Good governance within judiciary and its active and cooperative role in safeguarding RTI

9. Explanation of RTI exemption and information classification and annulment of inconsistent legal arrangement

Issues:

- Overriding clauses (What are the overriding clauses that are hindering the implementation of RTI? The RTI has no clear overriding effect regarding the enforcement of its provisions. The legal status of provisions in the RTI Act contravening other prevalent laws is ambiguous. This has impeded the RTI implementation. What could be the measures to remove the challenges created by override effect to ensure better Implementation of RTI laws?)
- Exemptions (Clear definition of exemptions of RTI. Citizens should not be deprived of receiving information in the name of exemption. So its clear explanation is a must to serve the spirit of access to information. The exemption regime in the RTI Act fails to strike a careful balance between people's right to know and need to protect important public interests
- Information Classification (Is the information classification scheme introduced by the Act is conceptually clear? Does the scheme not affect free flow of information as demanded by citizen? What happens when request for information is judged based on the exemption and classification of information? Comprehensive study on Information classification and disclosure of information)
- Other legal responsibility (What are other legal responsibility to be fulfilled to create an RTI friendly environment?)

10. RTI in Democratizing Political Parties

Issues:

- Internal democracy within parties (Using RTI to promote internal democracy within the parties; requesting information regarding party decisions; decision making process and functioning)
- Proactive disclosure (What is the trend and status of parties regarding disclosure of information in a routine manner? Is there any mechanism to work out this within parties? What is the structure and effectiveness of its functions?)
- Financial transparency and openness (How RTI could be devised to promote financial transparency and openness of parties in public? Comparative study of the parties regarding the issue. What are the practices within the parties to demonstrate their financial transparency and openness?)
- Information management and record keeping (What is the status of information management and record keeping in the parties? Are they archived and well-documented? What is the structural mechanism to undertake this task)

A Working Paper on

***Implementing RTI Law in Nepal:
Experience, Challenges and Future Strategies of the
National Information Commission (NIC)***

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1st National Convention on Right to Information
Kathmandu, Nepal, March 28-29, 2011

Implementing RTI Law in Nepal: Experience, Challenges and Future Strategies of the National Information Commission (NIC)

Vinaya Kumar Kasajoo

Background:

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

National Information Commission (NIC)

The Government decided to form National Information Commission and finalized the names of the Commissioners on May 4, 2008.

Commissioners were formally appointed on June 6, 2008. They took oath of office from the Prime minister on June 13, 2008.

Functions, Duties and Powers of NIC

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

- To observe and study the records and documents of public importance held in Public Bodies,
- To order for maintaining list of information related with document and records held in such Body orderly,
- To order concerned Public Body to make information public for citizen's notification,
- To prescribe timeframe and order concerned Public Body to provide information demanded by applicant within such timeframe.
- To order concerned party to fulfill liabilities in accordance with this Act.
- To provide necessary suggestions and recommendations to Government of Nepal and various other bodies related to information and communications regarding the protection and maintenance of right to information.
- To issue other appropriate orders regarding the protection, promotion and exercise of right to information.

Legal Framework:

Objectives of RTI Act

According to the Preamble of the RTI Act the objectives of the Act 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 simple and easy the access of citizens to the information of public importance held in public bodies;

To protect sensitive information that could make adverse impact on the interest of the nation and citizen, and

For the legal protection of the right of the citizen to be well-informed and to bring it into practice.

According to the RTI Act the 'Right to Information' means:

- The right to request and obtain information of public importance held in the Public Bodies
- The right to study or observation of any written document, material held in Public Body or proceedings of such Public Body
- To obtain a verified copy of such document
- To visit or observe the place where any construction of public importance is going on and to obtain verified sample of any material or
- To obtain information held in any type of machine through such machine.

Wide coverage of the Act:

The RTI Act of Nepal covers a wide range of public bodies from local level non governmental organizations to the national level organizations and the political parties as well.

According the RTI act the '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. Public service providing institution or foundation established by the law,
5. Political Party or organization registered under the prevalent law.
6. Organized institution under the full or partial ownership or under control of the Government of Nepal or organized body receiving grants from the Government of Nepal.
7. Organized institution formed by the Bodies established by the Government of Nepal or the law entering into an agreement,
8. Non-Governmental Organization/Institutions operated by obtaining money directly or indirectly from the Government of Nepal or Foreign Government or International Organizations/Institutions,
9. Other Bodies or Institution prescribed as Public Body by the Government of Nepal by publishing notice in the Gazette.

The RTI Act has elaborated the responsibility of Public Body as follows:

- Every Public Body has to respect and protect the right to information of citizen.
- Public Bodies have following responsibilities:
 - to classify and update information and make them public, publish and broadcast,
 - to make the citizens' access to information simple and easy,
 - to conduct its functions openly and transparently,
 - to provide appropriate training and orientation to its staffs,
- Public Body may use different national languages and mass media while publishing, broadcasting or making information public.
- Public Body has to keep update information related to them.

- Public Body, as long as possible, has to update at least of twenty years old information from the commencement of the Act related to them.
- Public Bodies have to update information within three months from the date of commencement of the Act and every three months afterwards.

Public Bodies are obliged to update the following information every three month:

- Structure and nature of Body,
- Duties, responsibilities and powers of Body,
- Number of employees and working details of Body,
- Service to be provided by the Body,
- Branch and responsible officer of the service providing Body,
- Fee and time limit required for service,
- Decision making process and authority,
- Authority to hear appeal against decision
- Description of functions performed
- Name and designation of Chief and Information Officer
- List of Acts, Rules, By Laws or guidelines
- Updated description of income and expenditures, financial transactions.
- Details of program or project conducted by the Public Body in the last fiscal year, if any,
- Details of website of the Public Body, if any,
- Other particulars as prescribed.

Every Public Body must have an Information Officer (IO). According to the RTI Act:

Public Body should appoint an Information Officer for the purpose of disseminating information held in its office.

The Chief of PB has to provide information held in the office regularly to the Information Officer.

Public Body shall set up an Information Section for the purpose of disseminating information as per necessity.

In section 7 of the RTI Act there are distinct procedures for acquiring information from the Public Bodies.

The provision of fees for Acquiring Information is as follows:

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

For study or observation of any document, material held in or visit or observation of publicly importance undergoing construction site of the Public Body

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

Exemption from Disclosure:

According to section 3(3) of the RTI Act the following information are exempted from disclosure:

1. Information likely to seriously jeopardizes the sovereignty, integrity, national security, public peace, stability and international relations of Nepal.
2. Information likely to directly affects the investigation, inquiry and prosecution of crimes.
3. Information likely to have serious impact on the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy.
4. Information likely to jeopardizes the communal and racial harmony.
5. Information likely to interfere with individual privacy and security of body, life, property or health of a person.

Provided that, public Body shall not refrain from the responsibility of flowing information without appropriate and adequate reason not to flow information.

Complaint against denial of request or incomplete Information**Appeal for Information**

- Individual who is not satisfied with the decision of the Chief can appeal before the National Information Commission within 35 days of the notice of decision received.
- Commission should follow legal procedure while investigating and deciding the appeal.
- While investigating and deciding the appeal the Commission shall do the following:
 - By giving time, may order the concerned Chief to provide information to the appellant without fee, if appeal is found reasonable.
 - Dismiss the appeal if it is found not reasonable.
- The Commission has to give final verdict on the appeal within sixty days of appeal submission.

Penalties

The Commission can impose following penalties to concerned authorities:

- From Rs. 1,000 to 25,000 for unreasonable refusal of providing information and also take departmental action.
- Rs. 200 per day for delay to provide information.
- From Rs. 5000 to 25000 for misuse of information, if any person is found misusing the information acquired from public Body.
- The Commission may impose a fine of up to Rupees 10,000 to the concerned person in case its decision or order in accordance with the Act is not obeyed.

Appeal against Penalties:

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

Compensation

- If any person incurs losses and damages due to not providing information, denying to provide information, providing partial or wrong information or destroy the information by the Chief or Information Officer of Public Body, such person may appeal before the Commission for compensation within three months.
- After the investigation, the Commission by considering the actual losses may compensate the applicant from the concerned Body with reasonable amount.

Protection of Information

- Public Body should protect the information of personal nature held in for preventing unauthorized publication and broadcasting.
- Personal information held in public Body, except in following situation, cannot be used without written consent of 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.
 - If related to investigation of offence of corruption.

Protection of Whistleblower

- Employees of PBs have the responsibility to provide information on any ongoing or probable **corruption** or **irregularities** or **any deed taken as offence** under the prevailing laws.
- Information receiver has the duty to make the identity of whistleblower confidential.
- No harm or punishment can be done to the whistleblower for providing information.
- If any punishment or harm is done to the whistleblower, he/she may complaint, and demand compensation, before the Commission for canceling such decision.
- The Commission may order
 - Cancel the decision of removal from the office if he/she is removed from office and
 - Provide compensation if any damages occurred to him/her.

Challenges in Implementation of RTI Act

1. 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 for which the government is obliged to do various activities as provided in the Act. Appointment of an Information Officer with physical facilities to carry his/her job is one of the basic provisions in the Act. Voluntary disclosure of information related with the government office, every three month is another obligation of the government.

To carry these basic activities and other duties as mentioned in the Act all the government offices need resource/budget and training and a proper information management/documentation system.

To manage and monitor all these activities a strong body or mechanism within the government with adequate resources is needed that can oversee appointments of IOs, manage training and budget. This aspect is quite missing in the RTI Act. And this may be one reason why even after three years of implementation the Act has not been so effective.

National Information Commission has repeatedly requested the Ministry of Finance to provide budget to every ministry and their office for implementation of RTI Act. But it has not been done.

A 2011 RTI status paper rightly observes: "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 the NIC, and then expect it to take the lead on implementing the law. However, structural factors such as limitations on the power of the NIC over public bodies, the fact that the NIC is outside of government and capacity constraints, limit the ability of the NIC to fulfill all of these roles." – *Implementation of the Right to Information in Nepal: Status Report and Recommendations, The World Bank, January 2011.*

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

2. Legal and Administrative Constraints:

In the RTI Act there are some exemptions for disclosure of information held in public bodies. But other existing laws have long list of prohibition of disclosure. Civil servants follow mainly the Civil Service Act and Regulation which has many provisions for civil servants to work in secrecy. Although the NIC is working on the concept that RTI Act supersedes all other acts it has not been tested yet and it is not clearly defined in the Act. In addition many responsible officers take the RTI Act as an extra burden.

Government offices/ bureaucracy are used to work in an environment of secrecy for long time. A culture of secrecy has developed not only in the bureaucracy but also in the society. Hence demanding and providing information in government offices is not common.

3. Political Impediments:

Nepal is passing through a political transitional period – from internal conflict to constitution making. There is no political stability in the country. Governments are changing. Situation of rule of law is very weak. Hence neither political parties nor the civil society has given any attention for the proper implementation of the RTI Act. Furthermore the issue of the guaranteeing the right to information in the new constitution has not been properly discussed yet.

One of the reasons of absence of active support to implement the RTI Act on the part of the political parties may be that they are also covered by the RTI Act and they are obliged to openness demanded by the Act, which is not common in most of the countries.

4. Reluctance of Civil Society/NGOs

In many countries the civil society/NGOs play important role to promote RTI through various initiatives from raising awareness to inspiring citizens to demand information from public bodies. They even work for strengthen supply side through conducting training, producing guide books and organizing trainings. Such activities are quite lacking in Nepal. Very few, not more than half a dozen, of NGOs are working in RTI sector.

It is obvious that without creating a strong demand from the citizens the supply side is not going to provide information. In a country like Nepal where corruption is widespread there are unlimited issues for demanding information. However the level of awareness and education of common citizen requires that the civil society, NGOs and media create awareness and create demand on behalf of the people.

So far, this is not happening in Nepal, despite there are about 27 thousand registered NGO. It may be due to the fact that the RTI Act covers the NGOs also equally as the government bodies and they are not prepared to meet their obligations under the Act. Hence it may reduce their moral authority to advocate openness in government bodies.

Federation of Nepalese Journalists has played important role in lobbying and drafting RTI law. In addition to that it has important role in the formation/nomination of NIC according to section 12(3) of the RTI Act.

It is important for a country like Nepal that journalist play leading role in promoting RTI. However, it has raised a confusion among the supply and demand side that the Act is meant exclusively for journalist. On the other hand journalists are not using the Act as expected in the beginning. Hence there seems reluctance in using RTI act by the journalists themselves.

Cooperation and support from the government and other stakeholders:

NIC communicates with the government through the Ministry of Information and Communication (MOIC). It gets its budget through the ministry. As far as the communication with the government through the MOIC is concerned there is no big problem. However, allocation of NIC budget combined with MOIC budget has problem. First the budget goes in the name of Information and Communication which is not the case. It also makes the amount of the budget of the ministry look quite huge which may be a problem for other ministries, including the ministry of finance. Therefore there should be separate allocation of budget to the commission.

There is a classification committee headed by the Chief Secretary of the government to classify some of the government held information as secret document. NIC has authority to test particular classified documents.

NIC is not satisfied with the basic method of classifying the information as done by the Classification Committee. NIC has received complaints against it and the commission has written to the Chief Secretary for revision of the classification.

NIC has right to review the individual complaint of the classification of particular information. It cannot review the total classification. Hence it would have been better to challenge the classification in the Supreme Court through writ petition by some

civil society organization. If the present classification is not changed and applied as it is it will certainly limit the effectiveness of the RTI Act.

Secretary and Staff

For more than a year NIC suffered from small budget and few staff. It got approval of staff/personnel after a long time. Within a short period there was transfer of secretaries and NIC has fourth secretary and a total of 19 staffs at present. Ministry of General Administration allocates staff for NIC. However, the staffs allocated by the ministry are not specialized in the RTI matter. NIC has to rely on external experts in particular cases. But it is not independent to hire experts from outside.

Complaints and Appeal Hearing

Recently NIC has formulated and passed Procedures of Hearing Appeals, Applications and Complaints and Procedure for conducting meetings. There is a separate section in the commission which deals with the appeals, complaints and application.

Appeals, Complaints and Application Demanding Information

National Information Commission received 12 cases of information demand in the first year. In the second year the commission received 39 cases and this year, in nine months period, the commission has received 28 cases. Till date the total number of cases demanding information is 79.

Nature of major cases

Most of the information demand dealt with personal information, such as appointment of school teachers, judicial status and procedures of cases pending in the court, performance evaluation marks of the government employees etc. There are few cases of demanding information regarding development related projects and activities which have wider effect in the public life.

The commission has received only one case of information demand by the journalist. Similarly there are single cases of information demand related to the protection of whistleblower, report of enquiry commission of judicial council and report of a judicial enquiry commission of a riot, which was classified as confidential.

Information demand regarding the answer sheets of the examinee of the university students is one of the important cases which the commission has decided in favor of the students. However, the case is in the Supreme Court as the controller of examinations filed writ petition against the commission's decision.

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

Here are brief descriptions of the few important cases, which may explain to the state of the supply side that is information holders and the implementation of RTI Act in Nepal.

1. Whistleblower protection by the RTI Act

The National Information Commission has received only one case regarding the protection of whistleblower.

A school teacher in Kailali district in Far Western Development Region was transferred to another school without her consent by the managing committee of the school for disclosing some of the wrongdoing in the school to the media. The Dalit students of the school were treated discriminately. They did not have access to the common drinking water in the school compound. Teachers gave marks/numbers in the answer sheets without checking them. Dalit students were deprived of other facilities and they were kept out of social activities in the school.

Another school where the teacher was transferred to did not accept her. The District Education Office (DEO) did not take appropriate action to install her in her in any of the schools of the district. Then she filed a case against the DEO chief for protection according to the RTI Act section 29, which is meant for the protection of the whistleblowers.

The Commission ordered the chief of DEO to provide her due salary and install her in her school. For some time the DEO provided her due salary. However it failed to install her in her job. Commission repeatedly ordered the DEO chief but as he did not pursue the order he was fined a sum of Rs. five thousand.

The Commission took this case to the Chief Secretary of the Government who took care of the case and instructed the Ministry of Education for appropriate action. Then 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 come to know that the committee is taking positive towards the teacher and the MOE is taking appropriate actions to reinstall the teacher.

2. The Judicial Council provided documents

A district judge was removed from his post for his alleged misconduct, based on the report of an investigation committee appointed by the Judicial Council. He wanted the true copies of the report of the investigation committee to file case against his removal.

When the JC did not provide the documents he appealed the Commission. The commission asked the JC either to provide the demanded information or to explain the cause of denial.

JC wrote to the commission that the documents cannot be given without mentioning appropriate cause. Then the commission called the secretary of the JC to be present in the commission, which he denied.

When the commission repeatedly ordered the secretary of the JC council the council wrote a letter to the commission which said that since the case is going on in the Supreme Court and the JC need the documents to produce in the SC it cannot be given by the secretary. The JC's decision is required to provide the document to the commission. JC also mentioned in the letter that JC is not required by law to provide the documents to the commission.

Then the commission sent a 15 days notice to the secretary and the information of the JC to provide all the information demanded by the applicant to the commission.

In response, the JC provided some of the documents, not all. The commission asked the JC to provide complete documents demanded by the applicant. The commission received the remaining documents including a video record in CD six months later. It took fully 364 days, one day less in a year, from the date of filing appeal to the commission to get information from the JC.

3. Ministry of Home Affairs provided the classified report

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

One of the victims of the riot, who was not given proper compensation as recommended by the investigation commission, requested the Ministry of Home Affairs (MoHA) to provide true copy of the report of the investigation commission. However, the ministry neither provided the report nor the reason for not giving it.

When the MoHA did not give the proper cause of not supplying the demanded document to the victim he appealed to the National Information Commission. The commission asked the secretary of MoHA to clarify why the ministry did not give reason for denying to supply the document. However the ministry did not provide any reason.

Since the nature of the report seemed sensitive for it is related to the issues of communal harmony the commission wanted to study the report. Hence the commission issued order to submit the report to the commission for study by the commissioners.

Then the secretary of the MoHA appeared himself with the Information Officer of the ministry and expressed his inability to provide the report to the commission. At the same time the ministry asked the Chief Secretary requesting his suggestion in this matter.

The matter was discussed at the office of the Chief Secretary, who told the representatives of the MoHA present there that since the commission is a part of the government there is no cause of mistrust and the Act also requires that the documents even they are classified as secret can be studied by the members of the commission. He suggested the MoHA to give reason for keeping the report as secret document, according to the section 3 of the RTI Act, and provide the report to the commission. However the MoHA did not provide the report to the commission.

Then the MoHA sent a letter to the commission mentioning that the Minister of Home Affairs has instructed to write to the commission that the report falls under the classification section no. 2(12), hence the report cannot be provided to the commission.

Then the commission issued a letter to the secretary asking either to provide the report or to face the 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 the report from the ministry.

4. Ministry of Home Affairs Provides Financial Report of an Investigation Committee

When a journalist failed to get financial report of a inquiry commission from the Ministry of Home Affairs formed to investigate the murder of a journalist he appealed to the NIC. At first the ministry denied to provide the report saying that the account has not been audited. However, the commission repeatedly asked the ministry to provide the financial documents to the journalist and the he got the information.

5. Disclose Answer sheets to the students

Giving answer sheets to the students is an important case which has wider effect on the education system of the country. However the concerned universities are quite conservative in this matter. They have filed write petitions against the decision of the commission. The case is under consideration in the Supreme Court for more than a year.

6. Disclose Performance Evaluation Marks

An employee of the Ministry of Agriculture and Cooperative filed 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 for legal action including financial penalty and departmental action. At this the secretary filed write petition in the Supreme Court against the decision of the commission.

Similarly the Telecom Corporation also has filed writ petition against the decision of the commission related with the supply of information regarding his performance evaluation marks.

Decisions, directives and implementation

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

Promotional activities

NIC started promotional programs with a commitment program and seminars Secretaries of the Ministries of the government in which the prime minister, minister for Information and Communication and the Chief Secretary committed to implement the RTI Act. The program was followed by an interaction program with all the secretaries of the ministries of the government. Since then the commission has been carrying various types of promotional activities to promote the awareness and implementation of the RTI act in the country. These activities are targeted both to the demand and supply sides of information. Interaction programs with the government officers, civil society members and journalists were conduct in the districts jointly with the district committees of the Federation of Nepalese Journalists. Major promotional activities conducted by the commission are as follows:

- Seminar, Workshops and Training for Information Officers and Chiefs of Public Bodies
- Regional Workshops/Interaction 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 the Information Officers and Chiefs of offices
- Training of Trainers for Information Officers. Over seventy five trainers have been trained in five development regions. They can be used as trainers in district level training to train the Information Officers.
- Regular Radio Program 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 fifty districts have been covered till date.
- Interaction programs with civil society members
- Launching of Website: www.nic.gov.np
- Production of audio and audio visual public service announcements broadcast through radios and TVs in five languages
- Scholarships to journalists for reporting and feature writing on the state of implementation of RTI Act
- Consultation meetings with the RTI experts, activists, journalists and representatives of civil society

In addition to the commissions own programs the commissioners have actively participated in RTI related public programs, workshops, seminars and media events. NIC has also started giving training to its own staff on effective implementation of the RTI Act.

Government's preparation and weaknesses

On the completion of the first year of the implementation of RTI Act NIC had sent experts' teams to various district to study the situation of implementation of RTI Act, find problem and recommend measures for effective implementation. In addition NIC regularly sends its staffs to government offices in the districts to monitor the state of RTI implementation. They also suggest the Information Officers for effective implementation.

The studies carried by the experts' teams and monitoring by the staff clearly indicate that the Act is not implemented properly and adequately. Majority of the government offices have not appointed IOs and the provision of quarterly disclosure is also not carried.

One important issue which is lacking, also in the Act, is that none of the government offices have kept record of the information demand. They are not obliged to do that. However NIC has in it guidelines has put provision for it and a sample is also given in the guideline booklet. The lack of record has caused a grave flaw for study of the implementation and effectiveness of the Act.

Positive/exemplary achievement

As far as the success of the appeals, petitions and applications demanding information is concerned there is no big problem except in a few cases. High level government bodies, ministries, commissions and judicial council have cooperated so far. However the problem lies in the first layer of information demand.

For the success of the RTI Act the information demand must be met at the grassroots level. Information seekers in the grassroots level must be given information from the local public bodies from the Information Officers at the first step. 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 RTI in Nepal various organizations including the World Bank, Freedom Forum and 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 (March 28-29) also can be expected to be a historic milestone in this direction. All these initiatives have their own value and contribution for the country. However, it is time to act, to implement those findings and recommendations. A time-bound action plan with specific activities and defined responsibilities should be prepared that oblige all the stakeholders – from political parties to the civil societies – to act in this area with common vision.

Conclusion:

RTI Act in Nepal came as a result of democratic movement and over a decade long struggle by the journalists and activists of civil society. They understood the importance and role of RTI in democracy. However, very few of the stakeholders of RTI movement had clear vision, better understanding and experience about its effect and ways of implementing it so far. Most of them conceived RTI as journalists' exclusive right. Therefore it is taking such a long time to realize the role of RTI in curbing corruption, promoting good governance and strengthening democracy. Hence majority of stakeholders, including the bureaucracy, political parties and the NGOs, who have foremost obligation to implement RTI Act, now seem quite unenthusiastic to play their respective roles. Mere formulation of Act and formation of the commission are not enough to mobilize and activate the public bodies which are used to work in the environment of secrecy for centuries.

For the effective implementation of RTI Act in the country we have not only long way to go but also a different way to go, because of the transitional political situation. We need a unified, time-bound and detailed plan of action/road map with adequate human and physical resources that encompass all initiative for effective implementation of RTI Act.

Recommendations

- RTI should be put more strongly in the New Constitution as fundamental right.
- All Acts that contravene with RTI Act must be amended. RTI Act should supersede all other acts. There should be supporting Acts that help implementation of the RTI Act, e.g. acts related with data protection/preservation, and generation, preservation and retrieval of digital data etc.

- National Information Commission should have more autonomous status. It should have right to recruit its own staff and its annual budget be allocated directly from the parliament.
- RTI Act should recognize the use of digital technology for demanding, storing and receiving information in digital form and devices. People must have access to Internet with broadband capacity.
- RTI must be practiced from the top level. All cabinet decisions should be open and put in the websites.
- National level political parties and non-governmental organizations should set examples of voluntary disclosure of information. RTI Act cannot be implemented successfully without their active participation/intervention.
- Media should act as peoples' representative to access and disseminate information held by public bodies. They should focus more on information regarding development activities and projects rather than concentrating on political issues.
- Citizens must be aware that seeking information is not only their fundamental rights but also democratic duty, without which democracy cannot sustain. For this RTI should be included in curriculums of schools and colleges.
- NGOs should come forward and set models as champions of RTI.
- RTI in the Government – Administration and Bureaucracy:
- Since major obligation of implementing RTI lies in the government bodies the government staff must realize from the bottom of their heart that information held by government offices are the public property and people have right to request and get information.
- Top level officers must commit for implementing RTI in their respective ministries, departments and offices.
- The Civil Service Act and Regulation must be amended and made RTI friendly. They should take the oath of transparency instead of secrecy.
- Government staff must receive RTI related training or exposure about it at least once in a year.
- There should be a strong body to take care of implementing RTI Act in all the government bodies. The proposed body should oversee the appointments of Information Officers and their capacity building, volunteer disclosure as prescribed by the Act and Regulation and manage resource for information management.
- Present system/practice of classification of confidential information should follow the spirit of RTI Act strictly and be made more transparent.
- It should be mandatory for every government office to keep the record of request for information and actions taken on the request, and the record should be sent to the Commission regularly.

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A Working Paper on

***Government Responsibility in the
Right to Information***

(Implementation, Structural Arrangement,
Regular Monitoring & Effective Co-ordination)

Sushil Ghimire

Secretary, Ministry of information and Communications

1st National Convention on Right to Information

Kathmandu, Nepal, March 28-29, 2011

Government Responsibility in the Right to Information

(Implementation, Structural Arrangement,
Regular Monitoring & Effective Co-ordination)

Sushil Ghimire, Secretary,

Introduction

Right to Information originates with the fundamental right of "**Freedom of Expression**". As we trace its origins to the organizational structure goes back to the United Nations general assembly (UNGA) in its very first session 1946, which adopted the resolution 59(1), states that "*Freedom of information*" is a fundamental human right and the touch stone of all the freedoms. The universal declaration of Human Right, 1948 also recognizes freedom of expression (FoE) including Freedom of Information (FoI) and free press as a fundamental human right.

On the basis of these global established norms regarding the FoE, FoI & Free Press, Nepal has provisioned the Right to Information as a fundamental right for the first time in the constitution of Kingdom of Nepal 1990, which was the initiation to formulate the right to information legislation.

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

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

- Accords sufficient importance to the good governance and the realization of the of all human right ,
- Become part of the accepted international obligations of the state,
- Assures RTI from being merely an administrative measures and information is given by government to the people on their discretion,
- Believes that information belong to the public and they are the real owner of it,
- Sets a higher standard of accountability,
- Gives citizens the legal power to acquire the information.

And right to information includes the right to inspect work, documents records, take extracts or sample of materials and obtain information in forms of print out, electronic soft copies or in audio video forms.

The RTI act 2007 has been formulated on the basic concept of these universal belief & values of the information, its maximum disclosure philosophy and to engage its stake holders in the collaborative participation.

Assurance to Implementation

For the implementation of the RTI Act, the article 3 of the Act has clearly specified that every citizen shall have the right to information, and every citizen shall have the access to the information held in Public bodies. With this statement it is clear that all the citizen are liable to access to the information of the public bodies. But in the article 3(3) has qualified the areas and subject not to release the information. These are disclosure areas and mostly related with

- The sovereignty, integrity, national security, public peace, international relations of Nepal.
- Information which directly affects the investigation, inquiry and prosecution of crimes,
- Information having serious impact on the protection of economic, trade or monetary interest, intellectual property or banking or trade privacy.
- That jeopardizes the harmonious relationship among various caste or communities, and
- That interferes on individual privacy and security of body, life, property or health of a person.

To classify and update these information of public body there is a provision of a committee under, the chairman of Chief secretary, Secretary of the concerned ministry as a Member and an Expert of concerned subject assigned by chairperson as a Member.

The classification of the information is to be informed to the National Information Commission (NIC) and NIC may ask the information classification committee to revise and review the information that has not to be kept confidential.

So, it is obvious that Government of Nepal has the legal basis & background to implement the RTI act to the optimum disclosure of information to the people.

Nodal Agency

There is no any specific nodal agency to implement, promote and monitor the RTI. But if we think about the spirit and motive of RTI regulation it is very obvious that all the concerned public Bodies are responsible to disseminate information. The provision of the information officer in all public bodies to disseminate the information is a procedural commitment of the government to implement RTI act & regulation. In the regulation the duties of the IO, the process of acquiring information and remedies of not providing the information has been clearly mentioned.

So there is no any confusion about the implementation of RTI and the responsibility of the public bodies but there is lacking of the specified Nodal Agency which can work in the central level to take initiative, co ordination, and monitor the activities regarding to RTI act & rule.

Even not being a provision in the regulation, Ministry of Information and Communications (MoIC) is acting as the Nodal agency of RTI and is coordinating with all the ministries, departments and other public offices to appoint the information officer(IO), MoIC has also organized workshop & orientation program to IO together

with the spokesperson to make them aware about importance of RTI and to assure its effective implementation.

There is a well designed procedural arrangement in the regulation to provide and acquire the information. The role of the supply side (information provider) and demand side (information seeker) is clear. The present need is to enhance the capacity of the both side. In such a case the amendment can be made in RTI regulation to assign MoIC or Department of Information or other organization to work as a Nodal agency of RTI.

Management of Information

In the present context, the governmental organizations (Ministries, departments, and other offices), corporations and other public institutions are directly related to the people in supplying their daily needs, goods and services and other socio-economic activities. These institutions are concerned with the people in their affairs from "Womb to Tomb". So these organizations are the major suppliers of information and needs the capacity building. In most of the Governmental offices the record keeping is very poor, which is the main source of the information. And the person working on record keeping are less motivated, not qualified and skilled to prepare the information, manage the information. Unfortunately this sector (record management) is still not a priority area to the employees and governmental organization.

RTI regulation has equally prioritized the role and values of both Information Supply side and Demand side, but in practice the supply side is more neglected and more emphasis has been laid down to demand side. All the debates, talk programs, workshops, and seminar are centered to analyze the defect, weakness and non-functioning of supply side i.e. governmental officials and public Bodies' officials. We never talk or talk less about their problems, physical facilities in information management and their knowledge and skill development and so on.

So the capacity development in the case of organizational set-up, scientific methods of record keeping & filing system, use of ICT for the data storage and quick release of information is of utmost importance. The officials and IO should be trained and familiarize with the modern technology and process.

To enhance the capacity and awareness of the demand side, there should be enough activities to publicize the provisions of RTI regulation, so that the people will be aware of it.

Some information has cross secretarial relation. So the flow of information from one organization hampers the flow of information of another organization. The internal communication (intra-organizational) within the organization from one section to another, one department to another is equally important. Likewise communication in between and among the organizations (inter organizational) should also be strengthened. In such case the harmonization in information management among the departments, and organization should also be considered.

Training and Orientation

In Nepal the concept of the "freedom of expression" the foundation stone of RTI activities was formulated in the constitution of Nepal long time back, but the matter of RTI is still a new topic in Nepal. The RTI act has promulgated on 2007, and it is already 3 years, that the RTI act is in the action. In the initial stage, the establishment

of NIC, information officer took some time. So it was in full swing of action since less than two year.

In this context, all the concerned officials in NIC, in ministries, department and other public organization are still in the learning phase. So they need a strong and effective orientation and training to increase their capacities. The infrastructure, organizational set up and record keeping mechanism is also poor. The demanding side i.e. the information seekers are also unaware of the procedure to ask for information and the legal provisions of the RTI Act.

The citizen's access to information should be made simple and easy and to perform the functions of the public bodies in more open & transparent way, so that people can get the information easily.

The orientation and training to the governmental officials, public Body officials on the supply side and the people on the demanding side should be frequent in the initial stage & should be regular in the coming days. The strengthening and empowering of NIC, to safe guard the RTI Act and rules is also equally important, for the smooth functioning of RTI regulations

Proactive Disclosure

Government has proposed the provision of Proactive disclosure of the information in their offices. Proactive disclosure is a process to disclose or disseminate the information to the people in a procedural manner in the regular and periodic basis even not being asked by the people. This process has been applied since a decade in the different forms. Some of the provisions has been included in regulatory framework and some are decided by the executive decisions or in regular practice.

Some of the common practices of the proactive disclosure are citizen's character. Annual programs, social auditing system, periodic (Quarterly, half-yearly and annual reports) reports, web sites, press bulletin, interview of the officials, regular press briefing etc.

These practices of proactive disclosure are applied in one and another form depending upon the needs and the nature of the organization. Some of the provisions mentioned above are mandatory backed by the regulation and are in practice. But the result in sincerity and efficiency is mixed and not satisfactory in the most of the organizations. But it has become easy to monitor the activities of the regulation by the concerned authorities. Publicizing the periodic reports, monthly financial statement are some of the mandatory process of proactive disclosure.

Classification of Information

To protect and maintain the confidentiality of the information those are not to release, the RTI Act has provisioned the Information Classification Committee. The composition of the committee is :

- | | | |
|----|---|---------------|
| a) | Chief Secretary of the Government of Nepal | - Chairperson |
| b) | Secretary of concerned ministry | - Member |
| c) | Expert of concerned subject assigned by the chairperson | - Member |

The committee will collect the probable list of the information and will classify according to their nature in the spirit of RTI Act. The information classified in accordance with act will inform to the NIC by determining the number of years of

confidentiality & method of protection of information. The confidential information may be kept confidential for the maximum period of 30 years, according to the nature of the information. The committee should also review in every 10 years that any information classified as confidential is necessary to keep it up confidential or not. While receiving the classification, the committee, if finds necessary to keep such information confidential for additional period, may decide the duration and classify as confidential for the period or may classify as non-confidential. There is also a provision for complain of the classification. So any person who is not satisfied with the classification made by the committee may appeal before the NIC.

The RTI Act has also provisions to the protection of the information. Public body shall protect information of personal nature held in for preventing unauthorized publication and broadcasting

Personal information held in public body, except in the following situation, shall not be used without the written consent of 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.
- If related to investigation of offence of corruption

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

Use of Information and Communication Technology (ICT) in RTI

The information management and dissemination process is very traditional. The manual system of record keeping and dissemination process is prevalent in almost all organization. It has made the RTI process very inefficient and time consuming. Records are also not maintained in proper way. So the use of ICT to achieve and manage the information is inevitable.

This 21st Century is the Age of Information, backed with ICT. In such case all the public bodies should be oriented and emphasized to use the ICT to facilitate the information management, information dissemination and reliable record keeping. Digitization of the information, hosting the web sites, updating in information, electronic transmission and dissemination of information, use of broadcasting and print media for the dissemination and proactive disclosure of Information are few example of using the ICT in the case of RTI campaign.

Use of ICT also needs both hardware and software component. In the hardware component availability of equipment is prominent, while in software component the operating system, the capacity building of the official is important. Both the component should go simultaneously for its growth and efficient functioning.

Transparency & Accountability

The procedure and process in the organization should be transparent. So the people can easily understand about the procedure, rules & regulation of their concern. This mechanism will make the responsible officers accountable to their jobs, and their customers. This will reduce the delaying process in performing jobs and creates the environment not to hide anything making the process more open(transparent).

To promote this process, the rules & regulation should be prepared & amended so as to make the concerned people more accountable to their job and transparent in the working procedure. Right to information can play a crucial role to change the conventional bureaucratic practices, transform the Nepalese society towards transparency and accountability and to establish a democratic society.

Challenges to RTI

RTI initiative is a new subject in most of the country, although “Freedom of Information” a basis for RTI was adopted by United Nations General Assembly in 1946. The implementation of RTI regulation, RTI activities are lagging far behind in most of the countries. The common challenges (that may not be equally applicable in all countries) are;

- Hostile or indifferent governments, public bodies, and other concerned organizations; in many cases government may not realise the value of having right to information, particularly in the country where there is a history and culture of secrecy. Right to information may also expose corrupt practices and undermine personal and professional interest.
- Working situations where media is suppressed, controlled or politicized; Access by journalists to official information in many countries is still not realized. In some cases where a right to information exists, journalists are not using it because they continue to rely on the relationships they have developed with government sources.
- Situation of conflicting laws ; in many cases, there is a constitutional guarantee of RTI and there are many laws which contradict with the RTI are not amended.
- Laws that are not implemented or enforced ;
- Cautious and conservative officials and cultural resistance;
- Limited state and bureaucratic capacity;
- Awareness of the right to information;

These are the common challenges that are facing in most of countries in different stage of implementation. There are no same prescriptions to overcome these problems in one instance. Some of the challenges need the amendment in the regulation and some can be solved by the executive decision and some more need some training, workshops, seminars and other awareness and advocacy programs. The capacity building in the organization and in the personnel level is equally important to overcome the challenges faced by RTI movement.

Road Ahead

There is a long debate in the service delivery mechanism in Nepal. The customer (service receiver) always complain about the delaying in the process, red tapism, corruption, lack of accountability of the officials in the public offices. They also complain about the clumsy working procedure and non transparent activities.

The RTI has been recognized as a fundamental human right, linked to the dignity of human being. The RTI is also a building block to the participatory management and good governance. This can create a harmony and belief in between the service provider and service receiver. It can create a conducive environment for the

accountability, good governance & to reduce corruption, abuse of power and misappropriation of the fund in the public offices.

Realizing the importance and global recognition of RTI, Nepal promulgated RTI Act 2007 & RTI Rule 2009. This was the landmark departure in the RTI movement in Nepal.

Some salient features of the RTI regulation are;

Proactive disclosure - Principle of RTI Stipulates that public bodies are required to disclose certain key information by them even in the absence of any request. Sec 5 of RTI Act requires public bodies to update and publish different information by themselves on periodic basis.

Protection of whistleblower - Sec. 29 of the RTI Act provisioned the protection of whistle blowers. No harm and punishment is done to bear any legal responsibility to the whistle blower for providing information. If any punishment or harm is done to the whistle blower, the whistleblower may complain along with the demand of compensation.

Scope of Act also extends to political parties & NGOs - another noteworthy aspect of this Act is that it covers Political Parties and NGOs in its section 2(a) within its scope and they are also responsible to provide the 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 its sec. 11. NIC has been already established on 2008.

Time frame and procedure of providing Information - Sec. 27 of the Act has made detailed procedures to acquire the information from the concerned agencies.

Compensation in case of harm or loss occurred as a result of not providing the information - Section 33 says that if any person incur loss and damages due to not providing information, denying to provide information, providing partial or wrong information are entitled to get compensation.

If we look at the provision in the RTI regulation it looks perfect to meet the expectation of the RTI movement. But the implementation of RTI regulation is not satisfactory. Both the supplying & demanding side are learning the processes & provisions of the regulation, and they are in the stage of “learning by doing” phase. Many activities regarding to the awareness of the RTI, the duties & responsibilities of the information seeking people and public bodies has to be enhanced. Regular publicizing activities, different forms of advertisements, workshops, seminars, orientation programs, training has to be carried out, targeting the officials of public bodies & the civil society.

The structural adjustment in the organization, strengthening the physical facilities of the organization use of ICT & other modern technologies in information management is equally important.

Furthermore, the realization of the importance of RTI, and commitment to implement the RTI from the political leaders & administrative leader is very important. Without their full support & willingness, it is impossible to enhance its smooth functioning.

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A Working Paper on

***EXPERIENCE AND CHALLENGES OF INFORMATION OFFICERS
IN THE RIGHT TO INFORMATION LAWS IMPLEMENTATION***

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1st National Convention on Right to Information
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EXPERIENCE AND CHALLENGES OF INFORMATION OFFICERS IN THE RIGHT TO INFORMATION LAWS IMPLEMENTATION

Sher Bahadur Dhungana

Information is rapidly becoming the world's most valuable asset. Information creates wealth. Before, land/farm / mines, labour and wealth were the basis of prosperity; however, now information is taking that place. Countries trying to block the free flow of information are pushing themselves towards underdevelopment/darkness.

- Edward Corneis, Futurologist

Section One

Relevance of the Study, Limitations and Structure

Background

Human beings, the most perfect living beings in this world, have their own views, analysis and ways of doing things which several governments try to keep free or restrict through legislation. Any information is the most valuable property. The countries that have realized this and using information in an unrestricted manner have achieved rapid progress. They have become the powerful nations of the world. With such achievement and examples, the Right to Information has evolved as the fundamental right of the people.

A landlocked country, Nepal, remained under the clutch of the Rana rule for 104 years. Although democracy was ushered in into the country in 1949, it was could not be sustained and institutionalized much. The Panchayat political system that was forced upon the people by the kings of the Shah dynasty in 1960 only benefited a handful of dynastic rulers, classes and communities. The people were compelled to live in darkness and ignorance. They had to wait for the People's Movement of 2006/07 to become the sovereign citizens. Mostly, the people were deprived of fundamental rights.

Democracy was reinstated in 1990. Nepal was also touched by the wave of modernization sweeping the world. From this point on, Nepal entered into an environment of openness. The Constitution of the Kingdom of Nepal, 1991 provided for the Right to Information. However, the Right to Information Law was not enacted for 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 2008.

Although the Act related to the Right to Information was arranged for in Nepal, the work, duties and responsibilities of the Information Officers has not been established even after four years since the implementation of the RTI Act. Efforts will be made in this working paper to cast some light on the available opportunities and the obvious challenges focusing on these topics since some leap has to be made for the success and prosperity of the federal republic of Nepal in this realm.

Efforts have been made in this presentation to explain about the experience of the information officers and the challenges in terms of the effective implementation of the right to information.

Importance of the Study, Limitations and Structure

The Right to Information Act, 2008 and the Right to Information Regulations, 2009 are under implementation in Nepal. The right to information has remained under-utilized in the context of Nepal due to the very few citizens seeking information and the practice of the office-holders of the public bodies who think it is practical and in keeping with the law not to provide the information.

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

The Right to Information has to be promoted rapidly for giving momentum to the concept that the people's rights would be strengthened and the country's development would gain pace if the right to information could be implemented in an effective manner.

This paper has been prepared based on the interaction and meetings held with the chiefs and the information officers of public bodies and the study of published materials. Information on the legal provisions and the global and India's experiences regarding the RTI has been collected from the Website.

Since the study had to be carried out within limited time, the experiences and challenges of the information officers from outside the Kathmandu Valley could not be included in adequate amount.

This study is divided into four sections.

The First Section contains the background to the study, the importance of the study, the limitations of the study and the structure of the study under the heading Introduction.

The Second Section deals with topics like the evolution of the Right to Information, the international practices, the Indian practice and Nepal's initiatives on right to information.

The Third Section includes topics like the legal provisions on the Right to Information and the works, duty and responsibilities of the Information Officer.

The Fourth Section incorporates the experiences of the information officers, challenges and recommendations.

Section Two

Right to Information and its Evolution

The practice of right to information¹

One has to go back 245 years in order to get an idea of the evolution of the concept of right to information. However, the task of guaranteeing right to information through the constitution and preparing separate laws to that regard is found to have increased especially after 1990.

The right to information was first of all provided in the constitution of Sweden in 1766. This is the oldest constitutional provision in the world regarding right to information. At present, the right to information has been constitutionally guaranteed in more than 50 countries of the world. Many countries in the world are taking initiatives for guaranteeing right to information through constitutional provisions, formulating separate laws and building institutional mechanism to that regard.

Right to Information as Freedom of Expression

Article 19 of the Universal Declaration of Human Rights passed by the United Nations maintains the right to information as human rights. This Article states: "Every person has the freedom of thought and expression. Under this right are included the freedom to follow any ideology without any hindrance and to seek, have access to and distribute information through any means and without restriction."

Right to Information as Fundamental right

Information is vital in this age of democracy for its strengthening. Realizing its inevitability, many constitutions drafted after 1990 have accepted the right to information as the fundamental right of the people. In the new democracies, the right to information has been adopted as the basic right and need.

In this way, the right to information has been accepted as the vital instrument for empowering the people, for the institutionalized development of democracy and for promoting openness and transparency. Going by its evolution in the world and comparing the status of prevention of corruption and good-governance in different countries, the right to information has developed as a strong means for rendering the public bodies accountable to the people.

International Principles²

Looking at the international principles of the right to information, this right is found to be used in an appropriate manner in many countries. Some principles have been formulated for its effective enforcement. Some of the best provisions provided in the laws of different countries and their implementation have developed as the fundamental principles of the right to information.

- a) The right to information is the basic right of the people. Even foreigners/refugees should not be deprived of this right.

¹ Aryal, Tankaraj and friends, *Right to Information (Training Resource Booklet)*, Citizen's Campaign for Right to Information, Saun 2067, P 26.

² Ibid, P 18-20

- b) The right to information is not secluded. Access to information is a rule while right to secrecy is only an exception.
- c) The right to information covers all the public bodies (the Executive, Legislature and Judiciary).
- d) Basic information should be published through proactive disclosure so that the citizens will not need to ask for the information.
- e) The process for seeking information should be simple and free of cost. It should not be complex and too formal.
- f) It is the duty of the public bodies to help by teaching all the methods and techniques to the seekers of information.
- g) Information could be withheld on legitimate grounds. However, the grounds for withholding information should not be fictitious and personal. They should be objective and reasonable.
- h) Even though a decision has been made not to provide information on any topic on any basis, if the information is **information of public interest**, such information should be released as per the laws concerning public interest.
- i) Provisions should be made for filing an appeal against the decision of any agency not to provide information and to conduct final hearing.
- j) An independent body should be set up for the protection and enforcement of the right to information with the authority of giving final decision by hearing the appeal against the body not providing the information.

Information Official: Indian Practice³

According to the Right to Information Act of India, 2005, a citizen of India is endowed with the right to ask any question to the government or seek information, to acquire a copy of any written document, to see and inspect any government papers/works and to take the certified sample of the substances or construction materials used in any construction projects undertaken by the government.

This Act is enforceable in all the bodies established by the constitution or laws of all the states of India except those of the State of Jammu and Kashmir, the semi-government bodies and the non-governmental organizations. This Act has been treated above all the other Acts of India.

One or two persons are assigned to work as Nodal Officers in every public body. They have been assigned for collecting information from various departments/sections and releasing it. Assistant Information Officers are deputed for the purpose of registering the information. The Department of Postal Services has assigned 629 postal offices as information officers to collect information for all the central bodies. They work as assistant information officers. The provision allowing filing of applications at the post offices and getting a receipt for the application has made it easy to file applications seeking information. The list of such postal offices has been kept on www.indiapost.gov.in/rtimanual_16a.html in accordance with the Guidelines on Right to Information.

India has enough Acts and laws related to right to information and it is said that not all of them are implemented in an effective manner. But the RTI Act has been functioning effectively. A fine of Rs. 25,000 is taken in case information is not given

³ Righttoinformation.org/facks.asp

on time and the wrong and incomplete information is given. Therefore, the law is working in India due to fear of fine and penalty as well. The designated penalty is deducted from the employees' salary.

An application seeking information can also be sent through the post if the information officer refuses to take the application to that end. A complaint can also be sent together with the application. The information commissioner can slap a fine of Rs. 25,000 against the official if he/she is found guilty. In Nepal also there is the provision of sending any complaint by post. However, its effectiveness has not been studied.

The central and state level information commissions in India have fined and punished the responsible officials not implementing the right to information Act. The Act has been enforced. In Nepal too, officials responsible for not executing the RTI Act have been prosecuted.

It is said filing of complaints against the erring officials and the commission taking action against them has helped check corruption in India. It is expected that this trend will also continue in the future. There are some people who say it is costly working in this way and enforcing the RTI Act. However, corruption will automatically be lessened if transparency is maintained in the works of the public bodies. It is found that the spending on implementation of the right to information is not much compared to the scale of corruption and it is much effective.

Implementation of the Right to Information: Indian Experience – from Central to Local Level

The names, offices, phone numbers and e-mail addresses of information officers assigned in the government bodies in all the states have been uploaded in the Website of all the provinces. For example, separate information officials have been assigned for every number at the Central Jail in India. ⁴More than one information officers are found assigned in a single large agency.

There are also examples of success stories of the use of right to information with remarkable outcome in province after province kept in the Websites. ⁵The people have received information and inspiration from this.

Representatives of the non-governmental organizations and people from different provinces are found working as the Right to Information activists. Their names, addresses, contact number and e-mail addresses and the province they live in have been kept in the Website. ⁶ In some provinces, there are also more than one volunteers.⁷

⁴ http://delhigovt.nic.in/rti/search_pio.asp

⁵ http://righttoinformation.org/fullstory.asp?story_id=426&city_id=22

⁶ http://righttoinformation.org/rti_activists.asp

⁷ http://righttoinformation.org/ngo_list.asp?city_id=1

Implementation Status of the Right to Information

Europe is better in terms of the status of the implementation of the Right to Information. The countries there are developed. These countries have formulated laws for providing constitutional protection to the right to information. Sweden gave legal recognition to the right to information in 1776. This country ranks fourth among the countries with lowest level of corruption and its score is 9.2 in the corruption index for the year 2010.⁸

In this connection, Colombia became the second country to implement the right to information. It implemented the RTI in 1888, followed by Australia, Canada and New Zealand all of which implemented the RTI in 1982, India in 2005, Nepal in 2007, China in 2008 and Indonesia in 2010. The number of countries passing the laws related to the right to information which stood at 13 until 1990 has now reached 94. There is separate legal provision on right to information in only four out of the eight countries in South Asia at present.

Nepal: Historical Background of RTI⁹

Provisions have been made on the right to information in different countries of the world over the last 240 years. The provision on the right to information in Sweden is the oldest provision in this regard. Presently, many countries have constitutionally guaranteed the right to information and the trend of these countries giving constitutional recognition to it, formulating separate laws on it and setting up institutional mechanism is growing rapidly.

The right to information could be the sure-fire tool to check corruption if it could be guaranteed and transparency maintained. It can become the basis for the effectiveness of public policy and decisions. It can be the protective shield against crisis as a mechanism to promote the government's legitimacy. It helps prepare the basis for public participation by complementing public accountability which is also a precondition for the success of democracy.

In the context of Nepal, the provision mentioned in Clause 211 under the heading Court Procedures in the Muluki Ain [Civil Code], 2020 BS, that says *'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'*, could be considered the origin of the concept of right to information. Similarly, Column 17 under the heading 'Paper Check' of the Civil Code reads: *Anyone concerned can take the copy of the government papers with the office/court.*

The fundamental rights of the citizens were limited until the restoration of democracy in 1990. Constitutionally, the Article 11 of the Constitution of the Kingdom of Nepal, 1991 made provisions for the right to information for the first time in the history of Nepal.

It was necessary for someone to raise voice for fulfilling the need of a process and the mechanism under which the citizens could seek information, acquire information for the protection of this fundamental right guaranteed by the constitution. As a result

⁸ Transparency international.com

⁹ Ibid, P 25

initiatives were started in 1999 at the people's level for formulating the bill on right to information through the continuous and collective efforts of the Federation of Nepali Journalists, Nepal Press Institute and the stakeholders in the media working in this sector.

As a member of the United Nations, it is Nepal's moral responsibility to abide by the UN Declarations. The United Nations Protocol on Civil and Political Rights was issued in 1966. In the context of Nepal unconditionally ratifying this Protocol on 14 May 1999, it was necessary to take the necessary steps to bring into use the right to information that was guaranteed by the international instruments.

The Interim Constitution of Nepal, 2007 is in force with full commitment to 'democratic norms and values including the competitive multi-party democratic system of governance, civic freedom, fundamental rights, human rights, adult franchise, periodic elections, complete press freedom, independent judiciary and the concept of the rule of law.'

Article 27 of the Interim Constitution which provides for the right to information states: "Every citizen shall have the right to seek and get information related to that individual or on topics of public concern. However, nobody shall be forced to provide information on any topic that is classified or that has to be kept confidential by law."¹⁰

Addressing the growing voices for formulating the Right to Information Act and also recognizing the activism of the civil society to that end since 1999, the mounting public pressure and the crucial role played by the media in bringing the successful political change of 2006/07, the Government of Nepal finally tabled the Bill on Right to Information in Parliament. The Parliament also passed the Bill on Right to Information. Ultimately, the Right to Information Act, 2007 was issued and it came into force from 20 August 2007. Similarly, the Government of Nepal issued the Right to Information Regulations, 2009 on 9 February 2009 as per the provisions of the Act. In this way, the provisions and mechanism stated in the Act were put in place. The provision of providing the information sought by the Nepali citizens as per the law has been put into practice.

Section Three

Information Supply, Citizen's Charter and Information Officers

Information

In simple language, the term information refers to news, data, facts and archives. Although all these concepts are covered by the term information, the laws related to the right to information that enable the citizens to exercise their right to information has defined information as any written document, material or records related to works of public importance executed or to be carried out by public bodies, any acts or decisions related to that.

¹⁰ *Interim Constitution of Nepal, 2007*, Nepal Law Commission.com,np

Written record

According to the Act, by written record is meant any written documents. The term also refers to audio-visual material collected or updated by means of any machine or that could be published and reproduced.

Right to Information

The right to seek and get information of public interest with a public body is taken to be the right to information. This term also refers to the right to avail of any written documents or materials kept by any public body, to study and observe the works carried out by that body, to get the certified copy of such written records to visit and observe the site where works of public importance are being undertaken, acquiring the certified sample of any material or to get the information stored in any type of machine by means of that machine.

Information that cannot be supplied

Every Nepali citizen has the right to access information while remaining under the Right to Information Act. Every Nepali citizen shall have access to information with the public bodies. Despite this legal provision requiring the public bodies to provide information, there is provision as per the Right to Information Act, 2009 that says information related to the following topics shall not be supplied. This is considered as the exception to the supply of information.

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

Update of Information and Publication

Clause 5 of the Right to Information Act, 2009 has provisions which make it mandatory for the public bodies to have the information related to them updated and if possible to have and get updated any information related to them dating back to at least up to 20 years from the date this Act is enforced.

There is the provision under which the public bodies are required to enlist and publish the following information related to them. As per this legal provision, the public bodies should update the information within three months from the date this Act has come into force and in every three months after that.

The provision requires that the public bodies should enlist and publish the following information related with them.

- a. The nature and type of the body,
- b. The works, duties and rights and responsibilities of the body,
- c. The number of staff in the body and their job description,

- d. Services provided by the body,
- e. The branches of the body providing service and the responsible officers,
- f. The charge required for the service and the time it takes,
- g. The process and officers taking decision,
- h. Officer hearing complaints on the decisions,
- i. The details of works carried out,
- j. The name and designation of the information officer and the chief,
- k. List of Acts, Laws, Regulations and Guidelines
- l. Updated particulars on the income, expenditure and financial transactions,
- m. The details of any programmes or project carried out by the public body in the previous fiscal year, if any,
- n. The details of the Website of the public body if any,
- o. The particulars of notice of the public bodies published or to be published elsewhere.

Citizen's Charter for Right to Information

As per the Good Governance (Management and Operation) Act, 2008; the Good Governance (Management and Operation) Regulations, 2009; and the Service Campaign Operation Guidelines, 2009, ¹¹any public body providing goods and services should hang a Citizen's Charter providing particulars on the following topics for the information of the service-recipients.

- The service and the nature of service provided by the office concerned,
- The process to be fulfilled by the 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 tariff 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 into complaints of the service-recipients,
- Related offices and telephone number of the body providing the service,
- Priority of providing the services,
- Services which are compensated and not compensated.

Once the Guidelines for Making the Public Services Effective, 1999 was implemented, the public bodies across the country started making the citizen's Charters with the above details written on them and hanging them in their respective offices. Works like collecting the entire Citizen's Charters in the district and publishing them in book form, distributing the books to all the bodies and organizations in the district and sending them to key offices throughout the country were carried out. The District Administration Office, the office of the District Development Committee and the officers' clubs in different districts actively contributed to this. Organizations like Pro-Public working in the sectors of good-governance have also lent a hand in this task.

One can, therefore, see the Citizen's Charters hung at the commissions, ministries, departments, regional/district-level office, area-level offices, the offices of some of the

¹¹ Nepal Law Commission.com,np

Village Development Committees (VDCs), resource centres providing the goods and services. This work has proved to be a pioneer in terms of transparency in information and providing the information about the services and facilities provided by the offices to the service-recipients. It had become a simple means for providing information before the introduction of the Right to Information Act and it is still working effectively.

The Citizen's Charter containing information on the services rendered by a particular public body when it has been hung in the premises of the offices of different public bodies in a way that it can be seen by all as required by the law has proved to be useful to people who need the services and information, while the Right to Information Law has provision for providing the information required by the general public, updating it regularly and periodically providing the information. The Citizen's Charters could be considered the information published voluntarily.

In Nepal also there is the provision In the Good-Governance (Management and Operation) Regulations 1999 under which a three-member committee formed under the chairmanship of the Chairperson of the District Development Committee and comprising the Chief District Officer and the Chief of the Office concerned will look into the application filed by any applicant complaining that he has suffered damages for not getting the services as mentioned in the Citizen's Charter and this committee will also determine the compensation. As per the provision, this committee shall also decide whether to carry out the work free of charge or provide Rs. 5,000 as compensation for damages suffered by the applicant. This amount is taken from the employee causing the damage. However, this provision is not found to come into practice.

Monitoring of Implementation of Citizen's Charter in Context of Right to Information¹²

There are people who say that it is not necessary to seek information as much of the information which the general public wants to know have already stated in the Citizen's Charter. The following results were found while carrying out monitoring of the situation of implementation of the Citizen's Charter in 17 districts, namely, Panchthar, Ilam, Morang, Udayapur, Dolakha, Ramechhap, Dhanusha, Mahottari, Parsa, Makwanpur, Dhading, Kaski, Syangja, Baglung, Myagdi, Palpa, Nawalparasi, Surkhet, Banke, Kailali and Kanchanpur. The monitoring was carried out by the National Vigilance Centre from mid-December 2009/mid-January 2010 to mid-March 2011 as per its responsibility and as per the legal requirement by which all the public bodies should mention in the Citizen's Charters particulars of all the services that they provide to the service-recipients.

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 the Citizen's Charters and the services rendered by these offices. The team collected information from altogether 50 service-recipients, including ten 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

¹² Annual Report, 2010-2011, National Vigilance Centre, Bhadra, 2067 BS, P 42

this by reading the Citizen's 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 Citizen's Charter, 34.04 per cent of the service-recipients said they knew about this while 66.52 percent expressed their ignorance about this.

Likewise, asked whether works were carried out in the time mentioned in the Citizen's 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.

Similarly, to the question whether their work was carried out in accordance with the charge/tariff mentioned in the Citizen's 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 Citizen's charter or less, 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.

- Going by the above results, when it is found that the number of people looking at the Citizen's Charter is few even when the public bodies keep the Citizen's Charter about the works carried out by these bodies, it shows the notion that one can get the information from the public bodies was yet to be established which indicates lack of publicity in that regard.
- The service recipients who come under the 14.59 per cent category including those who are quite satisfied and those who are very dissatisfied should be addressed. This section of the service recipients could be addressed best through the effective implementation of the right to information.

Inter-relations between Right to Information, Citizen's Charter and Corruption

Some among the countries making separate legal arrangements on the right to information have enforced the concept of keeping the Citizen's Charter. It is seen that the Corruption Perception Index (CPI) is nearer to the maximum score when services are provided by keeping the Citizen's Charter with adequate information on the goods and services provided by the public body in the premises of the public bodies concerned so that everyone can see it, along with separate legal provisions on the right to information for providing information to the general public in an effective manner. Some examples of this are given below.

(a) Corruption Perception Index (CPI) of countries where laws on right to information are implemented¹³

¹³ Transparency international.com

S. No.	Name of the country	Year RTI laws enforced	CPI, 2010 Rank	CPI score
1	Sweden	1776	4	9.2
2	Columbia	1888	78	3.5
3	United States of America	1966	22	7.1
4	Australia	1982	8	8.7
5	Canada	1982	6	8.9
6	New Zealand	1982	2	9.3
7	Thailand	1997	78	3.5
8	Pakistan	2002	143	2.3
9	Peru	2002	78	3.5
10	India	2005	87	3.3
11	Great Britain (UK)	2005	20	7.6
12	Nepal	2007	146	2.2
13	China	2008	78	3.5
14	Bangladesh	2009	134	2.4
15	Liberia	2010	87	3.3
16	Indonesia	2010	110	2.8

(b) Corruption Perception Index (CPI) in some countries where Citizen's Charter has been enforced¹⁴

S.No.	Name of the country	Year RTI laws enforced	Name of the Charter	CPI, 2010 Rank	CPI Score
1	UK	1991	Citizen Charter	20	7.6
2	Belgium	1992	Public Service Users Charters, 1992	22	7.1
3	France	1992	Service Charter, 1992	25	6.8
4	Spain	1992	The Quality Observatory, 1992	30	6.1
5	Malaysia	1993	Client Charter, 1993	56	4.4
6	Portugal	1993	The Quality Charter in Public Service, 1993	32	6
7	Jamaica	1994	Client's Charter, 1994	97	3.3
8	Canada	1995	Service Standards Initiative, 1995	6	8.9
9	India	1997	Citizen's Charter, 1997	87	3.3
10	Nepal	1999	Citizen's Charter, 1999	146	2.2

Looking at the comparison given above, it is seen that the Corruption Perception Index of countries that have implemented the right to information laws and the Citizen's Charter since long is high.

¹⁴ goicharters.nic.in

It can be considered that corruption has decreased in the countries where the right to information laws and the citizen's charter has been enforced as the works of the public bodies became more transparent due to this.

Responsibilities of the office chief:¹⁵

According to the Right to Information Act states that by office chief is understood the chief of the public body. The main responsibilities of the office chief in connection with enforcing the right to information laws are as follows:

- Assigning the Information Officer at the office,
- Providing required information to the information officer,
- Carrying out the works required to be performed by the public bodies in the protection and promotion of the right to information,
- Hearing complaints against the information officers.

The office chief of any body should make the following arrangements for the protection and promotion of the right to information:

- a) Carry out the necessary works for honouring and preserving the citizen's right to information,
- a. b) Spontaneously publish and disseminate the information related to the office for promoting transparency in the office,
- b) Public bodies should update the information related to them,
- a. d) The public body should update the information related to it from at least 20 years from the date of the implementation of the Right to Information Act, 2009, as far as possible,
- b. e) Assign the information officer and provide necessary information to the information officer,
- c. f) Hear complaints against the information officer, among others.

Works, duty and responsibility of the information officer

The public body should make arrangements for keeping an information officer for supplying the information at the office. The chief of the public body should regularly provide the information that the office holds to the information officer. Provision should be made for an information section as required for this purpose.

The **Information Officer** has to carry out the following works as per the Right to Information Act:

- 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 for cannot be immediately made available, 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 it is sought.
- If the information sought by an individual is not available with the public body concerned, the person seeking information should be given this information.

¹⁵ Aryal, Tankaraj and friends, *Right to Information (Training Resource Booklet)*, Citizen's Campaign for Right to Information, Saun 2067, P 38-39.

- Release the information from time to time by classifying and updating the information. If possible, information dating back to at least 20 years from the date this Act came into force should be updated. Information related to the body one is associated with should be made public, published and disseminated in every three months from the date the RTI Act came into force after classifying and updating the information.
- To update the information, manage the certification of the records and store and protect the information.
- To provide personal information with the consent of the person concerned.
- To play the role of the facilitator for making the works of one's office/department open and transparent. To update the given data and the data sought and provide it to the higher body and to the National Information Commission.
- Clearly state the name, address and other details of the Information Officer in the Citizen's Charter in order to make the process of seeking information easy and smooth.
- Clearly state in the notice board information about contact centre and the Enquiry Section in case there is no information officer.
- Provide necessary information about the process of application seeking information for facilitating the process.
- Provide information about the time it takes to provide the information.
- Provide information regarding the charges required for providing the information.
- To protect and preserve information of personal nature in one's access from unauthorized publication and dissemination.
- Not to shirk from the responsibility of supplying information except for valid and adequate reason for not supplying the information concerned.
- While making public, publishing or broadcasting the information it should be done through the medium of various mother tongues and mass media.

Information Officer and Spokesperson for the Supply of Information

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 and the Service Campaign Conduction Guidelines, 2009 and other existing legal provisions, the public bodies are required to provide to the beneficiaries the information related to them. In this connection, it is necessary to be clear about the separate or similar role of the information officer and the spokespersons. A comparative table is given below for that purpose.¹⁶

S. No.	Topic	Information Officer	Spokesperson
1	Concern	general public	representative journalists from the Press/media
2	Press	relation as general public	In number 1
3	Where?	in all public bodies	constitutional bodies, ministries and offices of that level

¹⁶ *Guidelines on Implementation of the Right to Information*, National Information Commission, Jeth 2066 BS, P 34

4	Scope of work	Have to update and Make public the information on a regular basis by oneself. Similarly, has to provide information sought by the Nepali citizens	Has to release information as per the need. Has to give the information sought by the Press
5	Status (position)	Post created as per the legal provision of the Right to Information Act, has legal responsibility and authority' there is provision for punishment in case of violation of law	Post created as per the need and the demand by the Press. Assigned responsibility as per the Guidelines on Work Procedures of the Work, Duty and Authority of Spokesperson issued by the Ministry of Ministry of Information and Communications.
6	Term	Not fixed. Officers from Joint Secretary level to Enumerators are working as Information officers	Spokesperson is of Gazetted First Class rank and the Assistant Spokesperson of the Gazetted Second Class rank.
7	Availability of Information	The chief should provide Information on regular basis.	The chief should provide information meant for the Press.
8	Means of motivation	None	Rs. 500 as telephone allowance
9	Transportation facility	Available in some bodies	The Joint Secretary is provided with a vehicle
10	Number	353 persons at central, Regional and district level	51 at the central level (including some Assistant Spokespersons)

Provision of Information Officer in Public Bodies

According to the Civil Servants Records Office, the body responsible for keeping the record of civil servants, there are 8,991 offices in the country.¹⁷ As per the Office of the Comptroller General that is responsible for releasing budget and keeping the accounts of the government expenditure, there are 5,000 offices throughout the country.¹⁸ According to the Office of the Auditor General, there are 30 to 40 offices in each district of the country. By the end of the Fiscal Year 2010/2011, there are 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.¹⁹

Even the health posts are considered as offices as the employees filling particulars under the civil service at these offices are also found working at health posts whereas the Office of the Comptroller General has considered only offices keeping the accounts of the budget as offices under it. Similarly, the Office of the Auditor General has included in its records only offices that maintain accounts of the government funds and have them audited. Information about the number of all the public offices could not be gathered in course of the study.

¹⁷ Mr. Shreeram KC, Director General, Nijamati Kitabkhana (Civil Servants Records Keeping Office) [Chait 6, 2067 BS]

¹⁸ Office of the Comptroller General, [Chait 6, 2067 BS]

¹⁹ Mr Dev Bahadur Bohara, Deputy Comptroller General and Information Officer, Office of the Comptroller General, [Chait 6, 2067 BS]

As per Clause 6 of the Right to Information Act, 131 information officers have been assigned at the central level to constitutional bodies, ministries, commissions, committees and centres. A majority of the constitutional bodies, commissions, ministries and central bodies have assigned only one spokesperson. It is not found that information officers are not mobilized in subordinate bodies. There is the record of 29 information officers assigned in the Ministry of Agriculture and Cooperatives and the bodies under it. The Ministry of Information and Communications has assigned 14 information officers including in its subordinate bodies. Among the diplomatic missions, only three have assigned the information officers.

It is found that 29 information officers have been assigned in the regional level offices in the five Development Regions of the country. Among them, the Ministry of Agriculture and Cooperatives is found to have assigned information officers at the regional bodies under it in all the five development regions.²⁰

Out of the 75 districts in the country, there are 191 information officers assigned in 63 districts. It is found that the Statistics branch office Bajura and Rukum have assigned the enumerators as the information officer. There is provision of keeping information officers on 13 offices in Bajura, 11 in Kanchanpur and 10 in Rukum.²¹ Information officers are not found assigned in 12 districts namely in Sunsari, Solukhumbu, Khotang, Sarlahi, Saptari, Lamjung, Parsa, Dolpa, Humla, Mugu, Jajarkot and Kalikot. It could not be ascertained whether there is lack of awareness on the need to assign information officers or whether the related law was not enforced in these districts. According to general rule, the chiefs of the bodies in which the information officers have not been assigned also work as the information officer for that body.

Also in districts where the information officers have been appointed, only some offices have done so. Not all the District Administration Office or the District Development Committee office and the Municipality office in all the districts have assigned the information officers. It is an irony that in the Kathmandu District only the Project Management Office of the Second Small Urban Drinking Water and Sanitation Project has assigned the information officer. Only four offices each have assigned information officers in Lalitpur and Bhaktapur districts.

Clause Four

Experiences of Information Officers, Challenges and Recommendations

Experiences of the Information Officers

In course of the study, we availed of the opportunity to talk to and discuss with the information officers of the Government of Nepal. In several offices, the information officers said that they were sharing a single room and not getting all the facilities that they ought to get. It was found that there was no separate budget and resources allocated for the information officers, in several instances the information officers had to make do with and share the resources available in the related departments and sections and many of the information officers also said that they had to share the resources with other officers as well. We also came across some information officers who said they did not know what they should be doing and not doing since the

²⁰ http://www.nic.gov.np/chertiye_adhikari.php

²¹ http://www.nic.gov.np/jilla_adhikari.php

provision of the information officer was being implemented for the first time after the necessary legal arrangements to this effect.

Since it is the responsibility of the public bodies to put into force the right to information, all the public servants of all levels working in those agencies were found fulfilling the responsibilities assigned to them by their respective offices. They were also found experiencing some strength and some challenges regarding their job in course of discharging their duties. Some suggestions were also received in course of the discussions. Primarily, the following topics were raised in the meeting with the information officers.

Strengths

- Implementing the right to information laws has become easier because of the legal provisions as the Right to Information Act, 1999 and the Right to Information Regulations, 1999, and a strong institutional mechanism as the National Information Commission in place.
- Because it is a service that the public bodies have to render as per the legal provisions, civil servants of the rank of Joint Secretary to enumerators of the Statistics Branch Office and from the administrative service to the law, forestry and other services and groups are fulfilling responsibility as information officers and assistant/associate information officers.
- The service is being provided with the regular resources of the office.
- Many bodies have not received the applications seeking information and the bodies which have received such applications have been providing the information on a regular basis.
- Generally, it is the information officer working under the chief of the office who is responsible for providing all kinds of important information related to the office. But this provision is not found fully implemented at all offices. Even Under Secretary and Section Officer level staff have been found successfully discharging the responsibility of information officers in the case of ministries and the ministry-level public bodies.

Experiences of Information Officers

Some of the experiences of information officers are personal while others are related with the office concerned or with the applicants. Among these, here are some experiences of information officers that we came across in course of conversation with them.

- Since the office of the Auditor General is not the office which has to do deal much with the public relations, no applications seeking information as per the law have been received. The Auditor General calls a press conference at the time of submitting the Annual Report.²²
- Legislature-Parliament Secretariat: An office room inside the Parliament building has been made available to the Society of Parliamentary Affairs Journalists for reporting the activities related to constitution writing and the Legislature-Parliament. Entry passes have been issued to journalists of all the national daily newspapers and all the television stations to facilitate them in the smooth collection of information on parliamentary business. Journalists associated with the weekly newspapers have also been issued press passes.

²² Information Officer Dev Bahadur Bohara, Deputy Comptroller General, [2067.12.4]

There are many people who seek verbal information, especially the journalists. They have not come seeking information in writing. There is no problem; the parliament-press relation is excellent. I have no experience so far of citizens seeking information by any means. I have six-seven years experience. I have not felt any difficulty in any matter. We have even been providing 50-60 pages of information free of cost. More information has been made available on the website - www.can.gov.np and [parliament .com](http://parliament.com).²³ 23

- The information officers do not have access to all the information. In many instances, we can provide only the information that is available to us. Making all files, meetings and discussions accessible to the information officers is also not practicable and easy. We sometimes provide the factual information. It is sometimes a problem for the officer providing the information when the information is published/disseminated as per the taste and requirements of the person seeking the information. There is the tradition of taking the information officer as the '**know-all**' person. That is not so in reality. Then, there is the problem of providing information at any time. The information should be categorized or classified. The civil service laws do not mention that all information is confidential. The concern is only that confidentiality is not questioned with information that should not have been otherwise released has been released from the way the information is released.²⁴
- Those coming to seek information do so without knowing the related laws. They are tight-lipped and go away when they are shown the provisions of the right to information laws. Information that has to be released as per the law has been provided in a smooth manner. We do not have all the information readily available with us. There is no inter-office information sharing. The organization is big. Sometimes when you cannot provide the information, some journalists even go to the extent of practicing yellow-journalism. We have to face fine and punishment if we do not provide information in time. The employees have become the victims of disrespectful behaviour. The information officer has to be capable. Many legal provisions need to be further clarified.²⁵
- All information is made available to the information officer of the Ministry of Peace and Reconstruction. This is a positive side, but we have to take information through personal initiatives. They hesitate in giving the required information. I wonder when will there be a system of automatic flow of information.²⁶
- If there is any confusion regarding the works of the Department of Industry, efforts are made to take the clients into confidence by briefing them about the reality. All the staffs provide the information. They ask for data and we cannot give them on time.²⁷
- Those seeking information think that the information officer is a **Narad** [the legendary Rishi or hermit mentioned in the Hindu scriptures who is considered as know-all and a well of information]. We ourselves know about the works and activities at the ministry by reading the Gorkhapatra [newspaper]. We do not know all the information. Nobody gives us the information spontaneously. People seek information when it is not yet fully fit for release. If you do not give the information readily, they are miffed at you.

²³ Information Officer/Section Officer, Giri Aakaram, (2067.12.4)

²⁴ Mr. Dinesh Kumar Thapaliya, Spokesman of the Ministry of Local Development. (2067.12.6)

²⁵ A high level information officer

²⁶ Information Officer/Under Secretary Hari Prasad Dawadi (2067.12.4)

²⁷ Mr Gopal Lal Amatya, Director/Information Officer, Department of Industries

They do not apply for the information as per the due process. First of all an information section should be set up and then this needs to be strengthened.²⁸

- Sometimes, when the commission presents itself in a very strict manner, we have to give the file containing the information but with the caveat - *You can see the file, but be cautious that the information is not leaked and it does not go to the media.*²⁹
- It is not that the information officer can invent the information that is sought. Not all the Divisions/Departments that are responsible for providing information to the information officer have been providing the required information. This is a stressful job. My experience is that it is not enjoyable work of my liking.³⁰
- Ministry of Forest and Soil Conservation: I nearly faced departmental action while fulfilling the responsibility assigned by the ministry. People come seeking information. The difficulty is that you do not have orders from higher authorities to give the information sought. The culture and tradition of providing information has not developed yet.³¹
- Media persons come to the Kalimati Vegetables and Fruit Market Development Committee, Kalimati, seeking information. They have not come as per the legal provision. The different sections provide information related to them. The chief of the office also provides the information. The information officer is rarely required to give information.³²
- The National Vigilance Centre, the Ministry of Defence, the Ministry of Women, Children and Social Welfare and the Ministry of Youth and Sports have no experience of receiving application seeking information.³³
- A government employee presented the following differences between the information officer and the spokesperson.

Information Officer	Spokesperson
<ul style="list-style-type: none"> • Information taken as a means to stop corruption but not understood as the right of the people, • Lack of thinking that providing information does not mean that one has been exposed but it too has certain limitations, • Information existing in the midst of the social culture based on 'secrecy', • Lack of clear-cut provision of storing and using information, • A model of responsibility without authority and facilities! 	<ul style="list-style-type: none"> • Spokesperson taken as someone who is not authorized to speak, • The ministers and secretaries themselves give the 'good' information while leaving the job of providing the 'contentious' or unsavoury information to the spokesperson, • A model of responsibility without authority and facilities!

Overall Experience of Information Officers

- The information officers have not become open and transparent.

²⁸ Mr. Surya Prasad Sharma, Under Secretary/Information Officer, Ministry of Youth and Sport

²⁹ Experience of an Information Officer

³⁰ Mr. Indu Ghimire, Under Secretary/Information Officer, Ministry of Local Development, (2067.12.4)

³¹ Mr. Yagyanath Dahal, Research Officer/Information Officer, Ministry of Forests and Soil-Conservation

³² Marketing Officer/Information Officer

³³ Information Officers concerned

- Feeling of increased workload at having to carry out the responsibility of information officer in addition to carrying out the work of the related Division/Branch.
- The situation is not conducive although the information officer feels the responsibility of providing information.
- In the context of information on meetings, discussions and parleys going on at the office being sought by the people, the information officer does not at all has access to these meetings, discussions and parleys or even if there is some degree of access, it is not easy and practical.
- Most of those seeking information are journalists. There is the concept that this right is exclusively for the journalists.
- Acute lack of information culture or transparency and openness.
- Information officers do not give information when much information is sought for in the beginning under the instructions of the chief of the department concerned, but later they are compelled to give the information.
- Many information officers said there is no problem as such as they assign the work to others while some of them said nobody has come to their offices seeking information.
- Those seeking old information giving hassle, some information officers also complained that they have to do the work all alone, they do not have assistants.
- Many information officers have the experience of receiving letter recommending departmental action against them while working in the interest of the office and they had to share their concerns with the National Information Commission. They have the experience that their office has not been of any help in such difficult moments.
- Some offices are found to have assigned another person as information officer when the incumbent one has been transferred while some offices do not immediately assign another information officer. Difficulty in providing information as it is found that the previous information officer who has been transferred has not kept information in record in the form of institutional memory.
- Information storage system not established.
- Many information officers do not have transportation facility.
- The spokespersons of the same office are given a monthly telephone allowance of Rs. 500 whereas the information officer does not have this facility.
- Difficulty in providing timely service in many offices due to the lack of assistant information officers there.
- Treatment towards spokespersons and the information officers is different.
- Difficulty in providing services at several offices due to the lack of information officer there.
- Enumerators, junior officers, sub-engineers having to work as information officers at the district level offices. It is not clear which rank of officer should be designated as the information officer.
- Power outage (load-shedding) is another obstacle in providing services. You have the information on your computer but are unable to print it; you have a copy of the information but cannot have it photocopied.
- No effective provision for reward and punishment.

- There are those information officers who have experienced difficulties due to the nature of the work, i.e. it is new and the tradition of settling and finalizing a certain task is not yet established.

Challenges faced by Information Officers

The system of keeping a spokesperson at offices has not been for long in Nepal and this tradition has also not picked up. Moreover, the concept of information officer entered Nepal only after the provision of the Right to Information Act, 2009 came into force. Provision has been made for keeping information officers at the central offices of the public bodies at present. The challenges pertaining to the system of keeping the information officers have not surfaced since it is recently that the district-based offices started assigning the information officers. Challenges are faced in course of work and solutions are also explored in that process. Challenge is in itself an outlet. Some information officers shared that it is challenging to carry out the works in the present context also due to the lack of institutional experience.

In Nepal the government is providing services at the grassroots level through the constitutional commissions, government commissions, ministries, departments and regional, district, area, village, municipality and ward offices. There are also the health and police posts at the local level.

People complain that the medicine provided to the village health posts free of cost is not available as it has already been distributed. The health posts say that they are running out of stock while the people are not getting the medicines. The people have the right to know who have received the medicines in the village and their right to information has been protected by the laws. But then there is the problem of lack of information officer at the health post. Who is responsible for hearing the public complaints? There is the additional problem of up to which level the information officers should be appointed and which level should be considered as effective?

Some of the felt **challenges** have been presented below:

- The State organs and apparatuses have not been able to carry out the task of providing information to the people in an effective manner as the message that the political leadership is determined in enforcing the laws has not gone down well. The consistent and unreserved support and assistance of the political leadership has not been felt towards creating a culture and environment of openness.³⁴
- The National Information Commission which has the important responsibility of protecting, promoting and putting into practice the legal provisions on the right to information whose objective is to make all the public bodies in the State transparent and responsible should be empowered, made independent and efficient. Similarly, the nature of its work and its importance and its relation with the citizens should be strengthened. But this still remains to be done.
- The commission has not been able to set up offices in different places as per the need despite the legal provisions for that.
- Creation of posts and job description are not available for the professional development of the information officers.
- Lack of adequate information on all aspects like the legal provisions, responsibilities and accountability.

³⁴ *Annual Report, 2009-2010*, National Information Commission, P 55-61

- Confusion regarding how to go about taking action on applications seeking information and complaints and on interpreting the law.
- Challenges exist regarding the public bodies preserving the information dating back to at least 20 years and making them readily available when required.
- The public bodies are required to update the information related to them as per the legal provision. But they are not doing so.
- Adequate time and attention not given to works related to providing information.
- The officers are worried more about the problems that might arise after providing the information rather than providing the information as such.
- Challenges pertaining to Acts that are in conflict with the provisions of right to information.
- Applications seeking information on sensitive topics such as law and order, corruption investigation, etc. are received. But it is difficult to provide information on these topics.
- There is the provision of administering the oath of office and secrecy to holders of important State posts but there is no provision for administering oath on transparency.
- The commission exerts pressure seeking information whereas one's department is not prepared to give such information.
- Those seeking information from the information officer look for legal route, but the related office does not give the required support and plays the role of a guardian when the commission punishes or fines the information officer.
- Information officer providing information easily is often blamed or faces imminent departmental action.
- Rather than the applicant getting the information, it is hard to get answer to questions such as how democratic the government is and how much committed it is to the right to information.
- Situation of the information officer providing information without inhibitions and taking satisfaction from that is not found yet due to the attitude of the responsible officers who spread misleading and negative comments against people who work sincerely.
- It is not that not all the people are extending cooperation to others. There are many uncooperative officers/staffs that are boring.
- The information officer wants to provide the information promptly but it is difficult to get the information from all the divisions, departments and sections of the public bodies lacking the culture of providing information readily and easily.
- The politicians/ministers do not want to give different kinds of information while in some cases the chiefs of the offices concerned are found hesitant to give information.
- There are very few offices using the modern technology of information management.
- On the one hand there is the pressure from the people seeking information while on the other hand the situation is such that the information that has to be released is not ready.
- Even if there is the information to be provided, sometimes you come across a very awkward situation in which the information in question is either not refined, updated or has not received the authorization from the chief of the office concerned for release.

- There is mismatch between the RTI Act and the prevalent culture and tradition. The Act is modern in spirit but the existing information, system and mechanism are traditional and outdated.
- The post of the information officer has not been transformed into an attractive office to the point of proving it is responsible to the people.
- A lot of work has to be done with limited resources. More so, monitoring has to be done and record maintained which other bodies than the National Information Commission are receiving more amount under the Right to Information heading.

Recommendations

The right to information is the basis of all the rights.³⁵ Here are some suggestions to support this principle.

- The information officers should be imparted training and education on right to information.
- Staffs of all level in public bodies should be made adept for the effective implementation of the right to information.
- It should be ensured that the Right to Information Act, 1999 overrides all the Acts.
- Action should not be taken against the staffs of the public bodies on the basis of giving information.
- Interactive commitment seminars with the participation of the government ministers and high ranking officials like the one held on Friday, Mangsir 20, 2065 BS, in which the then Prime Minister Pushpa Kamal Dahal was the chief guest should be organized after the formation of new Council of Ministers or at least in every six months for the effective implementation of the Right to Information Act, 1999.³⁶
- Regarding the district-level information, all information in the district should be compulsorily made available to the existing information centres set up at the District Development Committees and they should be regularly provided at least on a weekly manner.
- The offices with the section officer as the chief should make provisions in their working procedures to provide the information spontaneously at least once in a month.
- Arrangements should be made for creating the post of information officer and providing the job description for the professional development of the information officers.
- Information-friendly offices should be rewarded.
- Remove the culture of administering the oath of office and secrecy and promoting a culture of transparency and openness.
- Topics on the right to information should be included in the syllabus of all levels and programmes.
- Making provision for compulsorily incorporating contents on right to information in training programmes at every level and sector.
- Adopt the right to information as the starting point of democracy.

³⁵ *Annual Report, 2009-2010*, National Information Commission, P 57

³⁶ *Right to Know*, National Information Commission, inside page of back cover

- Information should be classified on the basis of the nature of information and not as per the ministries!
- The latest Act should be the most effective. The old Acts should be interpreted as per the latest/new Acts.
- Acts and laws restricting the existing Act should not be formulated. Amend the laws that are constricting.
- The commission can formulate effective working procedures for implementation.
- Let's promote maximum flow of information and do away with the culture of 'secrecy'.
- The commission should formulate code of conduct and implement it.
- The good practices from within the country and abroad should be studied and followed.
- Carry out programmes for sensitizing the public and making them aware of their rights.
- Lay emphasis on the effective implementation of this Act for giving a sense of forward-looking and functional State system.
- Work towards classification of the documents, protection of the information providers, maintaining the confidentiality of sensitive information and towards achieving the main objective of strengthening the democracy by keeping intact the responsibility, accountability and transparency that comes with information flow and by maintaining good governance.
- The state mechanism will be stronger if the Prime Minister or the Minister who is second to the Prime Minister in rank is made the coordinator of the Information Classification Committee.
- Making provisions so that the public body will not have to wait for the circulars or directives from higher authorities for implementing the provisions which are already specified in the Act.
- Administer the oath of transparency to the concerned officers as there still exists the old mentality guided by the 'oath of office and secrecy'.
- We are in the process of exercising the right to information. There is gradual improvement in its implementation. There is no need to be disheartened.
- Change in mentality is required. There is need for new awareness.
- The misuse of information should be made punishable offence.
- The system should work.
- The Law Commission should be cooperative for amending the Acts that clash with the right to information.
- A Right to Information Enforcement Cell should be established in the Office of the Prime Minister.
- Conduct publicity programmes with the help of various publicity materials highlighting the slogan - *Let's Respect People's Right to Information*.
- Publicize about the Right to Information through all sorts of media. Furthermore, conduct such publicity in local languages at the local level.
- Make arrangements assigning the VDC Secretary to hear into the complaints at the Village Development Committee (VDC) level.
- It is the responsibility of the government to maintain the confidentiality of sensitive information.

- The right of the commission to enforce, amend or annul this Act should be protected.
- The commission should forthwith start carrying out the immediate works, and it should not face problems for lack of fund and resources. There should not be any delay in making the commission oriented towards protecting the Right to Information.
- Make provisions for compulsorily keeping information officer in priority project and for the prompt release of information.
- Create an environment conducive for the information officer to provide all the information sought by the applicant.
- Prepare a roster of experts and avail of their service.
- Continue with the practice of publishing the treaties, agreements and important documents.
- Give emphasis on management of archives.
- Recognition should be given to electronic documents.
- Immediately enact laws relating to both secrecy and privacy.
- The commission should build on its best performance and publicity and it should work to grab the attention of the nation.

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A Working Paper on

***Right to Information in Nepal:
Constitutional and Judicial Perspectives***

Dr. Ram Krishna Timalaena

1st National Convention on Right to Information
Kathmandu, Nepal, March 28-29, 2011

**Right to Information in Nepal:
Constitutional and Judicial Perspectives**

Dr. Ram Krishna Timalaena

The Context

Nepal is drafting new constitution through the Constituent Assembly directly elected by Nepali people. The process of constitution making is ongoing and probably it will be completed soon. The upcoming constitution will not be drafted in vacuum. The present Interim Constitution of 2063 provides some baseline of the forthcoming constitution. Also that the forth-coming constitution may continue the institution and practices which are still relevant in the changing scenario. Major shift will be seen in the structure of the state i.e. the country is going from unitary state to federal state. It is very difficult task to manage federal set up in a system where everything was designed in unitary framework. We must be very careful in designing federal model of governance. Similarly we have to develop a scientific system of governance after abolishing the monarchy. We have to institutionalize republican system which was unknown to us before. As we know the constitution guarantees fundamental rights of the citizens and individuals. However, it is yet to be decided how the chapter on fundamental rights will be drafted. What would be the content of those rights? Whether the socio-economic rights will be made enforceable or not? How right to information like third generation rights will be addressed in the constitution? Moreover, mechanism for enforcement of the fundamental rights is more important in federal system. How jurisdiction of the federal courts will be spelt out? It is pertinent in a given situation. In this paper everything about these aspects would not be discussed. This paper attempts to shed light on the status of right to information in the constitution drafting. It will also highlight the mechanism to enforce the right to information in the present context. At the same time other rights connected to right to information also needs specific attention i.e. right to privacy, freedom of press and publication, freedom of expression etc. This paper mainly suggests dos and donts about right to information in Nepal.

Right to Information: conceptual framework

Right to Information (RTI) has acquired a special importance in the entire democratic world. It has become a vital element in the scheme of open and responsive governance. It is considered to be the pulse and the lifeblood of democracy. It is necessary for individual fulfillment. It is also necessary to make a responsive citizen; to participate into the governing process; to make wise judgment; to maintain human dignity and to uphold democratic process. It empowers the people; makes them responsible citizens; helps creating just society by preventing secret dealings in the 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 our government to our needs, wants, ideas and creativity. In order to make the government able to maintain the faith and confidence of its citizens, it must be in touch truthfully with the governed. RTI provides this opportunity to be in touch in the governmental process.

The effective operation of representative/participatory democracy depends on the people's ability to analyze, 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 has also 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 efficiently 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 will assist a more significant and effective enjoyment of life.

RTI is also vital in recognizing citizens as consumers in public life. The public bodies and government departments govern our lives, so 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. Also that it is also an important protection against corruption. Therefore, the RTI is but an important missile in revealing corrupt activity that shifts the balance of power in a subtle but profound way from the state to the individual.

RTI and Democratic Process

Democracy demands transparent process in every decision making that is possible only through effective RTI provisions and implementation thereof. Transparent process produces fairness and legitimacy. The consequentialist logic for transparency in government usually rests on the idea that unclear processes are likely to facilitate corruption and irregularities. Corruption/ irregularities is more likely because secret decision making promotes rent-seeking by public officials whereas transparent processes make bribery more difficult and increase the likelihood that it will be exposed.

Democracy has become catchword these days. Every system claims it as democratic. Therefore, it is said that democracy is like a hat which fits to everyone whosoever wears it. There may be many forms of democracy in the world but the substance of democracy is the same- to uphold justice-political, economic and social to everyone. We call substantive democracy if the substance of a given system is pro-people or people centered. In this sense, democracy in substance is substantive democracy. Substantive democracy relies on transparent governance where people have information that is required to them to be dignified and responsible citizen. Transparency deepens democracy. It helps to recognize diversity as the soul of modern democratic world. At the same fashion it takes into account autonomy of the people, community and group by maintaining their respective identity.

Ways of ensuring Access to information

Transparency relies on access to information. Access is guaranteed through various ways. The most important one is the openness or information culture under which the government and people act openly and transparently by conduct without any legal sanction. The second is the constitutional guarantee of the right to information and access to information legislation which provide access to information having public importance. Under this, citizens may have access to information as a matter of fundamental/legal right. It is the main instrument of guaranteeing transparency. There is also a third way of getting information. Although the constitution/law regarding right to information is the major source of access to government information, there are other several ways by which government and public information is available to members of the public. The parliamentary system, including the expanding 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 find information through the MPs of their constituencies. Annual reporting requirements for constitutional organs, community consultation in certain types of bill, publication of information and administrative law requirements increase the flow of information from the government. The government provides information through various means of communication. The media is the main source of information in a democratic country. Free Press, Radio, Television and Internet like means of communication disseminate enough information to the public by using their several freedoms and rights. In addition to the constitutional guarantee and right to information legislation, there are number of statutes which make provision of disclosure of information or provide the right to access to information. These statutes are complementary and supplementary to the right to information law and serve the purpose of the access to information thereby honoring people's right to know. In substance, access to information highly depends on the accountability of the government. It relies on the philosophy of open government and transparency culture.

In substance, transparent governance depends on all of the above mentioned ways of disseminating and getting information. At this point of time we have to design new constitution in this line. Similarly we need to update present legislation regarding RTI and to develop a culture of transparency and openness.

Right to Information

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

- (1) Access to public records and documents, in which the "business of the people" is stored in some tangible form;
- (2) Access to the deliberative institutions of government and public bodies, such as meetings and forums in which public business is debated and resolved; and
- (3) Access to places that conduct routine non-deliberative public business, such as government-managed prisons, hospitals, or schools etc. It also includes inspection of public function and delivery standard of public service.

In substance, RTI is to deepen democracy, to strengthen human rights and to ensure good governance by endorsing the concept of human dignity and sovereignty of the people. .

Transparency is the key word to indicate the quality of governance. Although, it is a word, it encompasses a lot of things connected to good governance. It is a value, a concept and philosophy of governance. Transparency is the backbone of healthy democracy. It is the hallmark of new civilization that relies on sovereignty of the people. It is both a means and an end itself. It is a value that deepens democracy and creates legitimacy in the process of governance. Transparency is not expected only from the government but it is also a part of civic life.

Transparency is a desirable quality in all walk of national and international life which includes 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 made are public. Parliamentary function can be audited by the people when everything inside the Parliament is transparent. People know their position through transparency and become real citizen. In short, we need open mind, open eyes and attentive ears so as to internalize the concept of openness and transparency. However, transparency is not the nakedness. It does not allow violation of private domain, the area of right to privacy. It maintains civilization personal dignity and ensures fair process.

Of late, the conventional model of governance based on lengthy organizational procedures, rules and regulations is being superseded by the concept of 'SMART' Government. SMART government runs through the SMART governing style which means 'Simple', 'Moral', 'Accountable', 'Responsive' and 'Transparent' governance.

In order to make SMART governance possible, transformation has been undertaken between the government-citizen relationships. SMART governance can be transformed into humane governance, by stopping it from getting degenerated into a sort of mechanical or conventional governance.

We have to redefine citizen state relationships to run SMART government. Citizen should be considered as the master in the governance system. All the state instrumentalities are for the highest benefit and interest of the people. The concept of **all** instead of **majority** should be placed in the centre of development strategy. Even majoritarian form of government should not forget about the right of minority. Minority and marginalized people must feel that they are equally represented in the political process where their voice has been taken into account. "**All for one and one for all model**" should be designed so that everyone feel as dignified citizen of the country. Inclusive citizenship model also demands transparency in all aspects of political, social and economic life.

Right to information in Nepal

The 1990 Constitution has been replaced by the Interim Constitution 2063. The new constitution has guaranteed different fundamental rights including the freedom of opinion and expression, press and publication right and right to information under part III of the Constitution. These rights together with the Directive Principles of the State Policies are said as 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 in the nature of positive rights. In other words, most of the fundamental rights are the reincarnation of

civil and political rights whereas Directive Principles are perceived as socio-economic and cultural rights. The Constitution is based on the principle of rule of law.

Vast information that the government holds is a national resource. Neither the government nor the public officials collect or generate information for their own benefit. They collect information for public purposes. Government and officials are, in real sense, trustees of that information for the public. The information acquired or generated by the 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 their duties of 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 the 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 right to this. Although in some appropriate situation it can be defensible that the constitutional protection for the right of the public to get information cannot be an unqualified one. The denial of information to the public should be only in exceptional cases that are narrowly and clearly defined.

Access to information ensures that information having public importance must be readily available. There must be free access over 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 the information must be available without payment if it is for the 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 publication and means of communication even to those who don't seek it as per the requirement of the open government and information culture. Generally readily available information does not mean that it is available free of cost. Since production, storage, dissemination and access of information involve some costs. Therefore, some reasonable fee for the access is justified.

Inclusion of the right to information as fundamental right

For the first time the Constitution of the Kingdom of Nepal 1990 had made the right to information as the fundamental right in Nepal. The newly adopted Interim Constitution of Nepal 2006 also retained the right to information in similar fashion. Realising the importance of open government in maintaining 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 having public importance. In South Asia, Nepal was the only country where the right to information had got the special status of fundamental right specifically incorporated in the constitution. However, now Pakistan also amended the constitution and added new right to information under Article 19(a) of the constitution.

The framers of the Constitution found that the freedom of opinion and expression could not compel an unwilling speaker to speak and 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 document 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. If Parliament enacts a law to make certain information secret, the right to that information is not available. This provision is to some extent regressive in terms of active protection of right to information because it left discretion to make secret information at the hand of legislature. Therefore, while drafting new constitution unlimited discretion to the hand of parliament/ legislature must not be given. The present Constitution makers left the area of secrecy to be determined by the representatives of the people. It has provided blanket power to the legislature which requires further consideration while drafting RTI as fundamental right.

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 open democratic and inclusive government. Democracy, peace, prosperity, full press freedom, proactive economic and social changes have been accepted as the core values of the Constitution. National independence, integrity and liberties have been placed in the centre of constitutional philosophy. All these values recognise the need of transparent government. All the fundamental rights can be implemented only if there is right to information. Without this right other rights cannot be exercised effectively.

Right to Information Under the forth-coming Constitution

Fundamental Rights and Directive Principles Committee of the Constituent Assembly presented its preliminary Draft Report on fundamental Rights to Constituent Assembly in 2066 BS (2009). Under its article 12 it purposes right to information as follows:

Every citizen shall have right to demand and receive information of 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 present Interim Constitution 2063. It also provides blanket exemption for secrecy by law. Parliament, under this provision, is free to impose restriction to disclose information. This sort of provision requires further consideration in tune with international standard of right to information provision. Disclosure in the public interest must be allowed and it should be maintained accordingly. Laws curtailing right to information must be reviewed through constitutionality test and should be declared *ultra vires*. For this reason the proposed article must be redrafted.

As of today the constituent Assembly has not deliberated about the Right to Information Commission. Whether there will be separate Information Commission in the state or provincial level or not. Establishing independent and separate information commission in every state, to my mind, is not necessary. If we take example of India, there is central legislation regarding RTI that works well for every state. We can learn from India in this respect. Central Information Commission and its branch offices in

the state would be suffice in the present situation. It can be done with suitable amendment in the RTI Act, 2064. For this reason, RTI Act needs to be treated central legislation.

Judicial information

As compared to other branches of the government, judiciary is more open and transparent to its business. The Supreme Court publishes its annual report as the requirement of law. It covers comprehensive information regarding judicial administration. It also publishes the important decisions of the Supreme Court in its regular law reporter. It is now disseminating on line status of case hearing and providing easy access to judicial information. The concept of digitalizing the judiciary has been implementing gradually. In this respect, transparency has been implemented to the greater extent. There is considerable access to judicial decisions of the Supreme Court and the Court of Appeal. Any lawyer may demand a copy of final judgement of the courts on payment of a prescribed fee. The Supreme Court has also designated its one of the Joint Registrars as the Spokesperson of the Court. He is under a duty to disseminate judicial information to the people. There is no constitutional and legal constraint on providing judicial information. Nevertheless, underdeveloped information mechanism and traditional record keeping system are responsible to create hindrance in obtaining judicial information. However, judicial appointments are not free from criticism. There is allegation that adequate transparency is lacking.

Judicial interpretation on Right to information

The Constitution provides the right to demand and receive information in the matter of public importance. There is no law to define what the matter of public importance is. The Supreme Court, through its dynamic approach, filled the gap. The Court in *Tankpur Case* made it clear that a matter of public importance need not affect the whole country if it affects certain group or community; it suffices to be a matter of public importance.

The Supreme Court found that the matter contained in a bilateral agreement regarding water resources is of public importance. Similarly, in *Arun III Case*, the Court filled the gap that existed in the Nepalese law. There was no fixed procedure for applying for information, how to give information, about payments for obtaining information etc. The Supreme Court seized the opportunity in this case and issued eight point guidelines to the government. The guidelines are as good as right to information legislation until the government enacts separate legislation to this effect. The Supreme Court found very close relationship between the matters of public interest and the 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 *suo motu* publishes the information having public interest there is no need of demanding information. In view of this, the Supreme Court in *Lumbini Case* changed focus towards the ‘*active publicity*’.

The Supreme Court has also propounded a precedent that any information having national concern is a matter of right to information and the government or public authority has to inform the people about such matter. The Court in *Godavari Marble Case* held that a matter related to environment protection is very serious, sensitive and important from the humanistic, national and international perspectives and is

thus a matter of public importance. As a matter of public importance there is the right to information.

In ***Chitra Dev Joshi Case*** the Supreme Court gave verdict in favour of right to information so that the petitioner received information regarding the charges and decision taken by the Judicial Council against him.

Access to official documents

So far as access to official documents are concerned, Nepalese legislation limit it to the concerned person. The person requesting for access has to supply the details of the documents in his application. Otherwise he may not get the copy of that document. There is no provision of access to information if it is recorded in a computer or electromagnetic devices. Moreover, if the departmental head or office in charge does not permit a copy of the requested document, there is no appeal against it. It shows that the right to access to 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 said as secret and unpublished document by the office. In the absence of proper classification of documents, the right has not been implemented properly. Therefore there seems gap between the constitutional vision and the statutory provision.

Access to national archives is available if law does not prohibit it. One may ask a copy or duplicate of the archival documents under the Archives Preservation Act 1989. Access to archives is restricted on certain grounds. Access is not permitted if the document that has been transferred by the concerned office to the National Archives for preservation with or without specifying the time period and prohibiting the reading, copying and duplicating of such document

Nepali Bureaucracy

The bureaucracy in Nepal is not properly safeguarding 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 the unauthorised persons. The oath they take forbids them to disclose the information known to them in the course of their official duties. So long as the position remains same it is very difficult to obtain information from the office of the government. Moreover, official documents are not scientifically filed and kept. An old document is generally non-traceable except the documents kept in the courts of law and Land Revenue Offices. Mismanagement of official documents is another problem in the path of the right of access to official documents. Although, there is provision of official spokespersons most of the spokespersons are not being able to internalize the concept of transparency. In some situation they themselves do not know what is happening inside their office.

All the political appointees are also liable to take oath of secrecy not of transparency. It is a clear cut barrier to transparent governance. It is high time to change the oath format so that that could replace oath of secrecy to oath of openness and transparency.

Disclosure of Information in the hand of private bodies

The Constitution is not sufficient to fulfill all aspects of the right to information because it guarantees only the right to demand and receive information having public import and related to oneself. In reality, the scope of right to information should extend to information kept in the private office if the information is having public importance.

At the moment, there is no law regarding access to information in the hands of the private organisations, institutions and companies. It is left to the will of such organisations or institutions themselves. 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 is out of access to the public. However, still there is hope that the Supreme Court could include private agencies within the meaning of state by virtue of its nature and functioning.

The RTI Act, 2003 includes NGOs, INGOs and political parties under the definition of public bodies as well.

There must be information culture in the functioning of the government. Private sector must be responsible to disseminate information under the separate legislative framework. All national legislation should be designed in tune of the transparent and open society.

Importance of separate legislation

The Constitution confers the right to demand and receive information on matters of public importance and which is related to oneself. But it nowhere defines or explains the matter of public importance. Further, the Constitution simply guarantees the right to demand and receive information. It does not give any guidance on how to demand and receive information. Method and process for such demanding and receiving information is very urgent. It involves a number of issues such as the form of demand made to the public authorities, the method of getting requested information, the time required for the demanded information, costs of the information, the location of the required information, the kind of information which the authorities could legitimately withhold, the amount of information they could withhold, deciding authority for withholding the information, possibility of disclosure of exempted information, application of the right to the private sector, remedy if the information is denied, recording of reasons for denial. These issues constitute only the tip of the vast iceberg. There are many other issues involved in the right to information. Only the incorporation of a right, even if fundamental, is not enough. A healthy environment to implement a right is also needed. It can be done by enacting suitable legislation regarding the right to information. Further more, Right to Information Act cannot be properly implemented unless we understand the scope of information exempt under this Act. Basically the right to privacy legislation, the national security law and the public records legislation would be complimentary to the right to information. We have enacted only RTI Act but not the Privacy Act, National Security Act. Similarly the classification of documents is not scientific one. There is no proper guideline to administer the RTI Act.

Some Suggestions for effective implementation of right to information

- (1) A long-standing tradition of secrecy cannot be changed overnight simply by making right to information a fundamental right and by enacting right to information legislation. A comprehensive programme of administrative training in the 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 thorough knowledge of their rights. The provisions of law and major decisions interpreting these provisions must be widely disseminated to 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 institutions

for the circulation of information among the people. This includes a free press, radio, television, public libraries, facilities for publishing books, articles and so forth, which ordinary people can afford and the means such as public meetings and libraries where newspapers, books and the like can be read.

- (3) Education is the most vital factor in maintaining transparency. The more the people are educated, the more effective is transparency. The majority of the Nepalese people i.e. (about 48 percent of the population is illiterate) and 38 percent of the population is below the poverty line. The rate of literacy is much lower in certain castes, women, ethnic and regional groups and the poor. The more illiterate people are, the more worsening situation of the transparency and access to information is. These illiterate people cannot fully use the benefit of the right to information. Though one may argue that if the illiterate people could take part in a people's movement and establish the democracy, why could they not use it? It may be justified to some extent. Moreover, the right to information may have instrumental role in educating and informing them. It will be a check on further worsening of the situation. The government must ensure effective education system throughout the country so as to make use of the right to information effective.
- (4) The private sector is emerging gradually and has become competitive these days. The government has also adopted the policy of privatisation in the communication sector. Keeping the situation in view with constitutional protection of the right to information it is suggested that the government should transfer the ownership of radio and television to the people or private bodies. Similarly the ownership and control of the Gorkhapatra Corporation should be handed over to the public through suitable arrangement and procedure. The news gathering and selling of the news should be allowed to be done by private bodies or individuals. For this, suitable amendments in the National Broadcasting Act, the National News Agency Act and the Gorkhapatra Corporation Act have to be made. The means of mass communication are centred in the major cities. These means have lesser reach to the rural areas where more than 90 percent of the total population lives. To provide greater access to information to the people, suitable policy to encourage community radio and community papers is to be formulated. Likewise, short supply of electricity creates hurdle for access to television. Only about 40 percent of the total population is using electricity facility and remaining 60 percent people of the total population is deprived of this facility. Moreover, heavy load shedding has affected dissemination of information very seriously. Access to information is, therefore, limited to a few people. To overcome the situation, the government should give priority for electrification and mass communication. Likewise law relating to media sector needs to be updated so as to make right to information meaningful.
- (5) The bureaucracy in Nepal is responsible to implement the provisions of the Constitution and law. As a fundamental right, the right to information demands bureaucratic support for 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 be competent to carry out the policy of the government and to develop skills to function openly and to show its commitment to uphold transparency. It should also not forget that openness is the rule and secrecy is an exception. A well-balanced approach regarding people's right to know and official secrecy has to be designed. To meet this requirement the bureaucracy is required to be trained in the light of open liberal democracy where people's right to information get primacy over official secrecy.

- (6) Ministers should also know that they work for the people. They are not responsible only to Parliament and Prime Minister. They are equally accountable to the people. They must show their readiness to provide information concerning their respective ministries. They must be required to do their job in writing so that they could maintain institutional memory. They must not perform their work orally. Problem of the hour is that both the bureaucracy and the ministers prefer oral transactions. It is one of the reasons for clandestine transactions and corruption.
- (7) There is absence of suitable legislation regarding classification of official documents. The Secrecy of Document Act 1982 classifies document into 'strictly prohibited', 'top secret' and 'confidential' document. 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 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 expiry of the fixed time, there must be declassification of the documents to which access may be permitted.
- (8) Nepal government has appointed spokespersons in every ministry as per its policy decision. However, there is no statutory provision. That is why the policy decision has not been effective in disseminating information. Moreover, spokespersons have not got required facilities and information within the organization. It is high time to make statutory provisions regarding spokespersons, their duties, and rights and to get necessary information from their departments or ministries.
- (9) The culture of active publicity or affirmative disclosure provision should be developed through executive instructions and policy of the government. Every policy of the government is required to be announced before it is implemented. Parliament should act towards the fulfilment of its duties regarding delegated legislation. There must be a legal provision regarding publication of delegated legislation before enforcement. The committee on delegated legislation should act promptly and efficiently so that access to delegated legislation could be effective. Consultation mechanism must be made mandatory
- (10) The judiciary has to change its old doctrine of state action to deliver justice in the case of the right to information. It should be dynamic to use its jurisdiction against the private bodies, NGOs and INGOs functioning for the promotion of public good. We have to apply public function test as regards to the right to information.
- (11) The Right to Information Act must clearly declare that the general principle in government administration is "open public access to information" and that "secrecy is the exception." Likewise, it must facilitate full and easy public access. For example there must not be limitation for requests to specific documents or to citizens with a personal interest in a case. Similarly public registers of all documents should be maintained in every department of the public authority. Fees for searches and copies must be low. Besides, it must list exemptions narrowly and specifically the types of documents that may be kept secret. The law must specify how long the documents are to be kept secret. A provision to grant permission for earlier release of the document must be there if it does not harm the public interest. Further, the law must require non-secret parts of documents to be released. It must contain strong provisions for the enforcement of access, such as the limited time for replying to a request or appeal, and requiring reasons for a refusal of access as well as penalties for denial. Finally, the law must provide a provision for easy appeal to an

independent authority that should include a final appeal to the courts with the cost recoverable if the requester wins.

- (12) The Right to Information Act should follow pro-active approach in releasing information. The Act should, therefore, impose duties on public authorities to make certain information publicly available. The government should voluntarily publish facts and analysis which the government considers important in framing major policy proposals and decisions. It should also disclose the explanatory material on dealings with the public. Likewise, every administrative decision should be accompanied by adequate reasons. Every aggrieved party should have adequate opportunity for being heard. The government should give information in advance regarding the operational information about how public services are run, how much they cost, targets set, expected standards and results and complaints procedure.
- (13) The culture of openness is required more than the legislation regarding the Right to Information. Besides, the Right to Information Act there must be separate open meeting laws and other relevant laws in line of open government that affect the life, liberty and property of the citizens. Board meeting of big public business houses and regulatory agencies must be made open. Similarly access to public places like hospital, prison and schools must be guaranteed.
- (14) Right to information requests should not be developed into legalistic adversarial contests.
- (15) The law some times becomes confusing for applicants and difficult to use. Therefore, suitable working guidelines for the right to information should be published and distributed widely so as to make easy access to information.
- (16) Record management is fundamental to the effectiveness of the right to information legislation. This aspect should be given sufficient prominence.
- (17) Most important thing is that the public authority should make a discretionary disclosure of exempt information whenever it is possible to do so without 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 legislation only when it is necessary to do so.
- (18) The standard of a need to know should convert into a right to know and the burden should be shifted to the government to prove why records should not be disclosed.
- (19) The right to freedom of information requires that certain information, such as descriptions of agency organization and office addresses, statements of 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.
- (20) 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.
- (21) 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 into line with the principles underpinning the right to information law.

- (22) 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 is not subject to disclosure.
- (23) Parliament should form a support unit to provide continuous, on-going review and oversight of government information.
- (24) 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 to unauthorised disclosure of official information is limited to specific categories of information no more widely stated than is required for the effective functioning of government. It is also recommended that those categories include information relating 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.
- (25) The government should review of all the existing secrecy provisions within a specified time framework from the date on which the right to information legislation comes into force with a view to repealing or amending those provisions which are conflicting with the basic object of the right to information legislation.
- (26) There is a need to enact Right to privacy and whistleblower legislation as the part of the right to information.
- (27) It is very difficult to implement greater openness in Nepal because 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 can be made in informal meetings. If written material is subject to disclosure, there will be an incentive to insure 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 place 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 as much a theft of public property.
- (28) 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 the conspiracy of secrecy. The Press must commit itself to working for openness. It is too much to expect them to disclose their secret sources inside the government, or to seek out exclusive sources of information. But there needs to be more reporting on the reporting process itself, exposing the immoral system.
- (29) Right to know in Nepal is a constitutional mandate despite several barriers in its practical application. There are several contradictions between the constitutional philosophy and existing laws and official culture. All archaic laws of Nepal need to be updated to foster people's right to know in the country. Likewise, there must be paradigm shift from a culture of secrecy to an open and transparent government. To make the state of affairs perfect all existing archaic laws need to be amended in tune with the principle of right to know. Along with the Right to Information Act, the Right to Privacy Act, the Public Records Act, the National Security Act, the Whistleblowers Protection Act and the Sunshine Act should be enacted so as to further strengthen the situation of right to know in Nepal.

Concluding Remarks

From the above discussion it is concluded that Nepal is the first and only south Asian country incorporating the right to information as fundamental right in its constitutional document. It has formulated various policies to implement openness and transparency in governance. Also that, the Right to Information Act is in place. After the restoration of multi-party democracy in the year 1990 the situation of access to information is gradually improving despite many hindrances. Nepalese press is also moving ahead with sound constitutional and legal foundation. However, there are still many aspects to be improved which affect the situation of access to information and people's right to know. There is still a big gap between the constitutional mandate of openness in governance and traditional secret culture of the bureaucracy and the government. To make the situation perfect all existing archaic laws need to be amended/updated in tune with the access to information. Along with the Right to Information Act, the Right to Privacy Act, the Public Records Act, and the National Security Act should be enacted so as to further strengthen the situation of right to know in Nepal.

The most important part now is to draft new constitution where RTI must be included as the fundamental right with broad framework where disclosure must be the rule and secrecy an exception. Likewise In a federal Nepal suitable number of state information commissions as the unit of Central Information Commission must be established.



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A Working Paper on

***Assessment of Right to Information Law Regime in Nepal
for Creating Conducive Environment for Effective
Implementation***

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1st National Convention on Right to Information
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Assessment of Right to Information Law Regime in Nepal

for Creating Conducive Environment for Effective Implementation

Tanka Raj Aryal

1. Background

Information is power and the spirit of democracy and the right to information is considered as a fundamental human right. 'Right to Information'¹ is also known as the freedom of information or the right to know. Similarly, this right is also called as right to access to the information held by the public agencies.

Right to information (RTI) empowers public for questioning government agencies about the process, status and result of different activities thereof. The quest of procedural and financial transparency by applying right to information is quite potential. Ultimately, RTI pave the way for public to participate in decision making process and governance system.

At present, right to information is the common concern of the global community. However, for the first time in 1946, United Nations General Assembly Resolution² recognized it and highlighted the importance of the right to information as crucial rights for promoting overall human rights. It states, "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."

United Nation Declaration of Human Rights (UDHR)³ recognized right to information under Article 19. Under the provision, right to seek, receive and impart information without interference and regardless of frontiers is protected. Similarly Article 19 of International Covenant on Civil and Political Rights (ICCPR)⁴ has guaranteed right to information in Article 19. 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 protected right to information as integral part of freedom of expression. The trend on regional mechanism is similar. Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of African Charter on Human and Peoples' Rights also recognize right to information as a part of freedom of expression. However, there is growing body of jurisprudence which recognizes right to information as a strong and separate discipline of human rights. Many explanations and resolutions have been made to

¹ It is known as right to information in south Asia and in the most of the western countries and UN documents refer it as freedom of information

² United Nations General Assembly Resolution 59(I), 14 December 1946

³ Universal Declaration of Human Rights, adopted by United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III)

⁴ Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force 23 March 1976, in accordance with Article 49

establish the right to information within international and regional human rights protection mechanism.

Right to information is one of the emerging right but it's not a new concept. Sweden was the first country to recognize the right to information and it was in 1766. Another country with a long history of right to information legislation is Colombia, whose 1888 Code of Political and Municipal Organization allowed individuals to request documents held by government agencies or in government archives.⁵ It took about a century to count third country having legal provision on RTI. In 1953 Finland adopted right to information law, followed by the United States in 1966, and Norway passed a law on right to information in 1970. Similarly, Canada, Australia and New Zealand passed on 1982 and Italy in 1990. There were only 13 countries having specific legislation on right to information until 1990.⁶

Recognizing RTI as fundamental right took a wave after 1990 as most of the Constitutions of new democracy acknowledged it in their constitution. It is getting reorganization within the national legal regime in a very rapid manner. Nigeria became 89th country have specific legislation on right to information once Legislative Assembly passed 'Access to Information Act' in 16 March 2011.⁷ So far, more than 50 countries have protected right to information constitutionally.

Nepal is also not out of the wave and it has protected right to information constitutionally as well as has a separate and specific legislation on right to information. Further, Nepal has international obligation for protection of the right to information since Nepal has ratified ICCPR without any reservation⁸. In this legal situation, this paper focuses briefly on the history of enactment of the Right to Information Act in Nepal including major provisions. Particularly, attention will be paid on major legal problems on the right to information laws that are hindering for effective implementation of those laws in Nepal.

2. History of Right to Information Act 2007

Before 1990, Nepal was under party less Panchayat regime. Freedom was curtailed and had very limited scope of exercising rights. Limited freedom was there on the mercy of ruler. Most of the legal provisions including constitution were in favor of the ruler; further, suppressing the right of the people. In that context, seeking the information held in public bodies was beyond the imagination. Transparency was absolutely lacking and accountability was towards royal palace instead of people.

After the People's Movement of 1990 the party less Panchayati regime was superseded by the open and democratic government in Nepal. With the restoration of open and democratic government, the new constitution "the Constitution of Kingdom of Nepal 1990" was promulgated. The Constitution has very explicitly recognized

⁵ FOI Survey of Laws by Toby Mendel, Second Edition, 2009, Page 22

⁶ <http://www.right2info.org/access-to-information-laws> accessed on 10 March 2011

⁷ <http://www.freedominfo.org/2011/03/nigerian-senate-passes-modified-foi-legislation> assessed on 18 March 2011

⁸ Nepal has ratified International Covenant on Civil and Political Rights (ICCPR) on 14 may 1991

right to information as fundamental right⁹ under Article 16. By this constitutional guarantee, Nepal became the first country in south Asia having the 'Right to Information' as a fundamental right. But, enactment of RTI legislation for real implementation of Article 16 never happened.

The Country Code's Provision of getting the zerox copy of the official document¹⁰ and the provision to take the public (official) document by the concerned stakeholder is appreciative.¹¹ But these provisions neither explicitly state about the Right to information nor carry on the notion of right to information. Provisions were very explicitly related to court procedure.

Some attempts were made to enact RTI legislation during the period of the Constitution of Kingdom of Nepal 1990 (1990-2006) but it never materialized. Because of huge pressure from media and civil society organizations, 'Right to Information Bill' was first tabled in the parliament in 1993 but was rejected by the parliamentary committee as the stakeholders including media opposed that draft. RTI advocates and stakeholders heavily criticized the draft bill that the government intended to create legal regime to hide information rather to disclose information.¹² Media organizations took an initiative in 1997 to draft a bill and presented it to the government. The Bill was finally tabled in the parliament in 2001. The Bill remained as bill; it was never discussed because of political wrangling and, finally, dissolution of the parliament.

During this evolution of 'Right to Information Legislation', the judiciary played a supportive role in the interpretation of, the fundamental right, right to information and the development of RTI jurisprudence in Nepal. In 1994 the Supreme Court, in Arun III hydropower case¹³, described the importance of RTI and directed the government to enact RTI law. Further, in this case, the court also set eight-point procedures to provide copy of documents by public agencies until any such law is enacted.

Again, 2nd people's popular movement in Nepal was started which lead to the promulgation of Interim Constitution of Nepal 2007. New Constitution guaranteed Right to Information under the Article 27 as fundamental right¹⁴. RTI act was still

⁹ 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.

¹⁰ No. 211 of the Chapter of Court Management of Muluki Ain (Country Code, 2020 B.S) August 1, 1963 A.D

¹¹ No. 17 of the Chapter of Paper Examination of Muluki Ain (Country Code, 2020 B.S), August 1, 1963 A.D

¹² Country paper on Right to Information presented by Taranath Dahal on *Regional Workshop Towards More Open and Transparent Governance in South Asia*, New Delhi, 27-29 April 2010, page 1

¹³ Advocate Gopal Siwakoti et al v Ministry of Finance and others, Writ Petition 3049/050

¹⁴ 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.

lacking. There was a huge pressure from civil society and recommendation was made by different agencies including commission¹⁵ to adopt RTI Act.

Finally, the government formed a taskforce to draft a Bill on right to information in September 2007. The seven-member taskforce was headed by former secretary of the Judicial Council Kashi Raj Dahal. The parliament endorsed the draft produced by the taskforce with amendments in July 18, 2007 and the Act came in force from August 19, 2007.¹⁶

Similarly, National Information commission was established on June 4, 2008.¹⁷ And Right to information Regulation was adopted in consultation with National Information Commission on February 9, 2008.¹⁸

3. Key Features Right to Information Act 2007

The Right to Information Act 2007 has significant value on RTI legal regime in Nepal. This Act is the first legislation on the right to information, thus it has more importance. It provides the process and system of implementing right to information guaranteed by Article 27 of the Interim Constitution of Nepal. Furthermore, it sets the scope and limitation of right to information. Similarly, it prescribes the process of promoting right to information held by public bodies.

This Act has numbers of progressive features for promotion, protection and implementation of right to information. Some of the key features are as flows:

3.1. Wider Definition of Public Agencies

The RTI Act applies to Public Agencies. Definition of the Public Agencies covers constitutional and statutory bodies and agencies established by law to render services to the public. Executive, legislative and judiciary; all these branches of the state are covered by the Act. Noteworthy aspect of this Act is that it covers political parties and non-governmental organizations under the definition of Public Agencies.¹⁹ Political parties and NGOs have to maintain the obligation imposed by the Act. This provision provides the opportunity to the political parties and NGOs to be more transparent and accountable toward public.

3.2. Proactive Disclosure

Principle of right to information stipulates that Public Agencies are required to disclose certain key information by themselves on their *suo-moto* initiative, without prompting or explicit demand. Such requirement is termed as proactive disclosure.

¹⁵ High Level Media Commission Report 2006

¹⁶ <http://www.ccrinepal.org/legal-provision/rti-act-2007> Accessed on 15 March 2011

¹⁷ http://www.nic.gov.np/download/annual_report_2065_2066.pdf, Accessed on March 20, 2011

¹⁸ *ibid.*

¹⁹ Section 2(a) 5 and 8 of Right to Information Act, 2007

Section 5 (3) of the RTI Act²⁰ requires public agencies to update and publish different information by themselves on periodic basis.

3.3. Information Update and Record Maintain Obligation of Public Agencies

The Act imposes the obligation to the Public Agencies for updating, maintaining and disclosing information.²¹ In this case, Public Agencies cannot escape from the duty of making information available to public. It obliges the Public Agencies to make information ready relating to them.

3.4. Timeframe and Procedures for Providing Information

Right to Information Act has made comprehensive procedures to acquire the information from the concerned agencies. In addition, those agencies are required to provide information immediately and if they are not in the position to provide immediately then they are given the time line of 15 days from the date of the submission of the application. Similarly, it provides timeframe to National Information Commission to give final verdict within sixty days of appeal submission.²²

3.5. Provision of Compensation and Punishment

The Act has provision that if any person incurs losses and damages due to not providing information, denying providing information, and providing partial or wrong information or due to destruction of information then such person are entitled to get compensation²³. Similarly, it has made provision of punishment to Chief of the public agency or Information Officer for holding back information without any valid reason, providing partial and wrong information and destroying information.²⁴

3.6. Provision of Oversight Body

RTI Act has made a provision for the establishment of an independent National Information Commission as an oversight body. It has responsible for the protection,

²⁰ section 5(3) requires to Public Agencies to publish following information relating to their Body after making list thereof:

- (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, By Laws or guidelines
- (l) Updated description of income and expenditures, financial transactions.
- (m) Other particulars as prescribed.

²¹ Section (5) 1 and 2 of Right to Information Act, 2007

²² Section 7, 9, 10 of Right to Information Act, 2007

²³ Section 33 of Right to Information Act, 2007

²⁴ Section 32 of Right to Information Act, 2007

promotion and implementation of right to information²⁵. National Information Commission has been already established in accordance to this Act on June 14, 2008.

3.7. Protection of Whistleblower

Protection of the whistleblowers is another significant aspect of this Act. According to that provision it is the duty of employee of Public Agencies to provide information on any ongoing or probable corruption or irregularities or any deed taken as offence under the prevailing laws. It protects the whistleblower whereby it mentions that no harm or punishment is made to bear any legal responsibility to the whistleblower for providing information. Furthermore, even if any punishment or harm is made to the whistleblower, the whistleblower may complaint, along with demand for compensation to the commission for revoking such decision.²⁶

4. Major Legal Drawback within the Act

After the minute review of the provisions of the Right to Information Act 2007 and the problem faced in practice it can be clearly said that the Act has some flaws. It could have been better implemented if these flaws were addressed previously.²⁷

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

In the RTI Act, the most serious is the regime of exceptions, which does not include a public interest override and which appears to promote the withholding of information simply on the basis that it has been classified.²⁸ The flaws and lacunas are clearly visible on legal arrangements. Some of the provisions relating to National Information Commission and obligation of the State are the major areas.

4.1. Extensive Exception of Right to Information

It is well accepted principle that right to information is not an absolute right. Some grounds are considered as legitimate ground for not disclosing information. Right to information is a fundamental right which has close and opposite relation with right to privacy. So, limitation on right to information is founded on protecting rights of other individual. Similarly, state sovereignty, public order and security are the issues where information can be denied from disclosing. These are the grounds to protect social interest. Such exceptions are misused very frequently by the state organ. Thus these exceptions must be trailed with minute scrutiny.

²⁵ Section 11 of Right to Information Act, 2007

²⁶ Section 29, of Right to Information Act, 2007

²⁷ Annual Report of National Information Commission 2065-66, Kathmandu Page 55

²⁸ Memorandum of the Right to Information Act of the State of Nepal 2008, ARTICLE 19, Freedom Forum and Federation of Nepali Journalist

International Covenant on Civil and Political Rights (ICCPR) provides the grounds for legitimate restriction on RTI²⁹ as follows:

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

But the restriction is not absolute. It clearly mentions that it must be provided by law and it must be necessary.

Similarly, European Convention on Human Rights has provided the exception ground³⁰ as follows:

"...prescribed by law and are necessary in a democratic society, 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."

Thus; limitations are only justified on the basis of legitimate reasoning. The ground of legitimate restriction varies from country to country. In most of the countries, the exceptions recognized in the right to information laws do 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 do contain rare or peculiar exceptions. For example, the laws of the United Kingdom and Thailand contain exceptions relating to the royal family, while South Africa has an exceptions relating to the Internal Revenue Service and third party research and United States law contains an exception relating to information about oil wells³¹.

Interim Constitution of Nepal provided wider scope of exception.³² Where it says:

"... 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 by law. "

Following the proviso of the Article 27 of Interim constitution of Nepal, Right to Information Act 2007 has provided the huge exception list under its provision. Section 3(3) has provided the ground of exception as follow:

- (a) which seriously jeopardizes the sovereignty, integrity, national security, public peace, stability and international relations of Nepal;
- (b) which directly affects the investigation, inquiry and prosecution of crimes;
- (c) having serious impact on the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy;
- (d) that jeopardizes the harmonious relationship subsisted among various cast or communities; and
- (e) that interferes on individual privacy and security of body, life, property or health of a person.

²⁹ Article 19 (3) of International Covenant on Civil and Political Rights 1966

³⁰ Article 10(2) of European Convention on Human Rights, 4 November 1950

³¹ FOI Survey of Laws by Toby Mendel, Second Edition 2009, Page 148

³² Article 27 of the Interim Constitution of Nepal 2007

If a breakdown is made, the subject of exception is on different 22 headings. The provisions of legitimate restriction are illegitimately ambiguous. There is no clarity on the grounds. Many subjects like; national security, privacy, state secrecy are never defined. There are no laws facilitating the context.

4.2. Classification of Information and Confusion

For the protection of information related to Sub-Section (3) of Section 3, held in Public Agencies, the Act has made a provision of classification of information.³³ A committee is set for classifying information. Many questions are yet to be addressed regarding to the classification. The committee form under the Section 27 of the Act is not clear whether it is Ad hoc or permanent. Again it is not clear whether committee has to function prior to the application on particular information or after the application is submitted. Similarly, it is not clear on the scope and jurisdiction of the committee. Up to which level of the state organ the committee has to perform.

Furthermore, the mandate of the classification committee is to perform two major tasks;³⁴ the first one is to determine the number of years the information should be kept confidential and method for the protection of information. The committee performed only first task and left unaddressed the second one.

The document produced by the Classification Committee as a 'classification of the information' pursuant to the Section 3(3), is beyond the spirit of the RTI principles. Some of the problems with classification are as follows:

- Provide huge discretionary power to the Public Agencies to hold the information;
- The timeframe for keeping important information confidential is set as 30 years randomly;
- Many information relating to public concern and public interest are kept confidential;
- Classification is promoting absolute secrecy rather than protecting information as it is mandated;
- Without testing the harm and assessing the context, confidentiality is fixed.

The classification provision of Act is understood by the government as an ample opportunity to hide and block information to the public. Thus; a large list is made which is beyond the given framework under Section 3 of RTI Act, 2007.

4.3. Inconsistent Laws Exist

Generally, once the RTI law is enacted, State has the obligation to make RTI laws compatible with legal arrangement. This equally applies in the context of Nepal too. But, still many legal provisions are not friendly with RTI Act. And, such provisions are promoting the secrecy of the official document. Along with that, the culture of secrecy among the civil servants is being a barrier to implement the RTI Act in Nepal.³⁵

³³ Section 27 of the Right to Information Act 2007

³⁴ Section 27 (2) of the Right to Information Act 2007

³⁵ Annual Report of National Information Commission 2065-2066 Page 55

Generally, a specific law prevails over the general application of laws, thus; right to information law should prevail over other laws in right to information issues. But In Nepal, different public bodies refer the particular laws relating to their agencies not to disclose information. Public Service Commission denies disclosing information citing the provision of Public Service Commission Act 2066.³⁶ Such provision exist over dozen Act and Regulation. Income Tax Act 2058 B.S. (2000)³⁷, Competition Promotion and Market Protection Act 2063 (2007)³⁸, Revenue Leakage (Investigation and Control) Act, 2052³⁹, Commission for the Investigation of Abuse of Authority Act 2048 BS (1991)⁴⁰ Civil Service Rules 2065⁴¹, Scholarship Rules 2060⁴² are some of them.

These inconsistencies are beyond the scope of Section 3 of the Right to Information Act 2007. Five categories of interest under Section 3.3 are listed whose protection could justify a refusal to disclose information, such as national security and privacy. A public body may only invoke these exceptions if there is an appropriate and adequate reason. But present, these inconsistencies has made parallel provisions on exceptions to Right to Information Act.

4.4. No Clear RTI Overriding Principle Established

Not to have clear overriding provision is the major legal problem of Right to information Act 2007. Section 3 has provided exhaustive list of exception and Section 27 has made classification, despite that RTI Act lacks overriding status. Section 37 is not clear about the overriding effect of this Act to other.

"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 Right to Information Act as aforementioned. Generally, the overriding provision activate only in the case of inconsistency with the other laws. If there is no inconsistency then the two laws should operate simultaneously. But in Nepal such provision on Right to Information Act is lacking. In many countries, information is accessible even if the information is classified for public interest. In Nepal, the public interest override is entirely absent.⁴³

5. Additional Problems to be Addressed

Except principles issues, there are additional legal problems which need to be addressed for effective implementation of right to information laws in Nepal,

³⁶ Section 46 of the Act says "...examination papers are not subject of disclosure..."

³⁷ Section 84 of the Income Tax Act 2058

³⁸ Section 36 of the Competition Promotion and Market Protection Act, 2063 (2007)

³⁹ Section 28 of Revenue Leakage (Investigation and Control) Act, 2052

⁴⁰ Section 23 of the Commission for the Investigation of Abuse of Authority Act 2048 BS (1991)

⁴¹ Rules 7 (2) of Civil Service Rules, 2065

⁴² Rule 19 of Scholarship Rules, 2060 "... examination paper are not subject to disclosure ..."

⁴³ Memorandum on the Right to Information Act of the State of Nepal 2008, ARTICLE 19, Freedom Forum and Federation of Nepali Journalist, 2008

particularly, Right to Information Act 2007. Implementation related issues and National Information Commission related issues are major.

5.1. No Nodal Agency

Implementation of right to information is obligation of government. Government has to mobilize different state organs to make necessary arrangement. In Nepal, National Information Commission is there as an oversight body⁴⁴. Protection, promotion and implementation obligation is assigned to National Information Commission (NIC). Ministry of Information and Communications is considered as line ministry to contact to government by the NIC.⁴⁵ Neither there is any specific legal provision on creating a nodal agency (implementing agency) taking responsibility of implementing RTI nor has government taken any initiatives to create nodal agency within the government.⁴⁶

For the effective implementation of right to Information Act 2005, Indian government has created nodal agency. Department of Personnel and Training of Ministry of Personnel, Public Grievances and Pensions is the responsible from government level for promoting and implementing right to information.⁴⁷ It is responsible for training, developing guidelines and creating conducive environment to implement RTI Act 2005 from government side. Such agency is lacking in Nepal. Adoption of Right to Information Act and establishment of National Information Commission are only taken as responsibility of the government.

5.2. No Record Keeping

One of the biggest lacunas of Right to Information Act 2007 is lack of obligation to the Public Agencies to maintain the record of information seeker. Public Agencies have no obligation for reporting to any other agencies regarding application received and information flowed. Even, agencies having very positive attitude and are willing to provide information keep no record on it. It really creates hurdles for assessing the trend of use of RTI by public. Due to the lack of proper record of information seeker, overall analysis of use of RTI is only based on assumption. Except the appeal received by National Information Commission, there is no system of maintaining record of information seeker.

5.3. Reason for seeking information

Right to information Act requires for an applicant to mention the reason for his or her information request.⁴⁸ This provision appears to contradict with 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 the public body has a good reason to withhold the information. It is common practice in the most of the country that if one is eligible to submit application for information s/he is not required to mention the reason of information.

⁴⁴ Section 11 of Right to Information Act 2007

⁴⁵ Section 26 of Right to Information Act 2007

⁴⁶ Long Way to Go -Towards effective Implementation of the Right to Information Laws in Nepal, CCRI- 2010, Page 55

⁴⁷ www.rti.gov.in accessed on 15 March 2011

⁴⁸ Section 7(1) of Right to Information Act 2007

Connected with this, there is a provisions under sections 31 and 32(4), which prohibit use of the information for other purposes than it was requested for, is problematic. Use of received information for illegal activities is prohibited by criminal law. Provision of Section 7 (1), 31 and 32(2) only discourage individual seeking information. Information held by public bodies should be accessible to any public regardless of his/her interest.

5.4. Staffing of National Information Commission

National Information Commission is projected as independent oversight under Right to Information Act 2007. Thus; independency of the commission has to be maintained from all perspectives. If the provision of RTI Act is reviewed, except commissioners all the staffs of the NIC are supplied by Nepal government.⁴⁹ These staffs are from government service and are always loyal towards Public Agencies. This system severely hampers the independency of the Commission. Generally, government staffs get transferred in every two years, in this case, commission has to spend huge money for the capacity building of the changed staffs.

5.5. Defence and Implementation of NIC Decision

National Information Commission seems independent but in many case it seems to be the part of the government. NIC has been using government logo. All administrative tasks of the Commission are managed by the government, but the judicial role of appeal hearing is expected to be independent. The case decided by the commission is almost final on disseminating information. But decisions are challenged in Supreme Court under writ jurisdiction. In that case, Office of Attorney general is responsible to defend the decision of Commission as well. At the meantime Attorney General Office has to defend opponent party of NIC. This is unacceptable under the general principle of natural justice. In this case, there is chance of misrepresentation of commission in court.

Implementation of decision of the National Information commission is another problem with NIC. There is no any government body to whom commission can write to implement the decision. Lack of responsible agencies or initiatives from the government side, has barred the smooth functioning and monitoring of the decision made by the commission.

6. Conclusion and Recommendations

It has been already three and half years of the RTI Act in Nepal. Compared to India and Bangladesh, the implementation status is too poor. However, situation is not hopeless; it could be done in better stage if associated problems are addressed promptly and positively. Reports shows that very few information officers are appointed in public agencies and the status of proactive discloser is extremely at a low level.

The situation is not merely because of legal problems, however it has significant role to produce such result. The following issues should be addressed from legal point of view for creating conducive environment to implement RTI in Nepal effectively;

- Clear provision on overriding effect of RTI Act should be established. There should be provision under section 37 as "this Act prevails over other laws to

⁴⁹ Section 22(2)

the extent of inconsistency". Such provision helps to end confusion among the stakeholders about the overriding issue of RTI Act. If such provision is established, the problem of inconsistent laws will be solved. The provision immediately creates the effect of annulment of the inconsistent laws.

- Exhaustive exception provision has to be managed. If the exception is managed by constitution rather providing open space, it will really have better protection of the right to information. In case of exception provision on Right to Information Act, exceptions to the right to information should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. The present classification should be invalidated. Classification should be an administrative practice, designed to ensure proper internal management of information.
- There should be legal provision of establishment of Implementing (nodal) agency. The legal obligation makes government more responsible for taking an initiation to establish such agency. Such agency could be useful for the implementation of the decision of the Commission at the mean time to work as the responsible agency to take care of the implementation of right to information in Nepal. Particularly, it should have responsibility of monitoring the implementation status within the state organs and provide necessary capacity building trainings and guidelines to facilitate for implementing right to information laws.
- It is fundamentally required a record maintain or log maintain of the information seeker as well as the intervention made by public agencies over the information seeking application. The obligation of the public agency to maintain record of the number of information seeker, details of information seeker, area of information sought, number of successful and failed application, number of appeal in NIC, number of pending application etc. should be addressed. Similarly, there should be legal provision with the obligation of the public bodies to submit these information to the NIC. This information helps to track the implementation status and the area where state requires more intervention for effective implementation of the right to Information Act.
- The provision of maintaining reason for seeking information should be deleted which boosts confidence of information seeker. On the other hand, unnecessary obligation of the public bodies to track the misuse of the information is ultimately reduced.

Independent role of the NIC has to be maintained by the legal arrangement. Recruitment of staff should be the power of NIC. There should be legal provisions setting the obligation of created nodal agency or government to implement the decision of NIC. Defense of the NIC decision by recruiting outsider lawyers should be allowed and necessary fund for this purpose should be managed by formal budget.

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A Working Paper on

Role of Citizen in Promoting Right to Information in Nepal

Basu Dev Neupane and Bed Prasad Sapkota

1st National Convention on Right to Information

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"Knowledge of any kind ... brings about a change in awareness from where it is possible to create new realities." - Deepak Chopra

1. Introduction

This paper is prepared on the basis of findings of following process – (1) review of available progress reports of different organizations involved in the promotion of RTI, various research reports and other related documents (2) findings of rapid survey among 163 respondents mainly from NGOs, general public and some professional. The rapid assessment was conducted between February 22nd - March 6th, 2011, focused on perception of people, purposive use, challenges in implementation and popular suggestions for effective implementation of RTI. (3) major findings of action research being conducted by SAMUHIK ABHIYAN, in health governance by using RTI and Citizen Report/Score Card as a tool, a national NGO actively involved in participatory governance, (4) compilation of some activities undertaken by selected I/NGOs and civil society organizations in promoting governance using RTI as a tool.

2. RTI -- A Civil Society Perspective

Civil society organizations by their nature represent rights and interest of citizens, work in favor of people and support people for dignified life. Most civil society organizations support people's empowerment in general. Enhancement of knowledge is prerequisite for people's empowerment and knowledge is a perfect and analytical blend of different information from varied sources. Hence civil society organizations consider RTI as a powerful tool for empowerment and overall development of people. Because RTI denotes the right to request and obtain information of public importance held by public agencies and this term shall also include the right to study or observation of any written document, material held in public agency or proceedings of such public agency; to obtain a verified copy of such written document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any materials or to obtain information held in any type of machine.

3. Right to Information Act in Nepal

Interim Constitution of Nepal, 2006 has made a provision of right to information in article 27 under fundamental rights chapter. Furthermore the parliament had promulgated the Right to Information Act in 2007 to guarantee the fundamental right of people in accessing all information. This act is substantiated by a Right to Information Regulation, 2009 for effective and timely enforcement of laws related to access to information.

The RTI act was enacted with the basic spirit that every citizen will use it as an effective empowerment tool to hold the public and private institutions accountable to their duties. Advocates of RTI around the world have lobbied with state for formulation and effective implementation of RTI as access to information and the ability to share the information can empower the people, regardless of whom and where they are. Information can mobilize, increase transparency and accountability, and it is a stimulus to participation, active citizenship, life long

learning and social change. But unfortunately in the country like ours this assumption turned out to be rhetoric and the reality is different. Several studies indicate that currently in Nepal only journalists and some NGOs are using RTI Act to expose abuse of authority, corruption and misconduct in the public and private agencies.

Although right to information and freedom of expression are both perquisites for democratic practices, there is fundamental distinction between these two important elements. The legislature composed of social representatives already trusted with social confidence through electoral process, accountable to the voters and being in constant contact with the citizens.

Though NGOs in Nepal have realized the essence and importance of RTI to empower people and foster good governance practices, they have not been able to promote its usage by making people understand that this as an asset of the people for their greater good. The status report, prepared by World Bank has clearly illustrated that most NGOs lack adequate knowledge on using the RTI Act and are therefore unable to expand its reach to the grassroots level. Some NGOs in the capital have substantive knowledge and experience on RTI with their involvement in the movement from the very beginning¹. The importance of the role of NGOs in Nepal lies in spreading public awareness and making advocacy efforts at the grassroots level. Some NGOs even outside the Kathmandu valley are promoting the RTI as interesting materials in the training session under good governance and transparency. , However, there are very few NGOs in Nepal who have programmed and implemented the RTI promotion independently.

As the concerned ministries and authorities have failed in circulating proper directives to public agencies, effective execution of RTI provisions have been over shadowed. In this context, mere awareness among people will be in vain since they do not get a response even when they demand information.

4. Conceptualizing Right to Information: A development tool

Knowledge is integral part of empowerment process of any individual and community, which is prerequisite of any development process. Knowledge is conceptualized after critical analysis of any information. Hence information of any kind is pivotal to development. Recently enacted Right to information act has opined the opportunity for any individual or community to obtain any information from related sources. But several study reports and experiences has clearly shown that the perception of wide range of people on RTI is largely limited to freedom of expression and not as a development tool. Since the constitution of Nepal has recognized the freedom of expression as a fundamental right, there is a common notion that Right to Information is only related to freedom of media. In Nepal, since last few years there has been a gradual shift in popular perception on RTI and at least a small section of people have now realized that media is not only development tool in raising people's awareness on basic rights such as right to food, shelter, security, livelihood choices and public participation. Civil society led awareness rising and realities of development initiatives have helped broaden this perception.

¹ Status of RTI in Nepal, World Bank 2009

Participation in governance is at the heart of any successful democracy. As public involvement not only enhances the quality of governance but also promotes transparency and accountability in government functioning, citizens are expected to participate in every steps of governance on day to day basis and not only at the time of elections once in every five years. Nepali scenario suggests as very gloomy picture of citizen participation in governance. In reality large number of citizen are denied to participate in governance and they do not have access to information about the government decisions making process. Furthermore citizens also do not know how tax money is spent, how public schemes are operating and whether the government is acting honestly and fairly when it makes decisions due to lack of proper and timely information. At the same time the civil servants are not answerable to all those questions. One way of participating is by exercising the right to access information from bodies which spend public money or perform public services.

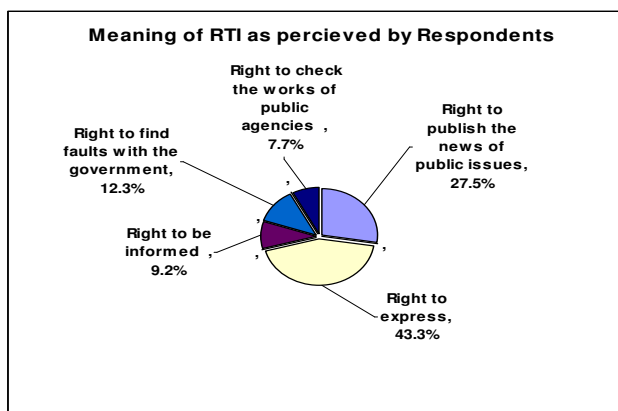
Following the enactment of the Right to Information Act 2007, all citizens of Nepal now have the rights to access information. The RTI Act recognizes that in a democratic republic Nepal, all information held by government ultimately belongs to the people. Making information available to citizens is simply a part of normal government functioning because the public have a right to know what public officials do with their money and in their name. Likewise, all public and private agencies, including NGO/CBOs and other development agencies must make their information available to citizens because the people have a right to know what the NGO/CBOs are doing in the name of poor people or communities.

5. Findings of Rapid Survey

A rapid survey was conducted to explore implementation of RTI in Nepal, exploring the level of awareness of general citizen and use of RTI by civil society organizations. Specifically the purpose of the rapid survey was to identify the citizen's perception on RTI in general and RTI act 2007 in particular, to explore the methods and tools of promoting citizen participation in government and development efforts through RTI and to explore the potential role of citizen in promoting RTI. A total of 163 respondents participated in the structured questionnaire survey and the survey also mapped the initiatives of some organizations. The 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), VDC secretary (15) and Mother group leaders, including FCHVs (32). Furthermore the research team visited 13 NGOs of Katmandu and progress reports of some INGOs were also reviewed to map the Involvements of CSOs in promoting RTI in Nepal. The research team also gathered key findings of action research being conducted by SAMUHIK ABHIYAN in promoting good governance in health sector using and RTI and citizen score card as tools.

a. What does citizen understand by RTI

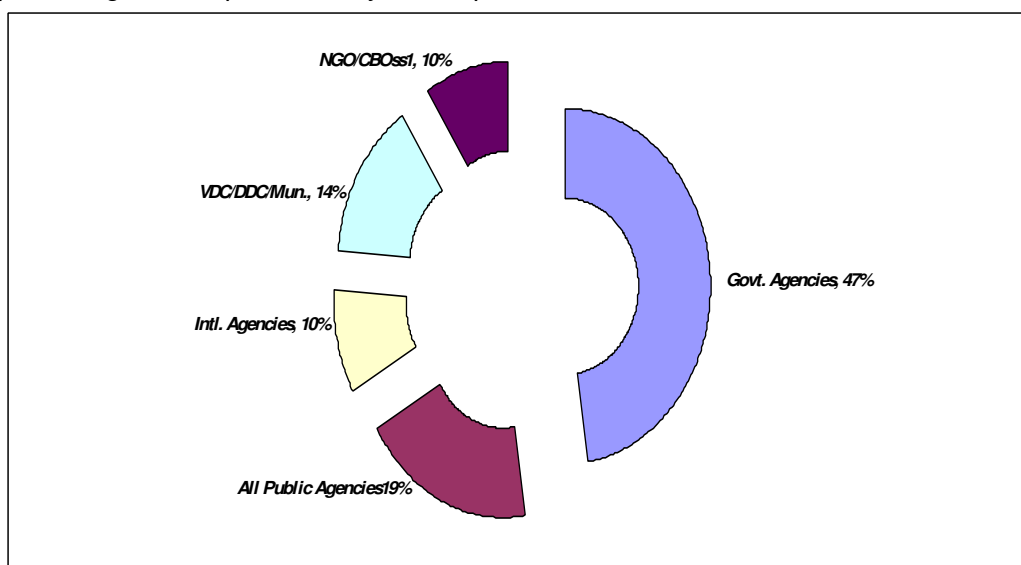
The rapid survey found that nearly half of the respondents perceive RTI only as the rights to expression of their thought or feeling through media or any other means of publication. 12.3% respondents said that RTI is the rights to find fault of government and to bring this to public attention. Only less than one in every ten person replied that RTI is the right of citizen to check the works of public agencies which affect their lives. Following graph illustrates the meaning of RTI as perceived by the respondents.



Source: Rapid Survey, 2011

b. Who is responsible to promote RTI? --as perceived by respondents

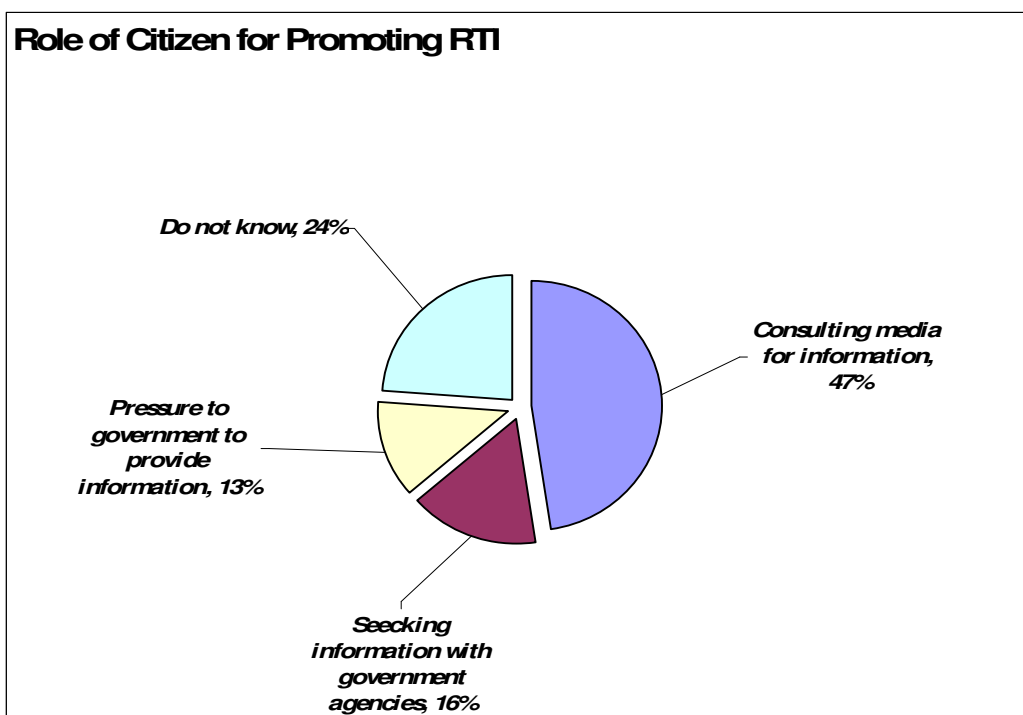
A multiple choice question was asked on who is responsible to promote the RTI. Nearly half of the respondents said that it is government is principally responsible. Almost 20% of the respondents said that it is the responsibility of all public agencies whereas 14% respondents reported that the local government is responsible. The survey found that most of the people think that CSOs are least responsible to promote RTI where only 10% respondents said that CSOs are also responsible to promote RTI. Following chart shows that the responsibility of promoting RTI, as perceived by the respondents.



Source: Rapid Survey, 2011

c. What role can citizen play in promoting RTI?

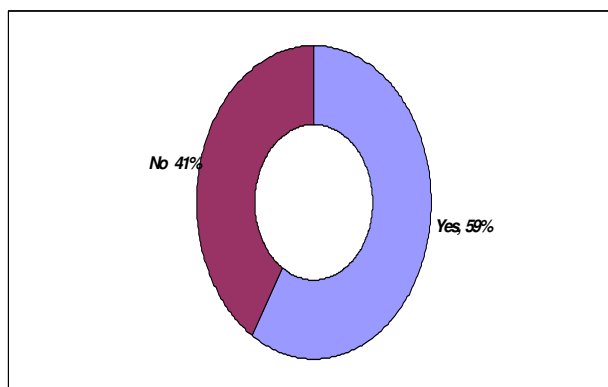
Nearly one fourth of the respondents are unaware of their potential role of citizen in promoting RTI whereas nearly half of respondents think that their role in promoting RTI is to consult with media. Likewise, 13% respondents said that the role of citizen is to create pressure to government for provide relevant information. Only 10% respondents reported that their is to claim or demand information from the government or any public agencies which is related to their concern. Following chart shows the responses of the role of citizen for promoting RTI as perceived by the respondents.



Source: Rapid Survey, 2011

d. Have people heard about RTI act

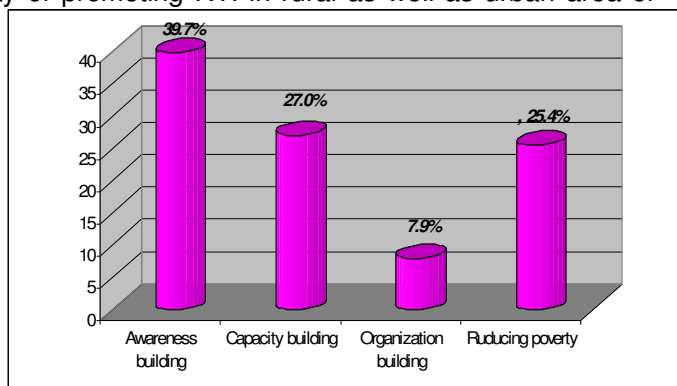
A question was asked to the respondents to assess their awareness on the RTI act. The question was whether they have heard about RTI act or not. 47% of the respondents said that they have not heard about RTI act. This situation shows that the RTI is either very new issue in Nepal or it is not widely disseminated among common people through media and relevant IEC activities.



Source: Rapid Survey, 2011

e. How can we promote RTI at community level?

A multiple choice question was asked to assess the perception of the respondents on the way of promoting RTI in rural as well as urban area of Nepal. Nearly 40% of the respondents firmly believed that the mass awareness building initiatives is an effective way of promoting RTI in rural as well as urban area of Nepal whereas 27% respondents relied on capacity building of people so that they can promote RTI. Similarly, 25% said reducing poverty as an effective way of promoting RTI, which shows that there is very low level of awareness of the respondents on RTI.



Following section of this paper presents some initiatives taken by I/NGOs and other civil society organizations in using RTI as a tool for promoting good governance, empowerment and overall development

6. RTI as a Means of Promoting Good Governance

Good governance is increasingly recognized by government and non government sectors as central to poverty alleviation, and several NGOs and civil society organizations in partnership with external development partners are getting involved in recent past in promoting good governance as an attempt to contribute in poverty reduction. Likewise multilateral agencies such as World Bank and ADB are also providing financial support to CSO to facilitate the citizens in promoting good governance to promote transparency and to make the public agencies more accountable towards the poor people. As a watch dog and facilitator for the general people, civil society organizations are playing a catalytic role to empower people against government malfeasance, while fostering greater transparency and accountability.

SAMUHIK ABHIYAN has been involved for long time through various activities to assess the effectiveness of public service delivery and bringing the results to public attention, sensitize the people to raise voice for their rights of participation in all types of development activities and to be informed on the government services and opportunities. At the same time, SA has been involved in an action research in the area of health governance that aims at strengthening both supply and demand side. On the supply side health service providers are supported to improve the service delivery mechanism in more transparent and accountable manner. And in the demand side the citizens are engaged in demanding good governance in the health sector by holding the service providers more accountable in delivering provisions in health services. SA has experienced that the RTI is an effective tools in promoting several elements of good governance such as transparency, accountability, participation, legitimacy, freedom of expression and association, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability, strategic vision and consensus orientation and so on.

Transparency in RTI perspective means that decisions are taken openly and enforced as per rules and regulations. It requires that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided to all the stakeholders in easily understandable forms and media to enable their meaningful participation in decision making processes. Likewise, accountability in terms of RTI means that public institutions and functionaries are answerable to the people and to their institutional stakeholders. Accountability cannot be enforced without a regime of transparency. A direct relationship exists between right to Information, informed citizenry and good governance. The Right to Information provides citizens the opportunity of being informed of what the Government does for them, why and how it does it. Public participation in Government, respect for the rule of law, freedom of expression and association, transparency and accountability, responsiveness, equity and inclusiveness, effectiveness, efficiency, accountability, strategic vision and consensus orientation, legitimacy of Government, and the like, which are the core values of good governance, can be realized only if the right to information is implemented in the right spirit. Right to information is the hallmark of good governance.

7. Tools for Promoting RTI

On the basis of SA's own experiences, findings of rapid survey and review of some relevant documents, it is found that several tools and techniques have been used by CSOs to promote good governance and those tools have directly helped to promote RTI at community as well as district level. The findings are presented in general used by several CSOs and in particular the experiences of SAMUHIUK ABHIYAN.

7.1. Social Audit

Social Audit is an independent and participatory evaluation process of the performance of a public agency or a program 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 also enables the Civil Society to assess whether a public authority lives up to the shared values and objectives it is committed to. It provides an assessment of the impact of a public authority's non-financial objectives through systematic and regular monitoring based on the views of its stakeholders.

Social Audit helps to promote RTI by following ways;

- a. 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.
- b. 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.
- c. Informed Consent: Social Audit provides for the right of the affected persons to give informed consent, as a group or as individuals, as appropriate.
- d. 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.
- e. Speedy Redressal of Grievances: Social Audit ensures speedy redressal of grievances of the affected people by the public agencies.

*Cited from Right to information Act, 2005
and the Role of NGOs, RTI Cel, ATII KOHIMA*

Using the RTI Act, SAMUHIK ABHIYAN, therefore, facilitated social audits of processes, activities, expenditures of CSOs/projects or users groups and so on. This has helped to improve public service delivery and the efficacy and accountability of the VDCs and projects. In Nuwakot district, SA has been

facilitating the communities (health service users) to use RTI Act to inspect various processes, and schemes of health services of government. SA has been facilitating the local community and CBOs to collect and verify records, and documents regarding the health service delivery, particularly the essential drug facilities of GoN.

7.2. Participatory Research and Evaluation

Use of participatory research and evaluation helps to promote the role of citizen to promote RTI at local level. Qualitative and participatory tools such as citizen report card, interaction meetings and review of documents are found effective methods in this regards. As experienced by SAMUHIK ABHIYAN, qualitative and participatory tools such as citizen report card, interaction meetings and review of documents are effective means to access information and enable the community as demand side and to improve public service delivery and enhance accountability of public officials. CSOs must actually empower to use the provision of RTI act to demand information. And requesters must be assertive demanding good service under the act. It is experienced that it is crucial in determining habits – on both demand and supply sides. Therefore there is great challenge to create system of demanding and providing information as well. In Nuwakot district, SAMUHIK ABHIYAN has initiated to facilitate the community to demand the information about the essential health services, particularly the role and responsibilities of sub health posts. The health personnel (In charges of sub health posts reluctant to provide information and threatened the community people). Therefore, CSOs must encourage Government towards a “right to know” approach in other words, to encourage government to automatically publish the majority of its information.

7.3. Public Hearing

In Nepal, public hearing is an effective means of providing the citizens to express their grievances and quarries in front of the service providers. This helps both the service providers (Supply side) and the citizen (Demand side) to make clear on the effectiveness of the services. Further, It helps to promote the rights to information of the citizens and accountability of the service providers towards the citizens. Experiences has been shown that such public hearing helps in accurately identifying the information that the different communities need in order to bring about social and economic development. CSOs can play as a bridge to elicit information, using the RTI act that will serve the interests of the weak and the poor, because inequality of 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.

7.4. Media Mobilization

Information is power and is regarded as the oxygen of democracy. Information is crucial for a vibrant democracy and good governance as it reflects and captures Government activities and processes. Access to information not only facilitates active participation of the people in the democratic governance process, but also promotes openness, transparency and accountability in administration. ‘Right to Information’ (RTI), the right of every citizen to access information held by or under the control of public authorities, can thus be an effective tool for ushering in good governance.

Considering this fact, SAMUHIK ABHIYAN has designed and promoted media mobilization activities in promoting RTI in its project district. Media such as local FM radio and print media coverage is significant throughout the project area. The rights to information related messages are disseminated through the FM in the project area. It is experienced such activities can make a real difference to the lives of poor and disadvantaged people by:

- making the citizen more aware of their rights and entitlements;
- enabling citizen to have access to government programmes, schemes and benefits;
- making citizen more aware of political issues and options and helping 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; and
- Providing a discursive space for citizens to dialogue with other actors in the governance process.
- highlighting significant cases or efforts made by organizations/individuals on RTI.

6.5. Empowerment

Many CSOs are found to be using the right to information to empower the excluded citizens in the rural and urban areas of Nepal. Such CSOs have involved facilitating the citizens to raise their voices to the needs and aspirations of the people and to provide them access to relevant information. When people lack a voice in the public arena, or access to information on issues that affect their lives, and if their concerns are not reasonably reflected in the public domain, their capacity to participate in democratic processes is undermined. CSOs are involved in providing information through the users groups, child clubs, mother groups, youth clubs and several groups and networks of ethnic and caste groups of the citizens which are related to the services and facilities that are provided by the government or other development agencies. Similarly, the CSOs facilitates them to follow the procedure to obtained such facilities and services. SAMUHIK ABHIYAN has provided such service in two VDCs of Nuwakot district by focusing on the health services. It empowers the vulnerable and marginalized sections of the society such as the poor, women, and weaker sections and socially excluded to make their voices heard.

6.6. Training and Awareness Campaign

By reviewing the reports and published documents regarding the RTI in Nepal, it is found that several CSOs have incorporated the RTI related contents in their training curriculums. Most of the RTI related contents are incorporated under the good governance, gender and social inclusion and empowerment sections. Such trainings are provided by the CSOs to their staff, members and the representatives of their stakeholders and beneficiaries. SAMUHIK ABHIYAN has developed and delivered training package for promoting participatory governance using RTI for the CSO workers, VDC officials and media persons. Though the training was organized for one group (25 participants), It is found that the participants has achieved significant outcomes in their program/project area. However, there is not any training package which is focused on the role of citizen in promoting RTI. There is need of such training package. Likewise, Some CSOs,

including SAMUHIK ABHIYAN, Pro-Public, NGO forum and so on are involved in raising massive awareness on RTI and the role of citizens to increase access to information on issues that affect their lives, and if their concerns. Recently SAMUHIK ABHIYAN has conducted awareness campaign in Bidur Municipality and other two VDCs of Nuwakot district by focusing on the health facilities of the government and the right to information of the citizen. It includes the key points of RTI act and the RTI regulation, information related to essential health facilities of GoN, process to be followed for obtaining such information and the role of citizen in promoting their own rights to health. Massive awareness campaign has been done in the project area. The awareness campaign was conducted to improve the health service delivery practices in the project areas focusing on the following issues;

- Absence of in charge/health personnel and other staff in the Sub Health Posts
- Lack of field visits of the PHC staff
- Lack of public transports up to the district hospital therefore, the patients are compelled to get expensive service from the private clinics
- Supervisory visits undertaken by other health officials of the district
- Stock registers of medicines with dates of procurement, expiry dates of medicines etc.
- Number of outpatients treated
- Maintenance of birthing centers
- Immunizations achieved as against the Action Plan
- Inspection of vaccines in the cold chain (refrigerators)
- Inspection of safety measures followed by the staff in regular medical treatment
- Maintenance of counterfoils on immunizations
- Inspection of other relevant registers
- Implementation and use of Citizen's Charter etc.

As a result 4 cases are filed in the good government monitoring committee of the district. The committee is formed in a consensus of all political parties, government officials and CSOs to monitor the corruption in the district. So far, 7 cases are published in local news paper. According to the medical superintendent of district hospital of Nuwakot, the number outpatients are increased by 150% in the hospital as a result of the massive awareness campaign.

7. Best International Practices

RTI in Nepal being relatively new, the examples of best practices is yet to be harnessed. But there are ample best practices that can encourage the RTI promoters in Nepal. Following two examples are cited from Best practices in the implementation of RTI act 2005, Center for Good Governance, Hyderabad

7.1 Self Disclosure of Panchyat in Madhya Pradesh

In a significant move to empower people with information *SAMARTHAN*, a Bhopal based NGO, motivated 5 panchayat each in *SEHORE* and *AJAYAGARDH* districts to prepare self disclosure manuals in accordance with the sections 4.1.b. of the RTI act 2005. These documents were prepared and were

kept at the panchayat so that the *GRAM SABHA* members could review the documents at any time.

Experiences of reviling information were also replicated in some other Panchyat's by posting information in the notice boards for the citizens. Seven panchayat in *AJAYAGARDH* block has displayed cost and physical details of the development works undertaken during the year on notice boards.

The information such as the budget and actual cost incurred in the Panchyat and the list of the persons benefited under the different schemes was reviled to citizens.

This experience of proactive disclosure depicts transeperancy at the grassroots and in the foundation taking place in the villages and upwards.

7.2 RTI helps better service delivery delivery-Kabir Studies

"RTI action research villages"; Kabir, an organization based in Aligarh Muslim University has undertaken action research to see if RTI has an impact on the service delivery. This has now taken shape of a campaign.

The on going campaign in five remote villages was taken up to study the impact caused by RTI i.e. whether RTI is being used extensively by the villagers. The inspiration of this campaign came from the actions of a very remote and economically backward village in the Indian state of Utter Pradesh. After trying all other methods, the local villagers finally succeeded in getting basic civic amenities like road and electricity in their villages by using RTI act. The action research village campaign aimed to get filed at least 300 RTI requests from each village.

These applications are having a tremendous and immediate effect. For instance, tardy school teachers were replaced and basic drainage infrastructures was set up in many village as a result of applications being sent under the RTI act, questioning the status of these activities. While saying so, we find that RTI in deed helped people get better services from the public authorities, with media reports covering their usage and the positive offshoots of the same, like pension clearances, admission in schools, better civic facilities, roads, electricity and street lights, improvement in public distributions systems etc.

8. Challenges in promoting the filing of RTI applications

This time of political transition embedded by anarchy, unrest, impunity and injustice it is most challenging for Nepal to implement RTI. The political attention of the country is on the breakdown in governance, 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, underdevelopment 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 RTI, has done so little to implement it in Nepal. There are several challenges in promoting filing of applications under RTI in rural as well as urban areas. Some key challenges are:

- There is a significantly low level of awareness amongst people on their rights to access information, since only few applications are filed with urban departments/municipalities. A rapid study also revealed that only 3.5% of people, particularly in rural area were aware of it. Therefore, a large-scale credible campaign on RTI can only lead to realization of right to information for the common citizen.
- There are vested interests or politically connected individuals who may misuse the act for settling personal scores. Though such cases are not large as of now, the possibility cannot be completely ruled out. There is a need to establish a strong mechanism of tracking application disposal rates and use of RTI-obtained information to minimize misuse of provisions of the Act.
- There is also a cultural mindset that prevails almost everywhere in favor of not disclosing information. Changing attitude for voluntary disclosure of information is a stake to practice RTI.
- A significant number of offices at district or VDC level are found that the suggestions box neither opened regularly nor there is any response of people's suggestions/claim. It is a waste of time and effort for any person to write and drop any claim.
- Many civil society organizations are involved in capacity building of community to promote good governance and to make the government agency more accountable towards the people. However, there is still lack of conceptual clarity on promoting RTI. The CSOs are reluctant to build capacity of the community to build demand for information.
- The legal aid support system for the poor needs to be linked with RTI, since many of those opting for legal action may get free legal support. Considering the fact that existing levels of legal aid is quite weak. It would be important to open information/help centers at district or VDC level with the help of civil society organizations. The experiences of grassroots-level campaigns, conducted by SAMUHIK ABHIYAN have demonstrated that citizens need support in drafting applications, formulating their questions and confidence building to withstand pressure of government staff, VDC officials and influential mafia.
- Most of the CSO workers, teachers and general people perceive the RTI as a matter of accessing only government-owned information or the act is related with media professionals only. Thus conceptual clarity on importance of RTI in preventing rights violation as well as improving governance is important for both information users and providers.
- Record Management is a major challenge for the government where the system follows a very traditional system, especially records and documents are maintained in hard copy, -sk8fn] afFw]/ jf af]/fdf xfn]/ /flvG5_. Financial

constraints, poor categorization and filing systems are not favorable for delivery of information.

- To make people aware about the act and to make them educate on usage of the act is more challenging. Developing of claiming culture among people, breaking the culture of silence and reducing the crisis of confidence between government and people are some of the major challenges of promoting RTI in the rural area as experienced by SAMUHIK ABHIYAN.
- It is equally important to educate designated officers on how to use the act. Otherwise to get the result from the Act will be ineffective. In this regard, media should come up for wider dissemination to popularize the Act.

Based on the action research and some document review following challenges were also found at the community level in the process of using RTI as tools in promoting good governance at district and community level;

- Awareness – citizen do not know about the available public services and most citizens do not know about RTI. Furthermore people do not know the process of demanding information in formal and systematic manner, often being informal, which does not allow people to obtain required information. A severe crisis of confidence between government and people are also visible at local level. People do not have trust that government will fulfill any commitment of providing services to the people.
- It was also found that the service providers also do not have knowledge of RTI. As a result they do not know that they are responsible to provide relevant information to the people who are demanding it.
- In the process of conducting RTI related activities and action research it was observed that the service providers also have attitudinal problem and are reluctant to accept RTI resulting into denial and delaying the information.
- Government has made a mandatory provision of posting citizen charter in all public offices. But according to a survey conducted by government owned Nepal Vigilance Center found that most of the citizen charters are not used and as either it is not visible or properly written. People are also not aware of citizen charter. .
- Deep rooted cultural values among people limits people in claiming their rights
- Harassment, intimidation and threatened due to RTI -- A youth in Betini VDC of Nuwakot faced threats for asking information from SHP under RTI Act.

9. Way Forward

- Massive and meaningful awareness RTI campaign embedded with action research using participatory tools and techniques.

District networks, branches or alliances of CSOs i.e. Bar Association, district branches of HR organizations, alliance of NGO who are involving in promoting GG, could host awareness campaign on RTI and to provide practical advice about how to use this right. They have to be capacitated in this regard by the national level organizations/experts.

- Use of existing networks and strengthening if necessary, which can play a pivotal role in spreading information about the right to information to their members. Strong, credible and capable networks such as NGO Federation of Nepal (NFN), Federation of Community Forestry Users Group of Nepal (FECOFUN), Federation of Water and Sanitation User's of Nepal

(FEDWASON) and many other national and district networks of caste and ethnic groups which are already initiating some actions to promote RTI should be further encouraged to focus more on RTI as a development tool.

- Promoting active and critical engagement of government agencies in ensuring monitoring RTI implementation and taking actions in relevant issues.
- Work at the local level: CBOs/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. Such CBOs/NGOs could be the VDC networks of mother groups, child clubs, youth clubs, and users groups and so on.
- Document and disseminate success stories: Success stories are always useful, but some are more useful than others.
- Promoting 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.
- Some innovative methods of supporting illiterate people should be considered. The telephone hotline or any other methods could be introduced so that these people can file the demand on the basis of telephone conversation.

10. Conclusion:

Right to Information is relatively new concept to Nepal. Civil society organizations, I/NGO have contributed to some extent in promoting RTI at different levels. However, the extent of support is limited to training and awareness building only. The service providers, who are major sources of information are either not aware about the law or are reluctant to provide information to citizen. It is also true that the act is not an ideal one. It is not possible to identify loopholes in information delivery mechanism unless the service providers face difficulties in delivering it. On the other hand people are entitled to access information but are not capable enough on demanding for information which is related to their livelihood and human rights. In this regard, civil society, media and all other stakeholders should work hand on hand to create an access and hold the government accountable and foster responsible civil society as well. So stakeholders together should initiate actions from both supply and demand side together to promote RTI at all levels.

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A Working Paper on

***Role of Local Government
and Right to Information in Nepal***

Hem Raj Lamichhane

1st National Convention on Right to Information

Kathmandu, Nepal, March 28-29, 2011

Role of Local Government and Right to Information in Nepal

Hem Raj Lamichhane¹

Background

This thematic paper is prepared with a view to sharing general review of relationship between the roles played by various layers of local government to comply with the basic provisions of Right to Information Act with regard to transparency and access of information to people. The paper is entirely based on the literature review and the working experience of the author.

Even after the adoption of the RTI Act in 2007, Nepal has witnessed no substantive progress regarding its implementation. The role of key stakeholders is not vibrant enough to expedite ahead the RTI movement and practices as expected. There is confusion among stakeholders as to how the RTI could take momentum to serve the greater goal of promoting state accountability, enhancing citizen's easy access to information held by public agencies and advancing people's empowerment. Likewise, RTI has not been widely understood and used as a tool to bring about multiplier effect in development, people's livelihood, and social, economic and cultural perspectives. All in all, implementation of the right to information comes at a difficult time for Nepal.

In this context, this paper will try to focus the legal provisions and practices which can promote effective implementation of RTI Act at local level. Basically, this paper tries to see the role of local bodies in its implementation and makes some recommendations to ensure effective implementation of the provisions of the RTI, especially by the local bodies viz. District Development Committees (DDCs), Village Development Committees (VDCs) and municipalities. The paper also tries to assess the legal provisions and practices, possibilities, constraints, challenges and their implication for the RTI implementation in Nepal.

Governance

Governance is a method through which power is exercised in the management of country's political, economic, and social resources for development (World Bank, 1992)². Governance is a manner in which power is exercised in the management of a country's social and economic resources for development (Asian Development Bank, 1995)³. Governance is the exercise of economic, political, and administrative authority to manage a country's affairs at all levels. It comprises the mechanism, process, and institution through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (UNDP, 1997)⁴. Governance is the process whereby societies or organizations make important decisions, determine whom they involve and how they render account (Canada Institute of Governance 2002). Moreover, the key dimensions of governance identified by the World Bank are Public sector management,

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² The World Bank (1992). Governance and Development (Washington DC: The World Bank)

³ ADB (1995). Governance: Sound Development Management, Manila

⁴ UNDP (2002). Human Development Report 2002 p.65

Accountability, Legal framework for development, and Transparency and information⁵ (Adel M. Abdellatif 2003). The UNDP Human Development Report 2002⁶ further elaborates on the concept of 'democratic governance' as a system of governance that would promote human development.

Good Governance

UN Secretary-General Kofi Annan says "Good governance is perhaps the single most important factor in eradicating poverty and promoting development" (Adel M. Abdellatif 2003). Good governance has eight major elements. They are participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follow the rule of law. It assures 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. It is also responsive to the present and future needs of society (UNDP, 1997). Similarly, according to the World Bank, the characteristics of good governance are sound public sector management (efficiency, effectiveness, and economy), accountability, exchange and free flow of information (transparency) and a legal framework for development, justice, respect for human rights and liberties (<http://www.scribd.com/doc/45724301/Good-Governance>).

Table 1: Provisions Regarding Good Governance in Local Bodies Grant Procedures in Nepal

DDCs grant procedure, 2010 (Chapter 10, point 41)	Municipalities grant procedure, 2010 (Chapter 10, point 41)	VDCs grant procedure, 2010 (Chapter 10, point 41)
Each DDC has to prepare clear term of reference of each staff and approve by the district council	Each municipality has to prepare clear term of reference of each staff and approve by the municipal council	Each VDC has to prepare clear term of reference of each staff and approve by the village council
Each DDC has to appoint Nodal person to hear the grievances	Each municipality has to appoint Nodal person to hear the grievances	-
At least two public hearing must be conducted by each DDC about the service delivery situation at district	At least two public hearing must be conducted by each municipality about the service delivery situation at district	At least one public hearing must be conducted about the service delivery situation at district
Each DDC has to manage and conduct Citizen monitoring , social audit, public audit, citizen charter through Local Governance and Accountability Facility (LGAF) for reduce fiduciary risk and increase accountability	Each municipality have to manage and conduct Citizen monitoring , social audit, public audit, citizen charter through Local Governance and Accountability Facility (LGAF) for reduce fiduciary risk and increase accountability	Each VDC have to manage and conduct Citizen monitoring , social audit, public audit, citizen charter through Local Governance and Accountability Facility (LGAF) for reduce fiduciary risk and increase accountability
Each DDC has to manage vital registration, social security allowance, daily certification of citizen concerns to ensure the service delivery	Each municipality has to manage vital registration, social security allowance, daily certification of citizen concerns to ensure the service delivery	Each VDC has to manage vital registration, social security allowance, daily certification of citizen concerns to ensure the service delivery

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, Accessed online: <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

⁶ UNDP (2002). Human Development Report 2002 p.65

DDCs grant procedure, 2010 (Chapter 10, point 41)	Municipalities grant procedure, 2010 (Chapter 10, point 41)	VDCs grant procedure, 2010 (Chapter 10, point 41)
DDCs' staffs have to maintain detail information of individual asset in the prescribed format of National Alert Center	Municipalities' staffs have to maintain detail information of individual asset in the prescribed format of National Alert Center	VDCs' staffs have to maintain detail information of individual asset in the prescribed format of National Alert Center

Source: DDC, VDC and Municipality Grant Procedure, 2010

Local Government and Right to Information

The local government is known as specific institutions or entities established by national constitution in Brazil, Denmark, France, India, Italy, Japan, and Sweden; by state constitutions in Australia and the United States; by ordinary legislation of a higher level of central government in New Zealand and the United Kingdom; by provincial or state legislation in Canada and Pakistan; and by executive order in China to deliver a range of services to a relatively small geographically delineated area⁷. Local government is the closest tier and unit of government to the citizen at the lowest level. It is also the first entry point for people to gain access of and influence decision-making process in government⁸.

The 2006 Peoples' Movement has not only made historical changes in the political arena by declaring Nepal as a federal republican as well as a secular state, but also provided impetus to inclusive participation in decision making process in transparent and accountable manner. The constitution of Nepal has ensured that every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance. (Interim Constitution of Nepal, 2006, Article 27).

"Right to Information" is the right of citizen to request and obtain information of public importance produced by the public bodies and the right to study or observe any written document, material held in public body or proceedings of such public body; to obtain a verified copy of such document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any materials or to obtain information held in any type of machine through such machine (RTI act 2007, section 2(e)).

The right to get information is the natural right in a democratic form of government. One of the predominant rights of the people is to know the working and performance of its government. These rights enable transparency and promote accountability in the public affairs.

⁷ Shah Anwar and Sana Shah (2006). The new vision of local governance and the evolving roles of local governments, ed. Shah Anwar, Public sector governance and accountability, local governance in developing , the World Bank, p.1

⁸ UCLG (2008). Decentralization and local democracy in the world, first global report by United Cities and Local Governments (UCLG)

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 power of the Local Governments (LGs) are specified in line with the Local Self Governance Act 1999.

Nepal has two-tier system of local governance, with Village Development Committees and municipalities as the lower tier and District Development Committees as the higher. There are 3913 VDCs, 58 Municipalities and 75 districts in Nepal. Establishment of local bodies' associations viz. Association of District Development Committees of Nepal (ADDCN), Municipal Association of Nepal (MuAN) and National Association of VDCs in Nepal (NAVIN) have an important role in institutionalizing decentralization, developing the capacity of local bodies, policy lobbying, mobilizing external resources through local bodies and implementing of LSGA, 1999⁹.

The LSGA, 1999 has provided spaces to VDCs to provide basic services to the people in the various areas such as agriculture, rural drinking water, works and transportation, education and sports, irrigation and soil erosion and river control, physical development, health services, forests and environment, language and culture, tourism and cottage industries and miscellaneous (LSGA, section 28). Likewise, municipalities are responsible about finance, physical development, water resources, environment and sanitation, education and sports development, culture, works and transport, health service, social welfare, industry and tourism and miscellaneous (LSGA, section 96). Similarly, DDCs have to work in agriculture, rural 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 industry, health services, tourism and miscellaneous (LSGA, section 189).

Although local bodies are autonomous, self governed and continued representative institutions, there are no elected representatives in local bodies¹⁰. Public servants are fully responsible to lead the local bodies in close coordination with all party mechanism at local level. The Interim Constitution of Nepal has also strongly focused the existence of elected representatives in local bodies. There is explicit provision to hold local election (article 139 (1)) and form accountable and responsible political mechanism (article 139 (2)).

⁹ Adhikari Damodar (2006). Towards Local Democracy in Nepal, power and participation in district development planning

¹⁰ Since July 2002, Government of Nepal has not conducted local election. As a result local bodies are being representative less.

Development of Plans and its Implementation at Local Level

According to the Local Self Governance Act, 1999, (LSGA) the following provisions are made for formulation of plans, selection of projects, Implementation and management of local level projects and monitoring and evaluation of the project implemented at local level.

Formulation of Plan

- 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 Project

- The information on the selected projects shall have to be made public among the inhabitants of the village (LSGA, 1999-Section 46-(5)).
- The 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)).

Projects Implementation and Management at Local Level

- The village level projects shall be carried out through consumer's committees (LSGA, 1999 section 49). The projects which have direct concern with the people at municipal level shall be operated through consumer's committees (LSGA 1999, 117 (2)).
- Similarly, the VDC or consumer's group shall have the responsibility for the implementation of the plan (LSGA 1999- section 205 (2)). The projects under the district level plan may be implemented and operated through consumer's group (LSGA 1999- section 205 (3)).

Mechanism of Monitoring and Evaluation at Local Level

In order to see situation the resources and means estimated have been mobilized as per the goals and to give necessary directions for the solution to the obstruction or hindrances that may occur in the implementation of project, there is provision of one supervision and monitoring committee in each DDC to be chaired by the parliamentarian of the concerned district in the alphabetical order for each year (LSGA, 1999 section 210 (1)).

Pursuant to the section 210 of LSGA, 1999, with a view to carry out regular supervision and monitoring of the district level programs/projects and to submit report to the supervision and monitoring committee, a supervision and monitoring sub-committee under the chairmanship of vice-president of each DDC is provisioned (LSGA/R, 2000, (regulation 202)).

Although special provision has been made about the supervision and monitoring committee until the new election in local bodies grant procedure, 2010 and also focused in **Performance Measures (PMs)** indicators, due to the absence of elected

representative in local bodies, this provision is made flexible or suspended until the new election in local bodies.

Present Information System at Local Government

One of the most important principles and policies of local self governance is to orient local bodies towards establishing the civil society based on the democratic process, transparent practice, public accountability, and people's participation, in carrying out the functions devolved on them (LSGA, 1999 section 3 (d)).

There shall be one information and record centre in each DDC to identify the real situation of the district and enhance the planned development process. Such center shall have to collect and maintain proper information (LSGA, 1999 - section 212). Although there is no provision about the establishment of information and record center by VDCs and municipalities in the LSGA, there is a mandatory provision for municipalities to establish information center in MCPM indicators.

Positive Initiatives for Implementation of RTI Act

In order to provide effective service, good governance must be ensured by increasing the degree of transparency, participation, accountability and rule of law¹¹. Moreover, Right to Information Act, 2007 is considered as one of the most important tools to translate into practices the basic theories and assumptions of good governance. The government of Nepal has given more emphasis for effective information system to make the works and decisions made by public bodies transparent. Likewise, 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. For this, provision of intensive trainings is made to enhance the capacities of the officials of public bodies.

Although the Ministry of Local Development initiated some positive steps by drafting the District Information and Documentation Center Management Procedure-2007, it has not yet finalized the process. The Association of District Development Committees of Nepal (ADDCN) with the support of Danida HUGOU has prepared a District Information and Documentation Center-Information Management Manual, 2007. Similarly, Ministry of Local Development has prepared action plan regarding proper management of report system and maintain transparency of local bodies in 2010.

The good governance (Management and Operation) act, 2008 has strongly accepted that public administration must be transparent and accountable and maintain financial discipline properly. Additionally good governance regulation, 2009 regulation 10 has focused that decisions made by local bodies related to the public concerned must be posted in the notice board and disseminate through the website and other proper means of communication. Local bodies must disseminate the details of income and expenditure (internal and grant received from central government) must be posted in the separate hoarding board to be accessed by the general people. The separate hoarding board must be made of the project having more than one million budget of project in the respective site of the project¹².

¹¹ Government of Nepal, National Planning Commission, "Base Paper of Three Years Plan" pp.172

¹² Action plan regarding reporting system and transparency prepared by Ministry of Local Development, 2063 BS

Table 2: Provisions Regarding Transparency in Grant Procedures

DDCs grant procedure, 2010 (Chapter 10, point 42)	Municipalities grant procedure, 2010 (Chapter 10, point 42)	VDCs grant procedure, 2010 (Chapter 10, point 42)
Each DDC has to keep hoarding board in project site of the project of more then 0.5 million	Each municipality has to keep hoarding board in project site of the project of more then 0.5 million	Each VDC has to keep hoarding board in project site of the project of more then 0.2 million
Each DDC has to conduct public audit of the completed projects to get last installment of the project.	Each municipality has to conduct public audit of the completed projects to get last installment of the project.	Each VDC has to conduct public audit of the completed projects to get last installment of the project.
Each DDC has to conduct at least one social audit in the presence of ward citizen forum and other stakeholders	Each municipality has to conduct at least one social audit in the presence of ward citizen forum and other stakeholders	Each VDC has to conduct at least one social audit in the presence of ward citizen forum and other stakeholders

Source: DDC, VDC and Municipality Grant Procedure, 2010

Problems and Alternatives for Solution

Ministry of Local Development (MoLD) has identified some problems to implement provisions relating to the transparency at local level. Local bodies have not submitted the periodic report to MoLD, as a result MoLD has not been able to submit report to the concerned institutions such as National Planning Commission and Ministry of Local Development. Action plan prepared by MoLD has identified the following alternatives to promote transparency at local levels.

1. All DDCs and municipalities having not created website must create website with systematic, dynamic, and interactive tools and in a way that can be updated easily at least on monthly basis,
2. The DDCs and municipalities which have already created website must update their website data on monthly basis,
3. All DDCs and municipalities have to create their own separate email address and operate properly,
4. Documents and information related to the public concerned must be kept in the website,
5. All the DDCs and municipalities have to prepare action plan on strengthening district information and documentation center and municipality information center and inform to MoLD,
6. All DDCs and municipalities have to make available periodic reports and board decisions to MoLD through the email system
7. Provide training to the personnel working in information center of DDCs and municipalities about the use of information system and reporting system,
8. Reward and provide career development opportunity to Local Development Officers and Executive Officers who regularly provide necessary information to MoLD through email and internet and update website periodically.

RTI Act, 2007 and Local Self Governance Act, 1999

According to the provision of RTI Act, 2008 (section 2a), District Development Committees, Village Development Committees and Municipalities (local bodies)¹³ are also defined as public bodies. It is duty of local bodies to comply with the provision of Right to Information Act fully.

¹³ LSGA, 1999 has defined DDCs, VDCs and municipalities as local bodies

Based on the provision of Local self governance act, 1999 and RTI Act, 2008, some provisions are made mandatory for local bodies to comply with as minimum conditions and performance measures that is tied up with the grant system of government of Nepal to be provided to local bodies. Some important indicators of Minimum Conditions (MCs) and Performance Measures (PMs) are explained below.

Table 3: Comparison between the provision of RTI act and Regulation and LSGA/R

Provisions of RTI Act and Regulation	Provisions of LSGA/MCs and PMs Indicators	Present Status
Public information should be published and disseminated through national and local means of communication (section 3 sub-section 3)	It is made mandatory for local bodies that local bodies have to public information of progress of last fiscal year, income and expenditure, MCs and PMs results, audit report etc through local and national news media such and printing new papers and local FM radios and keep in notice board	It is most important indicator in MCs and PMs process.
Public bodies have to update and publish the important information periodically (section 5)	Local bodies have to update and make information public through publishing report of annual programme and budget.	It is made compulsory by MCs and PMs indicators.
Public bodies have to manage information officer (section 6 sub-section 1)	DDCs and Municipalities have to recruit or depute information officer for collection and dissemination of information (PM-5 for municipality).	It is further enforced by MCs and PMs indicators.
Public bodies have to establish information section (section 6 sub-section 3)	There shall be a District Information and Documentation Center in each DDC (LSGA, 1999, section 212), and Municipal Information Center in each municipal (PM-5)	It is also made mandatory by MCs and PMs indicators.
Public bodies have to publish the following information (regulation-3) <ul style="list-style-type: none"> - Program and project carried out last fiscal year - Information of website if created - Information published by others 	Local bodies use to public the mentioned information in the annual progress report of the respective local body.	It is also made compulsory by MCs and PMs indicators.

Note:

It is very important to know the present real status of implementation of the indicators and provisions by reviewing the report of MCs and PMs which is available in Local Bodies Fiscal Commission (LBFC) Secretariat, Ministry of Local Development, Pulchowck, Lalitpur, Nepal

Source: RTI Act, 2007; Regulation, 2008 and LSGA, 1999

Performance Based Grant System (PBGs) and Right to Information

Although the impact of PBGSs on efficiency of service delivery and on poverty alleviation is harder to document, it can usefully complement other reform measures, and be supplemented by other tools for influencing local government performance¹⁴. 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 VDCs, Municipality and DDCs which is tied up with the grant system of the Government of Nepal. PBGSs generally include an annual assessment of local bodies' performance using a set of indicators. MCs are the basic conditions with which local bodies need to comply in order to access their grants. Likewise, PMs are more qualitative and variable measures of local bodies' performance, and typically go into more detail within each functional area.

In order to assess the performance of DDCs, there are altogether 15 indicators of MCs and 62 indicators of PMs. Due to absence of elected representatives in local bodies, two indicators of MCs and five indicators of PMs have been exempted until the replacement of elected representative in local bodies. Similarly, for municipality, 15 MCs' indicators and 40 PMs' indicators are fixed. Out of these, two indicators of MCs and four indicators of PMs are also exempted. Moreover, there are 11 indicators of MCs for VDCs. The very important indicators relating to the transparency, accountability and right to information under MC and PMs are briefly explained below.

A. MCs and PMs for DDC (Communication and Transparency)¹⁵

Some important indicators of MCs and PMs with regard to communication and transparency to be complied by District Development Committees of Nepal are as follows.

1. DDCs have to inform to VDCs, municipalities and related stakeholders about the approved annual program and budget (MC-3)
2. DDCs have to establish District Information and Documentation Center (MC-15)
3. DDCs have to inform people about the planning process and approve budget and program through national and local news papers and FM radios (PM-39)
4. DDCs have to make public the details of annual income and expenditure through local new print, FM radios, books, bulletin etc. (PM 40)
5. DDCs have to display project information board in project site of the project having more than 0.5 million budget (PM-41)
6. DDCs have to establish District Information and Documentation Center¹⁶ and depute full timer staff to work as Information Officer (PM-43)
7. According to good governance act, 2007, and regulation 2008, DDCs have to conduct or manage public hearing about the development construction and service delivery (PM-44)
8. DDCs have to carry out social audit of the completed programs of last year by the first quarter of the current fiscal year (PM-46).

¹⁴ UNCDF (nd). Performance based grant systems, concept and international experience

¹⁵ Manual for the Assessment of Minimum Conditions (MCs) and Performance Measures (PMs) of DDCs-2008, LBFC, October 2010 (with some changes in the second amendment)

¹⁶ 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.

9. DDCs have to establish inquiry/help desk and depute Nodal Officer/Person to hear grievances (PM-61)

B. MCs and PMs for Municipalities¹⁷

Some important indicators of MCs and PMs to be complied by municipalities are as follows.

1. Municipalities have to make public citizen charter, form good governance committee and deputy nodal person (MC-9)
2. Municipalities have to prepare and make public the detail of income and expenditure of last fiscal year and make public the rates of taxes/revenues (MC-11)
3. Municipalities have to establish information unit and depute staff to work in the unit to disseminate information in accordance with the provision of RTI act (PM-5)
4. Municipalities have to conduct social audit and public hearing (PM-9).
5. Municipalities have to conduct public audit of the entire program completed in last fiscal year (PM-26).
6. Municipalities have to prepare and update vital registration of birth, death, marriage, divorce and migration (PM-40)

C. MCs Provision for VDCs¹⁸

Some important indicators of MCs to be complied by Village Development Committees are as follows.

1. VDCs have to make public the income and expenditure of last fiscal year (MC-5)
2. VDCs have to carry out the financial audit of last fiscal year and make it public (MC-6)
3. VDCs have to update the information about the persons who receive the social security allowance from the state (MC-9)
4. VDCs have to prepare and update vital registration of birth, death, marriage, divorce and migration (MC-10)

Resource and capacity for Information Dissemination

According to the procedure of DDC and municipal grant, 2010, DDCs are eligible to spend capacity development grant in promotion of e-governance and institutional development of communication and information system of DDC; activities relating to maintenance of transparency and accountability such as public hearing, public auditing and document preparation; and promotion of district information and documentation center. Moreover DDC and VDC capacity development procedure, 2009¹⁹ has also given opportunity to spend certain per cent of amount of capacity development grant in the areas of human resource development and reform of information management at local level.

At the same time, each DDC have to establish information and documentation center and appoint the responsible personnel to look after this center. The performance of this center needs to be assessed properly so that gaps are identified for the appropriate steps to be applied to make the center more effective in terms of

¹⁷ Manual for Assessment of Minimum Conditions and Performance Measure (MCs) of Municipalities, LBFC, 2009 (with some changes in the second amendment)

¹⁸ Manual for Assessment of Minimum Conditions (MCs) of VDCs, LBFC, 2009

¹⁹ DDC and VDC Capacity Development Procedure, 2009, prepared by GoN/MoLD/LGCDP

coordination for collecting information and dissemination of information through proper channel.

Current practice and challenges in meeting the obligations of RTI

Most of the provisions of RTI Act and regulation, and Good Governance Act with regard to the transparency and accountability, which are very pertinent, are properly internalized and adopted in the grant procedures of local bodies in Nepal. Most of the provisions are accepted as minimum conditions for performance based grant system. However, due to the lack of elected representatives in local bodies and political instability in the country, the quality of the service delivery and the implementation of the provisions are not satisfactory. There is also no proper attention paid by the concerned institution to orient local bodies properly towards the implementation and compliance with the important provisions of various relevant acts and regulation regarding transparency and accountability. There is no adequate public awareness in the satisfactory level to make local bodies more accountable to the people. Moreover, civil society organizations are also not actively involved to articulate the issues of RTI at the local level. Line agencies at district and village level are not sufficiently monitored, facilitated and instructed to implement the provisions of transparency and accountability as MCs and PMs.

Moreover, from the supply side, the information and documentation center of DDCs and municipalities are neither properly equipped and trained to collect and disseminate necessary information to the people nor are they given high priority to make them more responsible and accountable towards people.

Conclusion and way forward

Government of Nepal has given high priority to maintain transparency and accountability for reducing the corruption and increasing the peoples' participation in decision making process. From the above review, it can be said that there are plenty of supportive legal provisions in LSGA/R and local bodies grant procedures in favor of promoting right to information at local level. Basically, Ministry of Local Development has strongly accepted and followed the legal provisions of Interim Constitution, 2006; Good Governance Act, 2007; Right to Information Act, 2007 and their regulations with regard to maintain transparency and make local bodies more accountability to promote service delivery mechanism in effective and crystal clear manner. However, it is important to assure the quality of implementation of the provisions of RTI in practical field at local level. The following areas are suggested for effective execution of the important provisions relating to transparency and accountability efficiently.

1. It is very urgent to evaluate and assess the report of MCs and MPs of DDCs and municipalities whether they are followed and effectively implemented the indicators relating to right to information.
2. Each DDC and municipality should be facilitated for preparing and implementing action plan for strengthening district and municipal information center.
3. Each DDC and municipality must be supported to create website and to be familiar with email and internet.
4. In order to establish uniformed reporting system, appropriate software of information system must be installed and oriented properly to the concerned personnel of the information section/unit of each DDC and municipality.
5. There is a need of orientation and training for major stakeholders at district, municipal and village level about the provision of right to information act, good governance act, related regulations, guidelines, and procedures with regard to transparency, accountability, good governance and right to information.

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A Working Paper on
RTI: Implications in Reforming Political Parties

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Freedom Forum, Nepal

1st National Convention on Right to Information
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RTI: Implications in Reforming Political Parties

Sanjeeb Ghimire

Introduction

Informed citizenry is the backbone of democracy. Free flow of information and communication enables informed citizenry and the process of democratization. Democratization leads to a more open, more participatory, and less authoritarian society. In all forms of democracy ranging from representative to participatory or inclusive, political parties are indispensable institutions. They are projected to aggregate and articulate the people's interest and formulate the suitable policy options.

Being an intermediary institution between the state and society, parties are expected to mobilize a greater chunk of society in their activities. Therefore, organizational structure and working style of the political parties greatly affect the democratization process of the society at large.

Transparency, accountability and responsiveness are the basic thrust of democratic governance and right to information ensures those values. A democratic state can be measured through existence of those features in governance. Political parties can ensure such environment in society, provided that they also practice internal democracy within their organization. It is because the sustainability of democracy relies upon the better functioning of political parties. How the basic values of democracy are exercised within the party governance is the major issue in building or reforming political organizations in transitional democratic societies like Nepal.

Despite their unrivaled contribution in democratic struggles, Nepalese political parties are often criticized for their reluctant, irresponsible and baggy performance towards their electorates, quite contrary to the promises made during elections. The copious engagement on internal quarrels only for securing power has lessened the ideals of democracy. This has led parties towards gradual deinstitutionalization as seen through the frequent splits and fragmentations, weak political identity, decreasing political unity, leadership clout, non decision, arbitrary decision, decision behind the curtain or black-box, under representation, centralized working style, ambiguous functioning and financing, hereditary transfer of leadership and the control of communication. These are the general ill practices political parties are facing today.

Nevertheless, there are no institutional options for political parties. This is the revealed fact that all transformational agendas of Nepalese polity institutionalized through the channel of political parties no matter whoever may be the actual initiators of that particular agenda. So the only remaining options is better and more democratized political parties enshrining the ethos of intra-party democracy for inclusive, transparent and accountable governance.

Access to information is one of the vibrant tools for ensuring accountable and transparent democracy. As Nepal has already introduced the Right to Information Act (RTI Act 2007), political parties have a now lead role to play as what is defined by the Act as "public bodies"¹ with obligation to disclose the basic information in proactive manner, or whenever somebody demands it. This is the best opportunity to political parties to internalize the spirit of RTI and

¹ 'Right to Information Act', 2064 B.S. section 2 a(5).

reconstruct its internal functioning and governance. Responsiveness to people's quest for information can heal their falling public image and enable the ethical and moral power to make them fit for leadership.

This article will highlight the issues of democracy and political parties, the status of intra-party democracy, and intra-party governance and RTI in general.

Importance of Political Parties and Growing Distrust

The pivotal placement of political parties in a nation's governing system is widely accepted by all developed and developing democracies today. But in Nepal, severe crisis of governance has been witnessed, especially after 1990s. Politics started becoming a dirty game, as political stagnation and corruption began to be gradually institutionalized. Mass political alienation heightened. Fighting for state patronage and power seeking attitude among political parties paved the way for the mass distrust towards parties and the non-political and non-programmatic alliances were emerged. Parliamentary norms and values were ignored. Parliamentary procedures turned out almost like a horse-trading. The political game of forming coalition and breaking them resulted in fragmentation and split of all the parties. The inability of political parties in governance process can be observed also in this remark by the then prime minister G.P Koirala: "When I became the Prime Minister, I did not have clear idea about the powers and functions of Prime Minister ...the popular aspiration remain unmet due largely to visionless political parties, which were instrumental in restoration of democracy. The political parties knew democracy was their single point agendas".²

This shows that the parties lacked awareness about governance process. Those degrees of ignorance consequently piled up to manifest in the form of governance malpractices that weakened the states' responsive and distributive capability. The eroding trends of state machinery--specially the decreasing presence of development and services delivery agencies and absence of people elected bodies--shrunk the state domains of influence.

The nation's transformation as a Federal Democratic Republic following the Constituent Assembly elections (April 2008) has given excellent opportunity to political parties again to uplift their tarnished image among the public. But sadly, the parties are still engaged in the same rituals of power politics.

Silverlining in the Cloud

Nevertheless, the CA election with the mixed electoral system having the provision of defined representation of different clusters of society³ and the agenda of federal restructuring of the state have led the change of the previous political equation and has contributed to the party building process in Nepal. Out of seventy-four political parties, registered with the Election Commission, only twenty-five political parties were able to secure their seats in the Assembly. The results of CA election not only changed the nature of

² Krishna Hachhethu, Parties in Parliament: Role of Prime Minister published in Political Parties and Parliament; edited by Lok Raj Baral, 2004.

³ The Interim Constitution of Nepal-2007 enshrine the thrust of inclusion and stressed its application in all state apparatus. Election to Members of the Constituent Assembly Act, 2064 (2007) has defined the portion of representation of Madhesi, Oppressed tribes/Indigenous tribes, Dalit, Backward region and others through proportional electoral system.

future polity but also threatened the old party status. "The emergence of new parties, such as Communist Party of Nepal (Maoist), Madhesi Jana Adhikar Forum (MJAF), Tarai Madhes Loktantrik Party (TMLP) and Sadbhavana Party (SP) marks the relative decline of old parties, such as Nepali Congress (NC), Communist Party of Nepal (CPN-UML), Nepal Sadbhavana Party (A), Rastriya Prajanta Party (RPP), RPP-Nepal and Rastriya Janashakti Party (RJP). Decline of old parties is largely caused by anti-systemic social movements, demand of various social strata, such as women, Dalits, Mahesis, youth, indigenous people, and ethnic groups of wider representation in political structure and their inability to include them in party framework⁴. However, in a large extent, it expanded the domain of political power and civic engagement in society that could strengthen internal democracy in political parties.

Legal regime for disclosure of information

Political parties are the link institutions between state and society. Therefore, primarily, political parties are public institution. However, the issue of public access to parties' internal functioning is often debated. Some countries have accepted political parties as public bodies, some others have not. While some have a mixed approach. Nepal's RTI Act has proclaimed political parties as public institution. It has given the distinct guidelines for routine disclosure of information for political parties. Besides this, laws related to political parties and elections have also provisioned for disclosure. This provision has been regulated by the following constitution and acts:

1) *The Interim Constitution of Nepal 2007*

The Constitution has established political parties as strong institutions. For party registration, they need to disclose the details of funds, income source of the political party and resources for bringing about such funds along with other requirements. The political parties should be democratic. It also assures that political party must provide for election of its office bearers at all levels at least once in every five years.

2) *Political Party Act 2002*

The act has compelled the political parties to keep record and account in a given format. It has compelled them to submit and publicize annual report revealing the income and expenditure within six month of the ending of the each fiscal year. The details of the donor, who has donated more than NRS. 25,000 should be mentioned in the audit.

3) *Election Commission Act, 2063 (2007)*

It has provisioned the political parties to disclose the following during election time:

- A person who has the obligation to submit returns of election expenses shall submit the returns of election expenses to the concerned District Election Office, in the format prescribed by the Commission, within thirty-five days after the date of publication of the results of election.

4) *Right to Information Act, 2064 (2007)*

As a "public body" political party has the responsibility to respect and protect the right to information of citizen. To ensure this political parties have to do, among other things:

- classify and update information and make them public, publish and broadcast,
- make the citizens' access to information simple and easy,

⁴ Dev Raj Dahal, 'Democracy Building and Party System in Nepal', *Reading in Governance and Development*, No 11, 2008.

- conduct its functions openly and transparently
- keep its information updated regarding, among other things, income, expenditures and financial transactions.

In spite of such legal mechanism of disclosure, the political parties have not strictly followed them nor have their regulatory agencies (eg Election Commission, National Information Commission) strictly implemented or facilitated to implement them. Therefore, the intra-party governance is not transparent and open.

Constraints in Intra-Party Good Governance and RTI Practice

Political parties must adopt the universally accepted basic democratic values to their internal governance and political life. There are different models of intra party governance, with instruments of both full-fledged and conditional application of democratic ideals in party governance.

Inner party or intra-party democracy can be defined as the ability of a political party to engage its members in deliberation, decision-making and action of party affairs and enforce the transparency and accountability of office bearer to its rules of governance.⁵ Transparency especially in financial matters, income and expenditure is very important for democratic parties. In addition, it requires an inclusive and participatory party structure, which enables and widens the decision-making capacities consequently to ensure greater legitimacy. The selection of candidates and the process of the choosing leadership, communication strategy, access to membership and mechanism to information disclosure is the very essence of a democratic party. The following are some major constraints, which have hindered the RTI practices and intra- party good governance in political parties.

Hierarchy and 'Black-box' Decision Making

The organizational structures of main political parties of Nepal are mostly hierarchical, leader-centric, pyramid based and centralized. The locus of power remains in their respective central offices. More than that, the extent of the centralization is associated with the degree of leadership charisma to what extent he /she can make a hold. This trend has led the formation of leader-centric parties, where the *party-supremo* is treated as a 'party' and there is no chance to dissident the chiefs "judgment". The chief's judgement is considered final and it is supposed to be followed by all strata of the party- from top to bottom. This hierarchical and centralized organizational structure led bureau pathological and buck-passing trend in political parties that has hindered candid information sharing and adherence to the RTI principles in party mechanism. The leader-centric trends in political parties has made them less accessible from the party activists and general public. This trend has occurred in Nepalese political parties in different times and different ways. Due to this, fragmentations, factionalism and splits' trends are observed in the parties. Further, it has created the 'pinnacle range of personality clout' among leaders. And some time, conversely, the party *supremo* is considered as an 'antidote' of all mal-practices of intra party governance. These trends can be seen- in all parties in Nepal- ranges and differ only in degree. It is assumed that after the demise of G.P.Koirala, the party power in Nepali Congress is fragmented and prone to be changed in 'collective leadership' so is the case in CPN-UML after its eighth national convention. However, it is seen that the decision is not made with the ethos of collective leadership.

⁵ Dev Raj Dahal, Inner Party Democracy in Nepal, A paper presented at a seminar organized by FES, CELCAR and SM collage, Pokhara, November 27, 2008.

Most of the serious policy decisions are made in conventions without serious discussion because most of the participants are engaged in lobbying and election campaign to specific candidate. less time is spent for policy discussions and debates. The resolutions are passed hurriedly without much understanding. As a result, the intermediary and subsidiary forces of social movement is struggling to break this patrimonial structure and seeking decision-making along horizontal and decentralized line⁶. This also has led to factionalism and inconsistency in party line. Short-term decisions are made by Central Committee and sometimes leader's statements are the 'party line' which will be endorsed later on. If it is possible they will try to make 'consensus'. If not, the majority decision rules out as the final resort. Lower committees of all the parties are treated as implementing and sub-ordinate agencies to follow the superior's guidelines and decisions taken by apex level. They are turned the only receiver of policy outcomes and information and they play minimum role in policy inputs. They are only the representatives of the center to obey and execute what they say. They work as 'welcome agency' and event organizer. It can be seen through the very provision in their constitution. 'Democratic centralism' is the basic organizational principle⁷ of CPN-Maoist and CPN-UML also has mentioned it as its governing principle of party organization. It is not written in NC party constitution but the inclination towards center is very high. There is no tendency to strengthen local party unit in all parties in terms of 'institutionalization'. They 'teach' rather than 'train' on issues of center's decisions and command to circulate it at lower units. There is one-way type of communication and flow of information in regard of policy matters. Only procedural and ritual reporting is being made by lower levels. The RTI provision are not strictly followed in decision making and the process of decision making is not even disclosed. Even in decisions disclosed, only limited information comes to the general public but not the detail development. All these practices suggest the *black-box* model of parties' decision making. Thus 'inclusion' in decision-making or 'participatory' decision-making is limited only to the 'physical presence' in certain party. Moreover, it is rare in all parties to use 'information' through other means such as opinion polls, survey research, for policy options to expand the legitimacy of policy outcomes.

Choices of Party Leader

The method of choosing party leadership denotes the degree of internal democracy in political party. Nepali Congress and CPN-UML have defined electoral process of choosing their leadership in party constitution⁸ and both parties have recently renewed their leadership from the top to bottom. The central electoral management mechanism⁹ is made for conducting and supervising election in party committee of all strata in NC and CPN-UML. Despite the election provision of choosing leadership there is growing trend to make consultation first for consensus leadership. It is practiced more as result of fear psychosis of threatening party unity. Seeking consultation in democratic politics is not bad but it shouldn't preclude the electoral process. In CPN-Maoist there is not clear provision of election of central and lower level of leadership and party leader is continuously leading the party after his selection. No general convention is being held from years. All leaders of respective party committees are selected by top leader's conscience. Though, it is revealed that there will be a 'elected' central committee, in the party constitution, though it is not happened till now. Internal Elections of parties are not merely the mechanisms of choosing leaders. They also play the catalyst role for flowing the information among the party structures, party leaders, party activists and the general public. So, following of such electoral practices in some parties is good for it makes information more accessible and thus promotes the culture of

⁶ Dev Raj Dahal, Op.Cit n 7 p6.

⁷ Interim Constitution of CPN Maoist, Article 6

⁸ See Party Constitution of Nepali Congress and CPN UML

⁹ NC Party Constitution Article 35 (central election committee) CPN-UML) article, 17 central election commission

transparency in parties. In some parties, there is no system of internal election practices which has promoted the culture of secrecy within the parties.

Murky Selection of Candidates

The legislative role of policy formulation and recruitment of public officials in executive offices is one of the key functions of political parties. This requires candidacy for election in democracy. It is very stiff to a voter to make an informed choice from a crowd of candidacy, in this regard party plays a concierge role by shrinking the size of ballot paper. However, the selection of candidate in political parties seems very blurry and non-transparent function in Nepalese political parties. There is no provision and criteria in party constitution about the selection of candidates for public offices. In most cases, centralized method is used. The central party committee or party chief sends the name of candidates to local level for nomination and orders to make a campaign for party candidacy. In some cases, central party offices ask local party committees to send three or four names of potential candidates and the central committee or party chief finalizes the name. Mostly party leader have the final say about candidates. It is seen the long and indecisive discussion among central and local leaders does not make a sense. Finally, the candidate's name list comes from the coat pocket of party *supremo*. Though the leader is not always free to decide because clique or the coterie encircles and influences him/her in selecting candidates. Sometimes, the party factional balances is also reflected in the process of candidate selection and sometimes the compulsory provision of accommodation and inclusion of social-cultural mosaics narrows the leaders will.

The defined provision of constituent assembly election law about the inclusion of certain excluded group compels party leader to select the candidates from the distinct social group. Since there is no clear criteria about the selection of candidates, clientalism and compromising party ideals is vibrant in Nepali politics. It is observed as : *“Recruitment of powerful business persons who don't agree on party ideology can threaten party platform when their pecuniary interests are compromised. Four traits have marred the internal development of Nepal's political parties: primacy of gerontocracy, hereditary and familial succession of leadership, clientalist networks and lack of sound think tanks to update vision and policies as per the sprit of age.....lack of systematic record keeping about members and their contribution and prerogative of leader's in the promotion of cadres indicate an ad hoc mechanism in the recruitment of political officials in the party, legislature and in the government”*¹⁰.

Though, it is claimed that the chance to win the election ,the local influence and attachment of candidate, strong commitment to party ideology and campaign, prior party experience, oratory skill etc; sounds very subjective, are taken into account though irregular basis. The closeness to party leader crumbled those criteria too.

Non-Transparent Political Financing

Properly managed financing is an essential element of a sound governance in any party. Absence of this results in undue influences that could derail the functioning of a party, leading ultimately to heightened public disenchantment. Political finance implies election and non-election expenses of a political party, in cash or in kind.

¹⁰ Dev Raj Dahal,Op.Cit.n 7 p4

In Nepal, political finance is one of the most opaque issues. Increasing numbers of party¹¹, especially during the Constituent Assembly election and their growing structure both in horizontal and vertical bases, has rapidly increased party expenses. The greater the expanses- the more it has becoming obscure. Most political parties have admitted that they will have fund¹² for party functioning. The fund of CPN-UML party comprising membership fee, levy, donation, publication sales, and amount collected by special campaigns. NC party constitution has confined only membership and its renewal fee as the main source of party fund. In CPN-Maoist it is not clear in parties' constitution about what kind of resources they will have beyond membership fee. It is obvious that the mentioned sources of fund cannot afford the real expenditure of political party and they manage it by 'other sources'. How parties manage other resources of their functioning is the key issues of investigation.

Political Party Act, 2002 also has required the party fund and resources as the requirement of the party registration. It has stressed to maintain and keep the record of income and expenditure of all electoral and non-electoral expenses and *must be audited* by certified auditor annually and reported to the Election Commission.

These legal mechanism have stressed for the regulation of electoral finances. They have defined the ceiling of electoral expenses to the political parties and candidates and urged them to submit the detail report of income and expenditure within thirty five days of the election's result announcement to the Election Commission. The candidates for the First Past the Post could spend upto 459,500 and Rs. Fifty thousands for candidate under the proportional system. The Election Commission could fine as per the expense, if there was expenses crossing the ceiling. The candidate crossing the provision could be declared ineligible for any election of the coming six years. The Code of Conducts of the Constituent Assembly's election 2007 had prohibited misuse of government resources, or financial and any other temptations to voters and other possible malpractices.

Despite the comprehensive legal foundation to regulate the political finance the practices are deteriorating. The **internal recording and book keeping** practices of the parties are not in as legally prescribed. Few parties the Nepali Congress, the CPN-UML and CPN- Maoist have been maintaining in some form the books and the registry of assets.¹³ Professionals do not maintain the record. Either it is maintained with the ad-hoc practices by party leaders' relatives or party carders or it is not maintained. There is massive 'no show' trend in accounting to exclude the expenses. Rather they tend to send bills directly to the contributing companies to settle these bills¹⁴. The regulatory role of the Election Commission has not ensured the proclaimed legal requirement in practice.

Nepali Congress and CPN-UML have provisioned **Internal auditing** mechanism in their party constitution, yet CPN –Maoist has not provisioned it in its party constitution. Parties have not paid attention to their own proclamations and the legal bindings of preparing and submitting annual audit report to Election Commission within the defined time. Parties are required to report their source of income from membership and annual renewal fee, individual and corporate or any other sources of donations either in cash or in kind. Though

¹¹ Seventy-four political party were registered in EC during Constituent Assembly election. There is growing trend of split and fragmentation such as Madheshi Jana Adhikar Forum and Terai Madhes Loktantrik Party were split within the three years of their establishment.

¹² Chapter 8, Party constitution of CPN-UML-2065; Article-28, Party Constitution of Nepali Congress-2017; Article-19, Interim Party Constitution of CPN-Maoist.

¹³ Report on Transparency in Political Finance in Nepal, Pilot Study Conducted under Crinis Project in Bangladesh, Indonesia and Nepal, Study Commissioned by: Transparency International Nepal, February, 2010.

¹⁴ Ibid

none of the parties have submitted their report to the Election Commission. Although, the law envisages penalties for non-compliance, so far none of the political parties have been penalized by the Election Commission for the failure to submit their reports.¹⁵ Media has reported huge amount of money comes to political parties from the businessman and corporate houses. Business community has been a major source of funding to our political parties, which even threatened the government in the past to stop paying donations to them if they continued to attack the industrial sector. Lately, the entry of high-profile businessmen as Constituent Assembly (CA) members serves as the strongest evidence of their “amicable relations” with the political parties strengthened by the flow of “corporate money” in politics.¹⁶ It is considered as the major source of party fund.

More than that lucrative political appointments, contracts, transfer and promotion of public employees are mentioned as other source of party income. The party leaders are reluctant to disclose the detail information about their source of income. Many party leaders' themselves are unknown about the source of income because it is managed by and presented only among the core leaders of the party. It is reported that some youth wings of the party also collect money forcefully for party expenses.

Election Commission is the main agency as a regulatory constitutional body for party activities. The Election Commissions' monitoring of the parties is seen 'event oriented'. At other times, it has not properly monitored parties and even the monitoring mechanism is weak. The practice of appointment of the election commissioners as per different parties loyalties has made them weak to execute the compliance of law in case of violation. Besides, the Election Commissions lacks the human resources to strictly execute its liabilities and make functional of its 'tracking mechanism'. Mechanism for civic political monitoring is weak and event oriented and limited to the rituals of 'election monitoring'. The election monitoring reports of civic groups could not bring out the real 'financial transaction' of political parties during the Constituent Assembly's election 2008. They have not prioritized the political finance as the key area of monitoring. There is no provision of prohibition of cash donation to political parties and it is not even managed by one-window bank account system to all the income and expenses.

The domain of political finance is increasing day by day in Nepali politics. In whatever the form, the paying for democracy is increasing its cost. The under table dealings of huge amount of money has crumbled the citizen's right to informed choice of political parties and candidate. The ambiguity of party fund has raised the question upon the moral base of party's, their political accountability and transparency. It has further derogated the public accountability of the political parties that has made the parties deinstitutionalized and undemocratic.

Reinventing Intra-party Governance through RTI

Access to information is a key tool for people-centered governance, development and democracy. It enhances peoples' capacity to control over public authority, people's representatives and the overall political process. It transforms 'public' to 'citizens' and thereby makes democracy from representative to participatory and inclusive one. Therefore, the right to information makes people's access to public bodies, their functioning, organizations, decision-making and resources. Ultimately, it enhances greater openness and transparency. Openness, transparency, and accountability are the basic tenets of intra-party democracy. It makes lively contacts among people. Party, where freedom of information,

¹⁵ Ibid

¹⁶ Pranav Bhattarai, Money in Politics, Republica, 2010-8-10.

discussion and debate are not enjoyed and allowed, where channels of communication are controlled and obstructed, ultimately are led to weak performance and seclusion from the broader mass. Such-degrading trend may lead party to failure.

The failure of party is the failure and the degradation of the political system. Failure of political system hampers not only the political parties but also to the system of governance and ultimately to the people and nation. Weak parties cannot guarantee the better governance and democracy. Better governance and democracy is not a single issue. It is associated with the betterment of the political party. As such, to transform the transitional Nepalese politics into the democratic politics the competent, strong, and democratic parties are required.

Nepal is under transitional politics. The constitution writing process is going on as a grand decision-making. In this transition of Nepalese democracy, the restructuring of public institutions is emerging as a key agenda. In this context, political parties being public intuitions and the driving force of constitution writing and restructuring of the state cannot remain aloof and stagnant. This transition therefore could be an opportunity as well for political parties to revive their own institutions and structures which is further a chance to answer the frequently charged mass criticism for them.

In this context, access to information is a better option for redefining the parties, there structure and spirit. There are a lot of questions in peoples' mind to the political parties- such as what are the bases of parties' functioning? How many members does the party have? What are the sources of parties' fund? How are the parties' fund managed? Where are the parties' expenses? How they spent? How much money do party people get paid? How are the party offices made and how they are running? How decisions are carried out in parties? Who decides the candidates' selection in an election? How the lower level parties' committees are involved in decision process? What are the criteria for membership? Who has the final say in the party?

Leaving all these questions unanswered, the parties cannot become democratic. To answer all these queries, parties should massively flow information, proactively. For that, RTI should be established as the basic guideline of party functioning.

Disclosure Mechanism and Trends

There is no strong, vibrant formal and permanent disclosure mechanism in political parties in Nepal. Most of the parties have the separate department for publication and publicity. However, except some publications and mouthpieces of some parties, there are no mechanism of regular and timely interaction with the lower committees, party activists and the public. Publication and publicity department works massively at the time of agitation, general election and general convention of the party. Most of the parties have recruited spokespersons in the central level, but they are ritualistic in working modality. The spokesperson's appointment is more a 'glamour' rather than something fulfilling or enhancing the access to information and promoting proactive disclosure and transparency to the public. The spokesperson reveals the facts to the extent he/ she gets the information from the senior leader (Party Supremo). Sometimes it becomes even funny when the things do not develop as per the spokesperson's proclamations. Thus, only the senior-most leaders know the real happenings. The offices set up of the parties are not disclosure-friendly. The basic features of parties' disclosure can be summarized as such:

Cultures of Secrecy- Nepali society is developing as an open society but traditional legacy of closed society still prevails. Nepali parties are not the outcomes of the open political

systems. They emerged as a movement and mission for democracy in a closed society. They have worked secretly for years for accomplishing the single mission of establishing democracy. Therefore, they have not, fully, coped-up with the open political system and thus have not reflected the features of open society in their structures, mechanisms and working modalities. This has been even reflected in inter- party nexus.

Superiority Complex- Most of the politicians are from either the middle class or higher-class background. Even the leaders from lower middle class assume to be changed in class-structure. Most of the politicians now are city elite. Party structure and functional modality has also supported this. Therefore, there is a superiority complex even among the intra- party leaders. The superior leaders, therefore, do not feel it necessary to share the policy issues with the lower strata of the party leaders, party activists and the general public.

The 'Real Ignorance' of the 'Real Power'- In adopting RTI laws there was positive role of the politicians. However, there is passiveness in implementing it. The passiveness reflects the ignorance of the leaders about the real value of RTI as it opens avenues for participatory democracy.

Technological Illiteracy- Mostly, Nepalese political parties have used traditional or people-intensive channels of communication such as- party meetings, local rallies, canvassing, pamphlets, and speeches. Now, parties are shifting towards mediated broadcasting channels of communications such as newspapers, magazines, televisions, and radios as they are becoming competent. Some of the political parties and politicians even have used internet channels of communications such as party and personal web site and e-mail. Though, most of the channels are one way. Parties have not institutionally exploited Information and Communication Technology (ICT). The party institutions, rank and files are not connected with web network. It has not been used for conducting dialogues with lower party's committees and larger mass of the electorates. Party's and politicians web-sites are launched with limited information of party history, organogram and general program. The websites are not regularly updated. Some parties' web- sites are even dysfunctional.

Information as Propaganda

Nepalese political parties have used propagandist approach in disseminating information instead of enhancing and capacitating their respective party's committees, activists and electorates. The parties use information to keep their support bases on hold. They sometimes tend to misinform and dis-inform.

Uneven and Fragmented Disclosure- Nepalese political parties are not regular in disclosure of information on internal functioning and programming. The ratio of disclosure is frequent, relatively, at the time of election and convention. There is no regular disclosure mechanism and disclosure are fragmented and factional. Sometimes, it is hard to find the real 'party-line'.

Reactive and Formal than Proactive Disclosure-

Most often, Nepalese political parties are reactive in disclosure of information. Their basic form of disclosure is media- mediated or disclosure upon request. Nepalese parties are not strictly following the self- disclosure guidelines that is embodied in the spirit of RTI as well as the electoral laws.

Conclusion and Recommendations

Conclusion

Political parties are the indispensable institutions in Nepalese democracy. Major Nepalese political parties originated from the democratic movement and therefore as oppositional forces. Now, they are in the phase of institutionalization. However, most of them have hierarchical, centralized and leader-centric structures, which are also guided by the culture of secrecy, and mission guided objective. This structural nature has hindered the easy access of and the free flow of information. Some parties have initiated internal election practices for choosing their leaders and respective party committees while some other parties have not even asked for convention for more than a decade. There are not clear and transparent criteria for candidate selection process of most of the parties'. The electoral and non-electoral political financing and the sources of fund of political parties is ambiguous. Even the Election Commission is silent to legal compliances on mandatory financial disclosures. National Information Commission has not been able in promoting *suo moto* disclosure of political parties. The demand side of party information is very weak. Neither the party carders nor civil society organizations have effectively demanded the party information. Thus, openness has not become the party culture.

Even parties involved in one-point mission of democracy have not become able to enshrine democratic values of openness and transparency within their structure and style of functioning. RTI act was adopted within the wave of reforming and restructuring the state and all non-democratic legal regimes along with April apprising 2006. The activeness of adoption is not seen in implementation of RTI. Now, the wave of restructuring of public state apparatus has come as an opportunity to redefine parties' own structure, spirit and functioning. In this context, parties should use RTI to redefine their institutions, and uprooting the culture of secrecy and reactive disclosure.

Recommendations

The recommendations and the role of stakeholders for democratizing political parties are given below:

Role of political parties

- Political parties should maintain internal book-keeping, auditing and disclosing the sources of income and expenditure publicly at least in an annual basis.
- Internal election processes should be prioritized in choosing party leaders, portfolio and respective committee members.
- Candidates for public offices should be elected through the electoral college of party members of respective constituencies.
- Robust information management system should be introduced and full time information officer should be appointed under the close connection with concerned department.
- All transactions of political parties should be maintained through single bank account.
- Information and communication technology (basically-web-site, e-mail and internet) should be used as interactive means of communication and proactive disclosure. Information and communication scheme should link all party strata, and broader public. It should not be left only as a 'web master's' responsibility. The concerned department should take its responsibility.
- Political and civic education, training and awareness programs, along with RTI notion, should be conducted through party schools/ training institute.

- Parties' centralized, hierarchical and pathological structure and opaque functioning should be redefined by participatory, open, and access to information friendly working modality.
- Political parties should free themselves the culture of secrecy and commit to comply with the RTI Act in internal functioning.

Role of Government

- Manage public funding and state subsidies to political parties for making them more accountable to the public and taxpayers.
- Codified and separate legal framework on political finance should be made.
- Make private political funding legal and tax-free.
- Help Election Commission and National Information Commission to ensure concerned sector's compliance with the laws relating to Political Finance and disclosure.
- The government should ensure the operation of the single bank account, of income and expenditure, of the political parties. Government should ensure the media disclosure of all kinds of funding.
- Make central guidance of disclosure for public bodies along with political parties.
- Assist in record management of political parties.

Role of Civil Society

- Engage in vigorous advocacy and awareness campaign for intra-party democracy and disclosure of political finance.
- Conduct Civic – political monitoring, by using civil society network, as watchdog for making open and transparent parties and political process.
- Conduct 'Democracy Auditing' based on universally accepted democratic measures along with RTI for creating open, transparent political parties and democratic societies.

Role of Election Commission

- Strict implementation of political finance regulations, election laws on party disclosure.
- Strictly implement the legal provisions of internal election of political parties for selecting leaders and conduct regular conventions. It should further play the observer role in the process.
- Strengthen and capacitate the human resources for effective monitoring of party activities – especially , book keeping and record management, political finance and disclosures (both in election and non-election time).
- Prepare disclosure guidelines for political parties in collaboration with National Information Commission and make it mandatory.

Role of National Information Commission

- Develop an information disclosure guideline, in collaboration with Election Commission, mentioning the exceptional provisions for political parties and make it mandatory.

- Review the information and record management system of political parties and suggest them to be RTI friendly.
- Order political parties for regular proactive disclosure.
- Facilitate and encourage both supply and demand side of political - party information.
- Decide complaints regarding political parties.

Role of Media

- Prioritize positive and objective reporting regarding political parties avoiding the 'stereotyped' negative coverage of parties.
- Conduct investigative and follow-up reporting on intra- party irregularities, political finance, selection of party leaders and candidates and party decision-making and functioning.
- Prioritize disclosing of the information of intra- party governance and political finance.
- Conduct public sensitization on RTI and intra – party governance.
- Conduct follow-up and reporting on political corruption.
- Provide citizen's disclosure space on political party reform.

Role of Constituent Assembly

- Ensure in the new constitution recruitment of professional commissioners in Election Commission.
- Make Election Commission an independent and autonomous constitutional body.

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A Working Paper on

Anti-Corruption Campaign through RTI

Pranav Bhattarai, Pro-Public

1st National Convention on Right to Information

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Anti-Corruption Campaign through RTI

Pranav Bhattarai

1. 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 gives.*¹ James Madison, letter to W.T. Barry, 4 August 1922

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. "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".² Nepal was 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. The incumbent Interim Constitution (2007) also guarantees RTI at Article 27. The full-fledged Right to Information Act of 2007 is a further commitment towards it.

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, corrupt officials will have limited opportunities and chances to indulge in corruption, mismanagement and misallocation of public funds.

2. State of Corruption and Issues

Nepal is reeling under a scourge of corruption at a rate never seen before. It has created manifold negative implications such as slow processing of files in offices, siphoning off development funds, aid ineffectiveness, low quality infrastructures, slow delivery of public goods and services, political extortions, among many others. The Transparency International's Corruption Perception Index (CPI) 2010 shows Nepal's descent by three points with 146th status listing itself as one of the most corrupt countries at par with Somalia, Afghanistan and Myanmar. Nepal was placed 143rd among 180 countries in the CPI in 2009 compared to its 121 position in 2008. The Worldwide Governance Indicators of the World Bank also depict Nepal as a country bogged down in a serious governance crisis.

The vertical drop in these global indexes and reports are enough to substantiate our

¹ Global Corruption Report, 2003

² Article 19 of the United Nations ' Universal Declaration of Human Rights (UDHR)

conclusion that corruption has increased where state mechanisms have failed to curb it. There are some reasons such as political protectionism, impunity, political transition and weak enforcement of anti-corruption laws and mechanisms behind Nepal's rise to a corrupt state over the last few years.

Political parties are enjoying "coalition culture" from national to local levels. Prevailing political transition and post-conflict situation has become a good excuse to hide their inefficiencies and divert their focus from anti-corruption and good governance issues to the political agendas such as constitution writing and state restructuring. 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 to dysfunctional status. Nepal has two anti-corruption agencies in place to fight public sector corruption. The CIAA is an apex constitutional body with multiple roles of an ombudsman, investigator and prosecutor whereas National Vigilance Centre (NVC) is a statutory body mandated to mostly focus 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 up doors for investigation into private sector corruption, assets recovery and money laundering, among other sectors. But legislations and conventions alone are not adequate in the fight against corruption. If we see our past track record of anti-corruption movement, Nepal's state-led anti-corruption campaign is beset with many problems such as CIAA operating without a chief commissioner since October 2006; the acquittal of high-profile corruption cases by the Special Court; a sharp drop in corruption complaints lodged at the CIAA.³ It has been made defunct by a conflict of interests and marred by the political influence. Nepal is losing both the state effectiveness (ability to govern) and the state legitimacy (right to govern) because of corrupt political system, impunity and increasing corruption indexes.

The CIAA had filed dozens of big 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 of the important cases are in court for years. The backlog on corruption cases at the Supreme Court (SC) also painfully evidences judicial incompetence in dealing with corruption lawsuits. Out of 12,000 backlogs at the SC, 339 corruption cases are waiting for the final verdicts. More than 100 corruption lawsuits are four years old. There are 60 cases of illegally earned properties.⁴ However, the Supreme Court has exhibited some pro-activeness by convicting former minister Chirinjibi Wagle of corruption after six years. Painstaking judicial delays and corruption within courts are taking toll on the anti-corruption campaign and the need to stamp out corruption from within judiciary is also urgency now.

The local bodies are also in the mess for the last eight consecutive years. Municipalities, District Development Committees (DDCs) and Village Development Committees (VDCs) which mobilize and allocate billions of rupees annually by carrying out development works and delivering essential public goods and services at

³ Global Corruption Report, 2009

⁴ Karobar Daily, 26 August 2010

the local level, are without elected people's representatives since 2002. This protracted vacuum of elected leadership has dismantled accountability structures and created challenges resulting in misuse of development budgets. Unaccountability, lack of transparency, corruption and political highhandedness are some of the problems that best characterize the current state of governance from central to local level in Nepal. Continued absence of elected leadership has jeopardized democratic functions at the grassroots and has increased public funds' vulnerability to misuse institutionalizing "consensual corruption". Lengthened 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 Right to Information (RTI) law to enhance transparency and accountability? These questions would be worth pondering in the political context Nepal is in now. If we see other countries experiences, we can find that of the many ways to fight corruption, besides institutional and legal reforms, is to create and pressure for a public demand for accountability and transparency. And the RTI law has this power and strength to create demand for public accountability and transparency.

3. Using RTI Against Corruption

The government of Nepal enacted Right to Information Act in 2007 and also promulgated Good Governance (Management & Operation) Act 2006 as people's right to good governance. The RTI law has ensured a legal guarantee for every citizen to question government activities, inspect its files, documents, records of any past or current development projects or programs. Their supervision, inspection, access and oversight on government activities can enhance transparency and accountability preventing corruption or fraud from taking place. The strength of the RTI law lies in its legal guarantee of access to information at all levels of the government and protection of the whistle blowers from possible reprisals.

Civic empowerment and engagement are the two most important dimensions in improving good governance on which all our efforts to demand accountability and transparency largely depend in an anti-corruption movement. As the Right to Information law has this potentiality with a legal guarantee of access to information and protection of the whistleblowers, it 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 just becomes a dream. As we have seen asymmetry in the flow of information between public authorities and the citizenry as a barrier to promotion of transparent governance, the RTI law has stood the test of time in correcting this asymmetry in many countries across the world. Right to information can serve both to detect and to deter corruption-by enhancing transparency and public oversight and by exposing leakages in development aid, procurement process, development works and service delivery. Many governments around the world have suffered from a lack of state effectiveness and state legitimacy because of corruption and unaccountability.

The use of RTI enhances people's trust in government when they feel that they have a say in government decisions and a close eye on government activities regarding how it allocates and spends public monies. Therefore, the right to information law can play an imperative role in enhancing state effectiveness, credibility and legitimacy by adequately listening and responding to people's concerns and grievances. All quarters of the society such as citizenry, the media, private sector and the 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 has power to transform societies radically. From the development sector to service delivery to aid effectiveness, RTI can enhance transparency at all levels because it has guaranteed 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 the local bodies, the funds are grossly being misused and misappropriated. If people's access to information regarding mobilization and allocations of development funds is strengthened and provisions of proactive disclosure mechanisms strictly put in place, corruption in development works and foreign aid can be minimized. Toward this end, clauses on transparency and internal controls should be made a part of the development process ensuring them in the Local Self Governance Act-1999 and also be made an inbuilt condition by the development partners (donor community) as well.

Information campaigns will have to trickle down to the community levels so that people will be motivated to seek copies of details starting from the planning process to implementation and in monitoring of the final development output. In order to institutionalize transparency in development funds being spent at the local level, the VDC and DDC Grants Operation Guidelines-2010 has mandatory provisions on them to publish program and budget details on notice boards and hoarding boards, but the compliance ratio has been very minimal. When people start keeping close tabs on government plans, programs, funds and their mobilization using RTI law, chances of misuse and corruption can be minimized.

As procurement and development works are closely related, public procurement is one of the most contested domains in Nepal for business and corruption as well. It is estimated that approximately 70 per cent of the central government expenditure is spent through procurement or contracts annually. As procurement is a regular activity performed by all levels of government, from municipalities, districts and local bodies, to national governments, through the use of RTI people can have access to copies of the entire procurement process and see how public funds are used to procure goods and services. As cartels, collusions and riggings among the bidders are common stories in Nepal and have led to compromise on the quality of development works and goods, having access to these bidding and procurement papers and documents reveals in case of any behind the scene compromise and cartels among the bidders or any illegal payments made to the contract awarding agencies. Public oversight and access to information will also disclose whether public procurement made by the government agencies fully complied with provisions of the procurement law or just flouted them to meet their corrupt interests.

As Article 2 of the RTI Act covers political parties and NGOs as public bodies, political corruption and NGO sector corruption can also be dealt with by the law with

demand from people to make their functioning, funding and accounts transparent. Also corruption within judiciary and anti-corruption agencies can be exposed by filing RTI applications as they are within purview of RTI law. A simple RTI application at courts can demand disclosure of status of corruption cases within the court as well and seek reasons for the subsequent delays in judicial hearings. The right to information tool can be applied even to anti-corruption agencies seeking the progress made on a particular complaint or grievances against corruption and whistle blowing. But the history shows that there have been no such information campaigns to expose corruption within judiciary and anti-corruption agencies by using the RTI law.

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 will be create unprecedented demand from the citizens especially from the grassroots initiatives. 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 did not receive any applications from people asking for information.⁵ Government's pro-activeness becomes all the more important in promoting RTI law because countries like Mexico has set a new international standard for transparency legislation by handling over 200,000 RTI applications in its first five years.⁶

Since the law has potentiality to expose corruption and galvanize government departments and offices for transparency, the government bodies, which bear principal obligations to disclose information, are not found much proactive in implementing the law. Approximately 400 public bodies, out of a total of five to six thousands appointed Information Officers, as required by section 6 of the Act.⁷ Neither we have yet a nodal agency nor any high level committee to oversee and monitor compliance by public bodies with provisions of the RTI law. As an immediate need, the government will have to form a High Level Committee under the chairmanship of the Chief Secretary to review, oversee and monitor public bodies' compliance 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 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 public knowledge of their rights.

Nepal is just three years into the implementation of RTI law. People whether living in urban or rural areas still don't know about the law and its strength as a tool to fight corruption and red-tape. It is due to lack of sensitization and awareness among people that there has not been adequate application of this law. One of the bottlenecks as experienced until now to RTI implementation has been the lack of

⁵ Kantipur Daily, 15 June 2010

⁶ Briefing Paper, CUTS International, 2010

⁷ Implementation of Right to Information in Nepal: Status Report & Recommendations, the World Bank, 2011

awareness building initiatives to teach people about benefits of RTI law and its power in controlling corruption. On supply side, secret and non-cooperating will of public bodies which considers information as its own prerogative is also a barrier to RTI implementation. Thus, creating awareness and building capacity of various public authorities as duty bearers and people as right claimers through trainings and workshops is a must to change their mentality and prepare them to comply with the law.

Political parties and government officials are lavishly enjoying tax payer's money taking advantage of the political transition. This political tendency and culture has percolated down to the local level. Political commitment for transparency, accountability and RTI implementation has been weak fearing that its effective practice by the people will deprive them of plundering and misusing tax-paid money and other public resources. If we look at the past practice of RTI as an anti-corruption tool, only a few initiatives from civil society and media have been taken so far which is not satisfying to the level expected but encouraging in some ways.

4. Role and Scope of Media

The media, being a fourth state pillar, shoulders the responsibility to make the state and its functionaries accountable and transparent. As things stand now, when most people are not aware of exercising their right to freedom of information in a direct and personal way, media's role and significance of empowering the public about legal advantages of RTI as an anti-corruption weapon becomes all the more important.

The RTI law has given a greater and wider space for the media to play in empowering people and consolidating democratic polity. By using this legislation, media can investigate and expose issues of wider public interest. Media, as guardians of freedom of speech, can open up "closed doors" to transparency and accountability by disseminating information about RTI to secure people's fundamental rights to know. Such kind of vibrant media activism, by publishing and broadcasting nationwide discourses on RTI, eventually narrows down 'transparency and accountability deficit' in countries like Nepal that ultimately paves the way for reducing corruption.

As most corruptions get concealed in government documents, records and reports with skewed bills and vouchers, having access to these documents is very much important to expose irregularities. The use of RTI law unearthed misuse of funds by the Investigation Commission formed to study on killing of J P Joshi, a local journalist of Kailali district. Rs 2,425 as reproduction cost was paid for soliciting 485 page report which laid bare many tampered bills and vouchers substantiating misuse of hundreds of thousands tax-paid money in the name of investigation.⁸

The above story is just a tiny example of how media can access to misuse of public funds using the right to information law. There are ample such untold stories of corruption and misuse of tax payer's money concealed in many government documents and reports. With the help of RTI law, the media can have access to them as well. Media has played a significant role in exposing big corruption and scams since democracy was restored in 1990s and become a powerful watchdog of

⁸ RTI Case Studies Report (Unpublished), The Freedom Forum, 2011

government activities and state affairs. But when it comes to promoting and using right to information law as tool to dig out corruption cases and malpractices in the public sector, the media seems to have done very little than it could have actually achieved in the last three years.

One of the reasons why media could not perform effective role in using RTI as a tool for investigative journalism is due to lack of understanding about its real strength. Except few cases, there have been no such practices and use of RTI law as an anti-corruption instrument by the media. The other reason behind media's indifference toward RTI is because of its excessive obsession with the political affairs and issues. Good governance, anti-corruption and other public interest issues such as right to information do not seem to have drawn much media attention even though some media persons actively lobbied and advocated for enactment of the Right to Information Act.

5. Civil Society, RTI and Anti-Corruption

Civil Society Organizations (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 Organizations (NGOs) in Nepal, has been to create and pressure for demand side of right to information regime. In such access regime, until a huge demand is created from the people's side through campaigns and grassroots initiatives, the supply side (public bodies) will not bother to disclose information.

The surge of NGOs in post-1990 era has definitely made some endeavors for anti-corruption advocacy and awareness building in Nepal. A motivated and vibrant civil society is a backbone of the campaign against corruption. As corruption is elusive, anti-corruption campaign needs to be backed by the use of right to information law through civil society initiatives. If we look at the last three years, it appears that civil society is not making use of RTI law proactively and vibrantly which is reflected in a low demand of requests for information at the public bodies.

One of the reasons behind civil society's lack of initiations for promoting RTI may be due to the transparency provision on NGOs themselves as obligated by the law. The Right to Information law has treated NGOs as public bodies with obligation to update and disclose information periodically. But the functioning of NGOs, their transparency and internal governance mechanisms in Nepal has always been under scanner and public scrutiny. As NGOs in Nepal are receiving huge funds from the government and international donors, issues of internal transparency and corruption within NGOs have drawn policy attention and public concern in recent times. The slack as shown by NGOs in creating public demand for right to information may be also because of their own reluctance to expose themselves transparently under the RTI law.

Right to information is a new concept and the civil society organizations don't seem to be logistically and mentally prepared to develop internal mechanism for proactive disclosure and maintaining 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 high "moral ground" to demand and seek transparency and accountability from other public bodies which is also a factor behind their lack of interest in initiating anti-corruption campaign through RTI.

As many civil society organizations lack financial sustainability, proven track-record and even expertise in RTI issues, the anti-corruption campaign through RTI has not been much effective and successful. Over the last three years, there are no information campaigns conducted so far by the civil society organizations among people at the grassroots encouraging them to use RTI as an anti-corruption instrument. Civil society organizations such as the Freedom Forum, Citizens' Campaign for Right to Information (CCRI) and Good Governance Project (GGP) of Pro Public are contributing to promote RTI in Nepal. But civil society campaigns and efforts have become more sporadic and lack a coordinated approach which is a must for spearheading anti-corruption campaign through RTI. Right to Information campaign is not a one-shot event or initiative but should be made sustainable for the next few years through external and internal support and assistance.

As some immediate steps to promote RTI for campaign against corruption and bad governance, civil society organizations can operate **RTI Help Desks** in corruption-prone or "wet agencies" such as revenue departments, public utility service centers, 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 can initiate and conduct **RTI Clinics** in different parts of the country and even at the village level to teach them through hands-on approach on how RTI can resolve their grievances relating 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 capacity of the public bodies, must also operate **National RTI Helpline** and **RTI Information Cells** in district levels to provide technical assistance to people in filing RTI applications. Furthermore, strong internal mechanism to monitor compliance of proactive disclosure and to process citizens' applications faster must be ensured by the public bodies to encourage people to use RTI to demand transparency and quality public services and development outputs without having to pay bribes for entitlements and services.

6. Best Practices from India

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.⁹ Thus, it would be interesting to see and draw lessons from Indian experiences on how RTI is being used by the media, civil society and citizenry to fight corruption in public services, development funds and budget allocation including a range of programs funded by public money. Thanks to the Right to Information Act, 2005, also the activism of NGOs and of the media, a culture of accountability is growing. However, the media, NGOs and RTI activists can only do so much.¹⁰

⁹ Implementation of Right to Information in Nepal: Status Report & Recommendations, the World Bank, 2011

¹⁰ Plug The Hole in The Bucket, The Times of India, 24 February 2011

There have been successful campaigns and grassroots initiatives in using RTI as an anti-corruption tool with a slogan "now you don't need to pay bribes. Use Right to Information. Often, it works faster than bribes". 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 the public servants. Indian experiences of the last five years are highly informative and beneficial to Nepal when it comes to stepping up campaign against corruption by putting the law into practice. These successful grassroots and urban initiatives establish a strong motivation for all of us in performing a crucial job from raising people's awareness to keeping close surveillance on corrupt practices through effective RTI implementation.

Drive Against Bribe: This was a nationwide most successful campaign organized by *Kabir*, a Delhi based RTI activist group, with 700 groups from 1 to 15 July 2006. The campaign encouraged and assisted people to stop giving bribes and use RTI instead. This campaign was supported by 8 media groups as partners, including NDTV, 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.¹¹

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 the poor and disadvantaged community 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 the record book.

The mass awareness campaign in Andhra Pradesh can be taken as encouraging as it was implemented by a consortium of more than 70 civil society organizations who came together to form the United Forum for Right to Information in 2007. The primary objective was to disseminate information on RTI and also to educate and create awareness among the community so as to equip and instigate them to use RTI to demand their rights and entitlements. It was a unique example of a unified effort of civil society organizations for ensuring accountability because the number of applications filed for information all across public authorities was around 8,000.

The campaign "RTI Action Research Villages" was started by Kabir, a RTI activist group based in Aligarh Muslim University, in five remote villages of Uttar Pradesh. The campaign aimed at studying the impact caused by RTI i.e, whether it is being used extensively by the villagers. The campaign aimed at filing up at least 300 RTI applications from each village. These applications had a tremendous and immediate impact on improving service delivery and public amenities such as absenteeism in school was reduced, basic drainage infrastructure set up, pension clearances, better roads, electricity and street lights including better improvements in the public distribution system. The finding was if 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.

¹¹ See <http://cysd.org/campaigns/drive-against-bribe>

Right to Information law has been used to expose political transparency in India. As obligated by this law, major political parties including regional parties disclosed details of their assets and liabilities following orders from the Central Information Commission a few months ago. The public disclosure under RTI showed that Congress Party has the highest income Rs 4.97 billion as on March 31, 2009, and its aggregate income increased to Rs 15.18 billion between 2002 and 2009, while its assets have also increased by 42 percent. The Bharatiya Janata Party (BJP) and Bahujan Samaj Party (BSP) declared their income for 2009-10 at Rs 2.20 billion and Rs 1.82 billion, respectively.¹² From corruption in the design of Indian Rupee Symbol to improvement in public distribution system, RTI has played an instrumental role in India. It has been proven that money spent on creating awareness about RTI is much less than what is saved with proper and frequent use of RTI in service delivery, welfare schemes and development works.

7. 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 organizations participate directly or indirectly to exact accountability. Citizens have the right to demand accountability and public actors have an obligation to be accountable to its 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.¹³ Democratic governance underlies the spirit of a contract, i.e. the rulers and the ruled¹⁴ are bound to each other by reciprocal obligations and effective implementation of right to information law provides foundation such connectedness. In other words, exercise of this right by the people establishes the "basic bargain" between the government and its citizens that entails accountability of the former to the latter in lieu of the authority vested in it by the latter.

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 behaviors for better social accountability situation. Social accountability initiatives such as Public Hearing, Public Audits and Citizen Report Card Survey conducted by GGP, Pro Public, over the last decade shows that public officials perceive citizen's demand for accountability and transparency as threatening in initial stages of their implementation. As most other social accountability tools, RTI is also encountering initial resistance or reluctance from duty bearers.

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.

¹² The Times of India, 18 August 2010

¹³ Social Accountability: The Main Pillars of Good Governance, the World Bank, February 2007

¹⁴ Rulers and Ruled by Thomas Jefferson

The Right to Information regime connects the right claimers to duty bearers enhancing public access to essential information about government resources, policies, commitments, laws and regulations, budgets, 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 a core element of citizens' empowerment and social accountability.¹⁵

For better social accountability, continuous coordination and convergence between different program implementing agencies, civil society organizations, local communities and other stakeholders is a prerequisite. Thus, there is a need at present to build the capacities of all the stakeholders such as civil society, media and local communities involved in implementing and institutionalizing RTI as a social accountability tool to reduce corruption and improve governance.

8. Conclusion

Fighting corruption through the Right to Information regime largely depends on its full-fledged implementation and compliance by the 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 the local and national government as it has tremendous importance for effective service delivery, development processes and efficient governance at village, district and national levels. The civil society, media, citizenry and the government will have to accomplish their respective roles by linking and integrating RTI as an indispensable component of their anti-corruption movement and apply different tested and proven approaches using RTI in days ahead.

9. Recommendations

- Nationwide campaign with a slogan "**Don't Give Bribe but Use RTI**" must be initiated jointly in coordination with the media, civil society organizations, private sector and other stakeholders.
- RTI should be made a part of the anti-corruption campaign by the civil society, media and the government itself.
- "**RTI Clinics**" will have to be organized in different parts of the country to teach people on how they can use the law instead of giving bribes to the public officials.
- "**RTI Help Desks**" should be set up especially in "wet agencies" such as 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 **National RTI Helpline** to facilitate and answer queries of the people regarding RTI application.
- **RTI Information Cell** needs to be established at the District Administration Offices in each district to provide information to people on how they can use RTI.
- The government should put in place a mechanism to monitor all public bodies as defined by the Act to prepare and publish the list of all the schemes, programs, funds and activities through proactive publication.
- Transparency clauses and internal control mechanisms should be included in entire gamut of national laws, working procedures, grants guidelines and service delivery directives issued by the government.

¹⁵ Demanding Good Governance, the World Bank, 2010

- RTI should be promoted as a social accountability tool by building capacity of civil society, media and citizens.
- Development partners (donor community) need to put RTI in their priority and make it a component of development initiatives such as Program for Social Accountability in Nepal (PRAN) and Local Governance and Community Development Program (LGCDP).

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A Working Paper on

Role of Press in the Promotion of RTI

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Role of Press in the Promotion of RTI

Yek Raj Pathak

1. Introduction

Right to information is a state-warranted process of knowing things. This right is an essential pre-requisite for practices relating to good governance and truly democratic system. Just like oxygen in an animal's breathing system, 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. Hence, in today's world, right to information is regarded as a means of empowerment and a tool for development and good governance.¹

1.1 Information as Civil Right

"Knowledge is power. Information is liberating...." - Kofi Annan

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 any kinds of other ordinary laws cannot change or supersede it.

Within the UN, freedom of information was recognized early on as a fundamental right. In 1946, during its first session, the UN General Assembly adopted Resolution 59(1) which stated:

Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated.

In ensuing international human rights instruments, freedom of information was not set out separately but as part of the fundamental right of freedom of expression, which includes the right to seek, receive and impart information.

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). Its Article 19 guarantees freedom of opinion and expression as follows:

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.²

The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, was adopted by the UN General Assembly in 1966. The corresponding provision in this treaty's Article 19 also guarantees the right to freedom of opinion and expression in similar terms.

¹ Thesis of the Masters Degree of Mass Communication and Journalism entitled RTI and the challenges of implementation 2007, submitted to Purvanchal University

² UDHR, article 19

1.2 Nepalese context

The right to information was first envisioned in Nepal in 1990 when the post-Democracy Constitution of Nepal 1990 inscribed the right to information as one of the fundamental rights. Article 16 of this constitution reads:

Every citizen shall have the right to demand and receive information on any matter of public importance.³

No previous constitutional history or precedent is traceable for the right to information in Nepal before this time. Likewise the Interim constitution Nepal 2007 also has guaranteed the right to information in its article 27. It says:

Every citizen shall have the right to demand or obtain information on any matters of concern to himself or herself to the public.⁴ 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.

1.3. Media as an Advocate in RTI Movement

Nepal's media sector has played a special role in the making of the RTI Act. Following the incorporation of the RTI in the 1990 Constitution, the media continued advocating for a specific Act as a way to ensure effective practice of the Right to Information⁵.

2. RTI Act and Scope for Media

Nepalese RTI Act recognizes media as one of the viable channels for effective disclosure of information. It can help public bodies to promote 'proactive disclosure' while publishing, broadcasting or making information public.

2.1 Enhanced Access to Information

The right of the media persons to access to public records is based upon their duty and responsibility of keeping the nation informed on all matters of public concern. The effective exercise of the right to information also restrains the state from improperly encroaching upon the rights and the freedoms of the people and to a great extent ensures that those rights and freedoms are not tampered with by the government and other agencies. The mass media are the most important vehicles for information, knowledge and communication in any country. They are accessible, cost-effective and widespread sources of information and platform for expression. They have an ideal, unbiased and non-favoritist role to play as an honest broker of information for their readers, viewers and listeners.

What's more, all citizens themselves cannot individually queue up for getting information, so they depend on the mass media for various types of information of public significance. Through the media, people get vital information that matters in

³ The Constitution of The Kingdom of 2047BS (1990)

⁴ The Interim Constitution of Nepal, 2063 BS (2007)

⁵ A working paper by Yek Raj Pathak presented in a program in sept 26, 2010 organized by Freedom Forum

their lives. The media are the most accessible and affordable means for concerned institutions and individuals to get information they need. In this context, the better access the mass media have to sources of information, the more informed the citizens become. Informed media can always inform people more effectively. In the mass media represent people in seeking information from public authorities and institutions. So long as the mass media are capable and free, people's right to information becomes accessible and wider. Therefore, citizens' right to information and the mass media are intertwined.

2.2 Proactive disclosure: Conditions for 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 list of information that is mandatory for public bodies to disclose proactively⁶. Although the Act seems to be lacking in providing clear guidelines about the process of making information public, it states that the public bodies may use different national languages and mass media while publishing, broadcasting or making information public. Media is naturally on the winning side in this.

2.3 Broad Coverage of Public Agencies: A Boon to Media

Nepalese RTI Act has defined the public agencies in a broad sense. Political parties and civil society organizations also fall under 'public agencies' which are supposed to give information. As RTI Act brings to its fold a wide spectrum of public sectors, which are liable to provide information, media is obviously exposed to better scope in terms of flow of information, both as news and ad contents. According to RTI Act, all organizations established as per law to provide public services, including political parties, NGOs, INGO⁷ and other legitimate bodies, have to comply with its provisions. Hence it is mandatory for these agencies to publish their activities periodically. And the media is an instrument in the process. How it helps the media can be summarized in the following points:

- It can help produce better news output
- It can help media generate more revenue, like the banks who publish their unaudited balance sheet every three months as an advertisement.
- Regular flow of information about the public agencies
- Promotion of transparency in the public agencies
- Enhanced relation between the Media and public agencies (as a result of regular contact)
- Gradual decrease in culture of silence in the bureaucracy

3. Existing Perceptions on Media and RTI

There are some misperceptions regarding the right to information and mass media in Nepal. Generally, people assume that the right to information, along with its concerned Act, is meant only for the media. People assume their role as passive information recipients completely dependent on the mass media. Apparently, most people tend to assume that it is the media's job to use the Right to Information Act for them. 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

⁶ Section 5(3), Right to information Act, 2007

⁷ Section 2, Right to information Act, 2007

of the NIC is made up of the Speaker, the Minister for Information and Communications, and the President of the Federation of the Nepali Journalists (FNJ)⁸. The media and FNJ in particular, have been involved in activities to implement the law, for example by assisting the NIC to conduct training programs. 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).

Actually, the Right to Information Act accepts that seeking and getting information from public authorities and institutions is one of the citizens' fundamental rights. Information is people's right, which can increase their access to opportunities. Depriving today's citizens of information is to bar them from opportunities of progress and change. As establishing people's access to information on resources and their proportional distribution for their continuous empowerment is essential, information has become an inseparable component of the public life in the 21st century.

4. What Media Can Do

One of the objects of a newspaper is to understand the popular feeling and give expression to it; another is to arouse among the people certain desirable sentiments; the third is fearlessly to expose popular defects. - Mahatma Gandhi

I fear three newspapers more than a hundred thousand bayonets. - Napoleon

To promote the RTI, the mass media can mainly perform two functions:

4.1 Advocacy

Firstly, The media can advocate for RTI nationwide. They can encourage people to use their RTI as the RTI Act exists for them to use it. Media advocacy in favor of RTI can promote people's awareness in connection with maintaining transparency by combating irregularities and corruption in the country. By frequently advocating the RTI and its use status through articles, news stories, interviews and editorials, the media can inspire individuals and institutions to make use of their RTI as much as they can.

4.2 Investigation and Reporting

Another pivotal function of the mass media regarding the utilization of the RTI for the majority of the people is to use the RTI Act adequately to inform and empower people, who need to be encouraged to use their right individually as well. The media can play an exemplary role first to encourage ordinary people to seek information through the RTI Act. As to using this right, the media can emphasize on seeking and producing public information on corruption, fraud, waste, inefficiency, cronyism, nepotism, abuse of authority and similar issues. Furthermore, they can use the RTI to investigate and expose bigger corruption scandals.

4.3 Media with the people's voice

⁸ Section 11(3), Right to Information Act, 2007

- Making people more aware of their rights and entitlements;
- Enabling people to have access to government programmes, schemes and benefits;
- Making people more aware of political issues and options and helping to stimulate debate;
- Educating the public on social, economic and environmental issues;
- Drawing attention to institutional failings – corruption, fraud, waste, inefficiency, cronyism, nepotism, abuse of power and the like;
- Fostering exchange of best practices, knowledge resources, access to better Technology, and to better choices;
- Creating pressure for improved government performance, accountability and quality, for example in service delivery;
- Providing a discursive space for citizens to dialogue with other actors in the governance process.

5. Promoting RTI: The Media's Role

The media can play a crucial role in building an inclusive Information Society based on knowledge, power and its distribution. For media to fulfil its potential, actions are required in three key areas:

- To protect and extend media freedom and independence, and rights of access to Information;
- To actively develop the potential of media to provide information, a forum for debate on topics of public interest, cultural expression and opportunity to communicate, especially to the poor and marginalized;
- To strengthen the capacity of media to promote and help build an Information Society – raising awareness, channeling civil society concerns, debating policies and holding government, private sector and civil society accountable.

As state mechanisms do not appear sufficiently prepared to implement RTI at their levels, the media can play the following roles towards the effective implementation of the RTI. Following points may be especially considered:

5.1 Follow-up coverage of the Implementation of RTI

Through frequent follow-up coverage on the status of RTI implementation, how it has been used, why it has been little used, and what the chief barriers are, the media can push the government to properly implement the RTI. This can even promote public awareness on the RTI.

5.2 Disseminating RTI awareness information

People generally do not know about what lies in the RTI Act. They have a preconceived view that the right to information is for the media. To eliminate this misunderstanding, the media have to sensitize people on who the RTI and its Act is for in essence. To convince people about the need for them to use the RTI and its Act, the media has not report a lot about the possible and proven practical benefits that people get through the use of information in their day-to-day life.

5.3 Watchdog and the Intermediary Role between Public Bodies and People

The media undeniably is always the bridge between public agencies and people. Regarding the implementation of the right to information too, the media can play a bridging role. Did people ask for information? If they did, did they receive information? If not, why? What is the government's attitude to providing information to information-seeking citizens? The media can seek answers of these and many other questions to highlight the status of right to information and to create an atmosphere for more RTI-related exercises. This watchdog role of the media will also reveal the exact character of the state on the implementation of RTI.

5.4 Highlight corruption issues and people's grievances

The mass media need to sensitize the grassroots people through the coverage by widespread corruption. They can stimulate the people against corruption through continuous publicization of irregularities. The people will defend the mass media should they take an initiative to break the network of those indulged in the embezzlement of public resources while concealing information. Hence the need of anti-corruption campaigns from public interest perspectives.

5.5 Highlight RTI success stories

The media can prioritize the task of publicizing how citizens have consciously asked for information from public agencies. Especially, success stories of those who struggled to use the RTI should be highlighted. If the media highlight such incidents of consciously information, including success stories, people will know what types of information they can seek and obtain from public agencies. The media can present success stories in the form of news stories, interviews and articles. Moreover, they can allocate some space for the regular coverage of RTI. This will further motivate citizens to consciously seek information that matters to them.

6. Nepali Media Practices: Experiences and Opinions of Professionals

It is a rare incident that a Nepali media has applied for information with a view to publishing news. There is no media practice of covering if citizens seek information or not or if they obtain it or not. Following the adoption of the RTI Act 2064 in Nepal, the media has not been able to play a proactive role in utilizing it. There is scarcity of investigative journalism that could use the RTI as per the Act. There has been no media practice using the RTI and disclosing big corruption scandals and irregularities. There has been very few or let's say rare instance of media officially applying for information with any public agency in case of denial of information. During the period of three and half years after the approval of this Act, the Nepali media have not yet taken an initiative to push public authorities, including the National Information Commission, for the implementation of the Act.

For this situation senior journalist and Professor of Media Economics R K Regmee thinks that the difficulty in implementing the RTI Act arises not only from the networks that deliberately try to conceal information but also from journalists, who have been dominating journalism for more than 20 years. However, Prof. Regmee points out that the RTI Act is a powerful tool to break such anti-transparency networks. Although the foundation have just been laid and They have just started to seek the information using the Act. Such some practices are:

a. Probe Committee Report

Ramji Dahal of Himal magazine had applied to the Ministry of Home Affairs asking for the investigation report and a financial statement of the probe committee formed to investigate the murder of Kailali-based journalist J. P. Joshi. His purpose was to write a news story.

RTI for investigative reporting:

In an exception, Ramji Dahal, a journalist for Himal Media, used the RTI to spell out the details of expenses and receive a copy of the report of the probe commission formed to investigate the incident of the murder of journalist JP Joshi in Kailali. He filed an application at the Office of the Prime Minister and Council of Ministers in line with the RTI Act, Clause 7(a) on January 26, 2010. "I did not get complete information from the authority concerned and I appealed to the Home Ministry again citing dissatisfaction on the information given to me", said journalist Dahal. The ministry has not decided on his appeal for the report but at last after the directives of the NIC he got the details of expenses and made a news story about the committee's irregularities in his magazine.⁹

What about the experience of seeking information? Journalist Dahal says, "Government authorities do not want to become responsible." According to Dahal, the Ministry of Home Affairs for several months ignored his request for information. Dahal felt that the Home Secretary even did not bother to remember that there is the rationality of the Right to Information Act.

b. Concerns in tender process

Reporter of the Republica Daily Mr. Kiran Chapagain has asked the Ministry of Foreign Affairs for information about the tender process of the Machine-Readable Passport (MRP) with application on November, 2009. Four companies out of 14 companies were short listed when Nepal government had invited tender for manufacturing MRPs. Mr. Chapagain had asked the government for details of all companies to produce information on how the tender process was carried out, what the companies were like and what special standards the government used to select the four of them in the PQ. When the ministry refused to provide the requested information, Mr. Chapagain went to file his appeal at the National Information Commission, which informed the applicant that the appealing process itself was inadequate. Mr. Chapagain exposes his experience that government mechanisms are not so cooperative in this matter.

c. Concerns with the National Army

As an another attempt to obtain publicly important information regarding the involvement of army personnel in human rights violations, Mr. Chapagain had applied to the Nepal Army Headquarters on August 25, 2010 but in vain. He demanded the information asking the name of those army personnel and their assignment. The Army spokesperson responded to him in written form that the Army was not expected

⁹ Suchana Sangrasha, a book, by Yek Raj Pathak, 2011

to give this type of information. Army spokesperson said that it was the matter of defense secrecy.¹⁰

d. Budget transparency of NGOs

Mr. Lokmani Rai of the Kantipur Daily told this presenter that he has obtained information as per the Act. On December, 2009, Mr. Rai had demanded the information with Social Welfare Council about the different national and international non governmental organizations for data of their programs and approved budgets. He obtained the requested information in about 10 days. "Despite the lack of cooperative atmosphere, I obtained information," Mr. Rai shares his experience.

e. Concerns With the Local Government

Ritesh Tripathi, a journalist based in Parsa in western Terai of Nepal, had sought information from 46 Birgunj-based offices for news dissemination in accordance with the Right to Information Act 2007. Submitting applications on behalf of *Terai Patra Saptahik* (a local weekly newspaper) to the 46 offices in several dates between July 25 and Sept. 15 in 2009. He and the other journalists had sought information about the details of operating expenses, number of working employees, vacant posts, work performance of the offices and services rendered to the commoners. None of them provided information as demanded, according to Tripathi. Worst, even some offices refused to accept applications.

But when the journalists threatened to file complaints against them, the District Postal Office and the Oil Corporation provided information but not as de seeks. With their quest for information remaining unfulfilled, journalists later blacklisted 10 offices, who did not cooperate with them by providing information. He made up his mind to file an appeal at the National Information Communication.

Tripathi says, "Since the office of National Information Communication is centralized, we didn't see the possibility of getting information on our own effort."

Following the adoption of the RTI Act in Nepal only above are the practices of the Nepali media. The Chief Editor of the Republica Daily Mr. Amit Dhakal thinks that Nepali media workers are not used to the practice of this Act since it is in the preliminary stage. Lets hope in the days to come Nepali media will be encouraged to use this act in the course of their investigative reporting.

6.1 Good News...but with RTI, they would have been better !

Some examples:

i. MPs in foreign trips (Kantipur Daily March 8, 2011)

Expenses for the MPs would be transparent if act was implemented or used to demand the more information on it. The news was about the foreign trips but the exact expense was not exposed in this news. It is confirmed that the constitution is not going to be prepared in the stipulated time but MPs are frequently in the foreign trips. So, the people should be informed that how much cost was spent by the MPs in

¹⁰ Interview with Kiran chapagain, reporter, The republica daily

the name of constitution after the CA election. To explore this information the reporter can use the Act as a effective tool.

ii. Economic transparency of political parties (*Kantipur daily February 19, 2011*)

Economic status of political parties of Nepal is not mentioned in it. The article was about the economic activities of the political parties but their economic transparency is not mentioned. The political parties also are regarded as the public agencies in the act and one can seeks information directly with them. How their office building has been built and how they are managing their costs of apartment and the personal vehicles? Like these hundreds of such questions are unanswered.

iii. Cost free education responsibility of the state (*Annapurna post February 23, 2011*)

The state's policy is cost free education. It is written in the editorial of this newspaper. But some of the schools are not delivering this service. Some students are compelled to pay the tuition fee. This would be clear how many students have been benefited. And also there is the right of the people to know the fact amount of the investment by the state for such service. For this purpose the Act may be the tool to find out the facts that is the state is misusing the fund in the name of the free education.

iv. Government vehicles in private no. plate (*Nepal weekly, February 8, 2011*)

This news deals with the issue of misuse of the government vehicles received by government officials with government no. plates by using a private number plate for personal business. In the news, reporter Madhav Basnet has reported on the use of red number plates in 40 percent of some 36,000 government vehicles which require white number plates. But the official of the Home Ministry which has the responsibility of keeping this record, has denied giving such information, saying there was no information on who are issued with red or private number plates. However, if information was sought by using the Right to Information Act, he could have been compelled to give it in the detail.

v. TU's bid to gag on Information (*Nepal weekly magazine March 20, 2011*)

News Reporter Upendra Pokhrel wrote his experience in his magazine that:

I actually had to collect information about the teachers and other Tribhuvan University (TU) staff who have been shifted to abroad betraying TU as well as missing perks. I found Mr Bhimraj Adhikari, TU Registrar very irresponsible, though he was found mild in the telephone conversation. He tried to escape pretending that did not have any information I required. But later accepted to provide information after I assured him it could attack against existing disorder. Eventually, he wrote a letter to an administrator Purussotam Upadhaya asking him to provide me the information if it were possible. Again I felt headache to persuade Mr. Upadhaya. He seemed doubtful thinking that it might reveal secrecy. He did not agree even though I tried hard to convince him regarding my concern. When I reminded him about right to information he asked me to consult the following week. I went to meet him after a week but he was not available. After that again consulted registrar Mr. Adhikari he repeatedly suggested me to collect the information from college to college. To collect this data, I even contacted the Vice Chancellor (VC) of TU Mr. Madhavraj Sharma and Rector Suryalal Amatya twice. Mr. Sharma seemed positive as he said it would help to promote TU but escaped saying that it was not the matter he could intervene. Late alone Mr. Amatya, he could not help because it was not under his department. In this way, I had no alternative except returning empty handed. What a rigidity of TU towards information.

Finally, he did not use RTI Act to get required information. His story may be complete if he could use Act.

vi. Hisab Das Lakh ko (A Count of One Million Rupees)

Ujjyolo 90 Network, a Kathmandu based FM, has a nationwide network have launched a program named 'Hisab Das Lakhko' a count of one million rupees. The CA member of Nepal are provided one million Nepali Rupees under the Parliament Development Fund program each year. FM have an interview program on every morning with the CA member about the utilization of the fund. How and for what purpose he has spent this fund is asked in this interview. People also can ask him the expenditure is broadcasted by FM. Reporter of this FM Mr. Milan Timilsina said the program is launched to inform people about the utilization of the CA's fund. It is not exactly the use of RTI but some initiative of the informing people on economic transparency.

6.2 Headlines of some of the news published in Nepali papers which can be made more investigative by using this Act are:

- Misuse of student scholarship
- Non-Dalits benefited in the name of Dalits
- Medicines meant for free distribution being sold
- Districts deprived of medicines
- Mega corruption in road construction
- Students paying for free education in govt schools
- Elderly allowance scheme under corruption spotlight
- Delay in Sudan corruption case
- Misuse of government vehicle
- Firing as bid for the construction dispute turns ugly
- Misuse of vat bill as an ordinary

7. Some Initiatives of Indian media

The movement of seeking information has become success in India due to the strong civil society organization. The credit goes to the media also to have been success this movement. Here are very few media initiatives of them:

- The Indian Express with the one NGO 'Parivartan' has been guiding people through a regular column 'Express initiatives' where recent developments are mentioned. It publishes the success and failure stories and also sample questions for the people.
- NDTV in partnership with leading civil society organizations have launched a nationwide campaign on RTI that seeks to build public awareness on RTI and people are being encouraged not to pay bribers.
- Times of India: October 31, 2008

Under the MLA local Area Development Fund, each MLA can spend up to Rs. 2 crore on development works in his Constituency each year. Did your MLA align this work with your needs and priorities? Or was it to help his cronies? was public money Rs. 10 crore in five years well utilized or wasted? The information was sought by a NGO Satark Nagarik Sangathan using RTI Act.¹¹

In this news story: The Times of India writes:

'The times of India will empower you this time with the lowdown on your MLA. Now you can hold them accountable how did they perform in the assembly? Did they reflect your concern and give you a voice? Did they involve you in the

¹¹ www.rtiindia.info

development work in your area? Going through the MLA Report Card, you can judge for yourself.'

Thus, the Indian media seem to have used their RTI Act in obtaining information as well as in publicizing the RTI a lot. The Indian media have mainly focused on asking information concerned with the properties that the parties and leaders owned, leaders' performance records and data, educational data and more. To promote the RTI, the Indian media have used columns, editorials, Op-Ed page articles as the major tools. The NDTV has a mission concentrated on the news and use of RTI.

8. Current Status of Implementation

The media sector, civil society members and others were had been continuing their efforts for 15 years towards having a separate RTI Act in Nepal. With much enthusiasm had Nepali media workers and democratic forces had been urging the state to produce the Act. But the same enthusiasm and vigorousness cannot be seen in its implementation.¹² The implementation process has been too slow, or little heeded. The Nepali media sector has to review its own role in applying the RTI as per the Act. In reality, the current status of the implementation of this Act is not very appreciable:

- All public agencies have not recruited information officers with or without communication degrees.
- The updating of information or information management in those agencies is weak.
- No culture of proactive disclosure or periodic disclosure has not yet been developed in general.
- No training for information officers has been a custom.
- Citizens and institutions have not been encouraged to seek information.
- Government role in this matter is almost nil.
- The National Information Commission has failed to organize nationwide campaigns geared to the implementation of the RTI Act.
- No mechanism to monitor the implementation is available as yet.
- The mass media have shown little interest in performing their investigative journalism by utilizing the RTI Act.
- Difficulty has been seen in the implementation of the orders of even the information commission.

9. Constraints for Media in Using RTI Act

a. Non-communicative culture in the state bureaucracy

This appears one of the most constraints regarding the implementation of the RTI Act. It is obviously seen that the Nepali bureaucracy has still been keeping a negative culture of remaining non-communicative on public issues and agenda. They do not appear conscious enough to analyze why communication, information and the mass media matter to the society. This non-communicative culture is a challenge in connection with the lively use of the RTI Act and due to such types of culture media are not able to receive the information from the public agencies.¹³ Due to this

¹² Article in a kantipur daily by Yek Raj Pathak, 2067

¹³ Suchanako hak hatepustika, a book by Taranath Dahal and Santosh Sigdel, 2064

problem, media workers hesitate to believe that they get any serious information for immediate dissemination by applying officially to public authorities. The chief reporter of Nepal Magazine Chudamani Bhattarai's experience is that it was rather than easy to get information by the traditional way of the reporter due to the non communicative culture of the officials.

b. Lack of time

Most of the journalists who were interviewed in this study said that they did not have sufficient time for the reporting using RTI. They have to go to the public agencies to file the application for information. The information officer can hold the application for 15 days to give the information as the act has given him this provision. Media house are not managing sufficient journalists and they can not afford month-long assignment for one reporting. Dailies require immediate information but the procedures and process to be completed as per the Act to obtain information are lengthy, requiring even 15 days.¹⁴

c. Less Concentration on investigative reporting

Journalism today is more inclined to opinion flow compared to the information and facts. Nepali journalism today has not really been involved in the in-depth and investigative reporting.

They are more involved in the political debate or the political view of the leader and most of the front pages of the paper full with only the political news.

The Act is useful to explore the facts and data about the irregularities and various scandals in the country. Likewise, if the reporter follows the Act the detailed information is possible and it makes his report more authentic and more informative, RTI Act is relevant for such investigative and in-depth reporting says the RTI expert and senior journalist Taranath Dahal.

d. Lack of knowledge about RTI

Reporters are not aware about the RTI Act of Nepal as we have witnessed that the reporter have not applied this Act in course of reporting. Due to the lack of the knowledge about the Act, the reporters are not encouraged to use it. Similarly, media houses are not giving them the assignment for the RTI reporting and they have not been taught and trained by any other institutions. They are using their traditional source or personal contact to find out the information.

e. No Information Officer Appointed

Many of the public agencies even have not managed information officers to deal with public information issues. No monitoring mechanism has been set up to make sure the public agencies work as per the Act. As a result, it is difficult to obtain the exact information the reporter is seeking. The reporters therefore are confused to whom they have to file an application for information. This is another constraint for the journalists. Some of the journalists in the district do not know who to demand information with due to not having information officer in the concerned offices. A journalist from Pachthar district said they are in confusion to whom they demand the

¹⁴ Interview with Hari Dahadur Thapa, news chief of kantipur daily

information. The public agencies of the district have not appointed the in information officer yet he said. ()¹⁵

f. Lack of Social Campaign

Due to illiteracy and suppressed mentality, the majority of people themselves are not able to look into public issues and demand information as one of their fundamental rights. Most of them even do not know that the Right to Information is guaranteed in the country's constitution and that its Act as well as regulations is in existence. They mainly depend on the opinion of the leaders for much information. For promoting people's access to publicly important issues, social campaigns on the implementation of the RTI Act could produce powerful pressures and such types of campaign should be organized with the collaboration of media, so that media can be a good vehicle for the people in urban as well as rural area.

g. Limitation of the National Information Commission

As the information officers in the districts do not provide information, the journalists are bound to visit the central office in Kathmandu for appeal. As a result, many of them do not visit the Kathmandu-based office of NIC on various constraints as long distance, monetary matter¹⁶.

The RTI Act has given a judiciary role to the National Information Commission. It has limited resources; however, it can define its subsidiary role to motivate people for the implementation of the Act. It should not confine itself to going through applications. It could play a proactive role in reaching out to people and media widely.

Press advisor to the president of Nepal Mr. Rajendra Dahal doubts the intention of the state since state level information commission itself has been kept in a weaker condition. He sees government mechanisms not very positive as regards the effective implementation of the Act.

h. Lack of academic and training programs

Although universities have the right to information as one of their components in the mass communication and journalism program,¹⁷ it is not enough for in-depth study and specialization. Moreover, nongovernmental organizations and public agencies themselves can conduct necessary RTI training programs for all stakeholders, including media workers.

i. Poor Record Management System:

There is no proper record management system in place which has frequently caused problems for the supply side to provide information in line with the RTI Act. No archives are maintained and no systems are in place. The documents in most of the offices are packed in sacks. Information management is itself a challenging task. No concrete program and policies have been proposed and no investment or human resources allocated for it. After the enforcement of the Act, no formal training is

¹⁵ Interview with the Pachthar district base journalist Laxmi Gautam

¹⁶ Interview with a Birgunj base journalist Ritesh Tripathi

¹⁷ Modern Journalism: Principles and Trends, MA MCJ, 1stSemester, PU

provided for the information officer about the information dissemination system including the record management or updating system¹⁸. Due this lack the press is not responded while it seeks information.

10. Conclusion

Nepal's media sector has not been able to practically use the RTI Act due mainly to following point:

- Deep-seated ill-culture of concealing information in public agencies.
- Disbelief among media workers in getting any serious information for immediate dissemination by applying officially to public authorities.
- Practical limitation due to professional compulsions to media deadline.
- They have to manage their human resources and time to use the RTI Act.
- Media's failure in general to grasp long-term benefit of RTI from the information viewpoint.

However, the media has a big role in promoting the use of the Act. Without the vanguard role of the media in comprehensively and frequently informing people about the rationale, functions and uses of the RTI Act, its conscious use cannot be increased. Since the media mainly represent people for obtaining and disseminating information, is natural to expect their initiative and campaigns in using the RTI Act. Plus, the media themselves can persist in demanding information using the RTI Act, and they can encourage civil society institutions to do so while regularly covering what information they seek and what responses they get from public agencies. The media and civil society institutions can co-work in making the best use of the RTI Act.

There may be so many causes of non involvement of media but one cause may be the growing impunity in every sector concerned over the insecurity of media workers, who try to investigate corruption and other irregularities in-depth. Nepal now is in transitional phase of politics and day by day the journalists are being threatened and beaten up day by day. Journalists have been killed also.

Nepali press has not exercised the RTI Act in order to obtain information from public agencies because this task involves patience and in-depth study.

Media workers have to work hard to dig out new and interesting information and earn a high degree of credibility in their profession. For this RTI is extremely helpful.

¹⁸ Country paper presented in a south asian regional workshop on 2010 April, by Taranath Dahal, senior Journalist

11. Recommendations

1. Media Houses

- Media can go with the civil society organizations and freedom of information advocates constantly carrying out special cases on public matters
- Media should launch campaign to make people aware about RTI law and its usage by producing news and articles
- Media houses can give assignments for investigative reporting by using the RTI
- Television channels, radio stations and newspapers can allocate separate space for RTI coverage and analysis as talk show, column and so on
- Media houses should collaborate with the civil society organizations for national campaign on social audit, people's grievance and so on
- Wider publicity should be launched to convince people that the RTI Act is not only for media but a fundamental right meant for all citizens to use
- Community radio stations should broadcast programs and advertisement to spread public awareness on RTI and economic transparency
- Media can also go for media-public partnership to encourage people to demand more information

2. Reporters

- Use RTI for the investigative reporting to get data and more facts
- Follow the application and go to the appeal if necessary
- Expose the tendency of the information officer if ignore to give information
- Do not misuse information
- Journalists should maximize the use of RTI to explore the issues of corruption and area of the various public interests
- Work hard to dig out new and interesting information and earn a high degree of credibility in the profession
- Pointing out where people can seek information on corruption and irregularities is important.
- Expose through news coverage the media-unfriendly attitude of the state mechanisms.
- Follow up of the every public agency for Suo Moto (self-disclosure provision) of RTI
- Publicize success stories regarding the use of RTI and also focus on the evading of the information by public agencies

3. Civil Society Organizations

- Civil Society organizations should collaborate with media for anti-corruption and transparency-related functions while giving coverage to their pro-transparency activities
- Use RTI as an Innovative tools to promote good governance, tools as an citizen report cards, social audit etc
- Generate more and more success stories with the people in the good governance using RTI
- Encourage people giving them the sense as RTI is the people's property and organize the public hearing in construction and development work and people' grievances

- Expand the working network of the NGOs to the local level and create a information culture in society
- Organize the public hearing on the people's public agendas among local levels

4. Government and Public Bodies

- Create a Nodal Agency under the office of the Prime Minister and council of the ministers to provide the central leadership for implementation
- Monitor the implementation task by such agency with the clear authority
- Strictly monitor the pro active disclosure by every public agencies
- Prepare the directives for every public agencies for the proactive disclosure and the information dissemination system
- Provide the necessary training and guideline for the information about the updating information
- Provide training for every government officials about the importance of information by the Nepal Administrative Staff College(NASC), which is responsible for providing central training to the officials
- Provide the necessary physical infrastructure, refreshment and extra incentive to the information officer
- Telephone or the oral demand also should be accepted as an application

5. National Information Commission (NIC)

- The network of the Commission should be expanded nationwide and volunteers should be deputed as per need
- Organize the nationwide training program for the journalists to coverage the agendas of the right to information
- Should come up with the campaign throughout the country encouraging people about the knowledge of right to information and insist them to seek information
- Strengthen the working capacity of the NIC providing it necessary staffs and logistics
- Monitor the public agencies' periodical disclosure whether they are doing it properly or not
- Pressurize the government to create a Nodal Agency, so that it would be easy to work with its coordination

6. Universities

- Revise curriculum in the mass communication and journalism in universities level about the RTI that can enable the understanding of the student
- Conduct the Thesis of the student at the masters degree level on RTI subject
- Give an assignment to the student of the mass communication and journalism as an project work research on RTI
- Maintain the RTI related materials, books and research documents in library or study center

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Note on Constitutional Guarantees of the Right to Information with Reference to Nepal

For the World Bank

by

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I. Introduction

The right to access information held by public bodies (the right to information) is now widely regarded as a fundamental human right. In international law, it is articulated through 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. The likely introduction of a federal system of government in the new constitution also raises important issues for the right to information.

This Note reviews the status of the right to information under international law, and under 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 lens of countries where they are in place.

II. 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 matter 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

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

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

held by public bodies. 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 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 non-disclosure 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:

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.

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 on 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. In November 2010, the Committee published draft General Comment No. 34 on Article 19 of the ICCPR, paragraph 18 of which unequivocally recognised the right to information as follows:

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 elaborating ten 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

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).

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.

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 bodies, and elaborates a number of key features of this right.

These authoritative statements have also 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 bodies. 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 respect 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 protect a legitimate interest recognised under the ACHR and be necessary in a democratic society to protect that interest.¹⁷

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.

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.

¹⁷ *Ibid.*, paras. 88-92.

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 bodies, instead arguing that the information in question in the case fell within the scope of the exceptions to this right.

III. Constitutional Protection for RTI in Other Countries

The constitutions of many countries recognise the right to access information held by public bodies 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 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, the right must be made explicit through interpretation of the general guarantee by courts in a manner that includes the right to information.

II.1 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 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.

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.

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, as defined by 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, 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 was 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, passed by the National Assembly of Pakistan on 8 April 2010, adding a new Article 19A, guaranteeing the right to information.

II.2 Legal Decisions

In a number of countries in Asia, leading courts have interpreted constitutional provisions 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

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.

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

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 there was a right to information inherent in the guarantee of freedom of expression in Article 21 of the Constitution, 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 bodies 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 bodies 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 developed country has recognised a constitutional right to information as part of the guarantee of freedom of expression.

IV. 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 under 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

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

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>.

(1) 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.

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 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 support a limitation on 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 to both demand *and* 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 bodies 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 of 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.

IV.1 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, providing potential options for this guarantee which are consistent with international standards might be useful to help decision-makers in formulating 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.

V. 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 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 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.

V.1 Centralised Right to Information Systems

In the Indian example, the federal law is binding on all individual states in the federation. This applies to the standards for disclosure of information and the

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

exceptions thereto, as well as to the main institutional arrangements, such as the setting up of State Information Commissions. 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 India 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. In this case, requesters presumably have the power to 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 this centralised approach. One is that it establishes a set of minimum standards regarding the right to information. As a result, all requesters receive 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. The same 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 Right to Information Act, 2007, already allows the 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, 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 may have different rules on 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. 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 vastly 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 system, they need to monitor every single state system separately, an often daunting task.

V.2 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 that state. 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 ministry of health 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 aspect, including as to the scope of bodies 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.²⁸ 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.

²⁸ The results are available at: www.checatuley.org.

It is possible to draw two key conclusions from these results. First, they suggest that there is a massive difference 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 2009-2010*²⁹ is based on filing the same or similar requests at the 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.³⁰

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 within the 30-day deadline or with a proper extension 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 levering 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).

²⁹ Available at:

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

³⁰ 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.

VI. 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 was 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.

Annex VI: Convention Photographs



Honorable President Dr. Ram Baran Yadav Inaugurating the Convention



Participants of the Convention



Chief Secretary Madhav Prasad Ghimire, Secretary Sushil Ghimire and international commentators during session on "Role of Government to Implement RTI"



Participants in Interaction



Some Views of breakout sessions



Honorable Speaker Mr. Suvash Chandar Nembang- Left and Chief Commissioner of National Information Commission- Middle and Chairperson of Freedom Forum, Taranath Dahal-Right with the closing speech

AnnexVII: Media Coverage

The Himalayan

March - 30 - 2011

SAARC meet on Right to Information concludes

Himalayan News Service
Kathmandu, March 29

The two-day convention on Right to Information concluded today with 16 dignitaries from SAARC countries forming a South Asian Group of Advisers.

The group comprises Chief Information Commissioners, Mohammad Zamir of Bangladesh, Binaya Kasaju of Nepal, Shailesh Singh of India, RTI activists, civil society members and media practitioners, who have vowed to work towards sharing information and experiences.

The group had met in Delhi in April last year and had considered developing transparency law, norms for information commission, capacity development of government officials, media and civil society organisations, raising aware-

ness on RTI laws and promoting media involvement in RTI implementation. India, Nepal and Bangladesh are among the member countries that have information commission offices.

"The group felt that RTI is one of the most effective tools for improvement of governance and greater transparency and accountability," read a statement issued by the group today.

Chief Commissioner of National Information Commission Binaya Kasaju said: "The challenges that we face are involving political parties and Non-Government Organisations in the RTI implementation."

गोरखापत्र

विक्रम संवत् १९५८ देखि निरन्तर प्रकाशित • गणतन्त्र नेपालको समावेशी राष्ट्रिय दैनिक

निरोगी सबै हुन् सबै हुन् सुखीया । सबै बेस देखुन् नहुन् कबै दुखीया ॥

साल चैत १६ गते बुधवार • चैत्र कृष्ण एकादशी • नेपाल संवत् १९३१ • पृष्ठ १२+६ • मूल्य पाँच रुपैयाँ • GORKHAPATRA DAILY, March 30, 2011 • Website : <http://www.gorkhapatra.com>

संविधानमा सूचनाको हक सुनिश्चित हुन्छ : सभामुख

गोरखापत्र समाचारदाता

काठमाडौं, चैत १५ गते । नेपालमा सूचनाको हकसम्बन्धी प्रथम राष्ट्रिय सम्मेलनले ४८ बुँदे काठमाडौं घोषणापत्र जारी गर्दै भ्रष्टाचार निवारण, जनसहभागिता तथा लोकतन्त्रलाई संस्थागत गर्ने प्रभावकारी साधनका रूपमा सूचनाको हकलाई प्रवर्द्धन गरिनुपर्नेमा जोड दिएको छ ।

सम्मेलनले मानवअधिकारको विश्वव्यापी घोषणापत्रको धारा १९ को परिच्छेद आत्मसात गर्दै सूचनाको हकसम्बन्धी ऐन २०६४ को तत्काल सशक्त कार्यान्वयनका लागि घोषणापत्र जारी गरिएको जनाइएको छ ।

सो घोषणापत्रले नेपालमा सूचनाको हकसम्बन्धी ऐनको सशक्त कार्यान्वयनका लागि सो कार्यमा संलग्न रहने र रहनुपर्ने नेपाल सरकारका विभिन्न निकायका साथै सामाजिक सङ्घसंस्था एवं सम्बद्ध सबै पक्षलाई क्षेत्रगत रूपमा आवश्यक सुभावसमेत दिएको छ ।

सूचनाको हकका क्षेत्रमा काम गर्ने दक्षिण एसियाली क्षेत्रका आठवटै देशका सक्रिय कार्यकर्ता, अभियन्ता एवं सूचना आयोगमा बसे आ-आफ्नो देशका सूचनाको हकसम्बन्धी कानूनको कार्यान्वयनका लागि विशेष योगदान पुर्‍याएका व्यक्तित्वहरूको सम्मेलनमा सहभागिता थियो ।

घोषणापत्रले सूचनाको हक प्रत्येक नागरिकको हो, राज्यले बिनाकुने बन्देज र बिनाकुने हस्तक्षेप प्राप्त गर्न पाउनु पर्छ भन्ने तथ्यलाई पनि आत्मसात गरेको छ ।

सूचनाको हकलाई प्रजातन्त्र र जनताका जीविकाको प्रवर्द्धन गर्ने साधनका रूपमा विकास गरिनुपर्नेमा घोषणापत्रले जोड दिएको छ ।

त्यसैगरी, सम्मेलनले प्रजातन्त्रको विश्वव्यापी

घोषणापत्र, सहस्राब्दी लक्ष्य एवं अभिव्यक्ति स्वतन्त्रताको अभिन्न अङ्गका रूपमा रहेको विषयलाई जोड दिने बिसबेन घोषणाप्रति ऐक्यबद्धता जनाएको छ ।

सम्मेलनले नेपाल सरकार, राष्ट्रिय सूचना आयोग, नागरिक समाज तथा गैरसरकारी संस्था, संविधान सभा (संसद), सञ्चार क्षेत्र, विश्वविद्यालय तथा शैक्षिक संस्थाहरू, राजनीतिक दललगायतलाई सुभाव पनि दिइएको छ ।

सो सम्मेलनको समापन गर्दै संविधानसभाका अध्यक्ष सुवास नेम्वाङले अब बन्ने नयाँ संविधानमा पनि सूचनाको हक सुनिश्चित गरिने बताउनुभयो ।

उहाँले सूचनाको हक प्रवर्द्धनप्रति संविधानसभाको संसद्को पूर्ण समर्थन र प्रतिबद्धता छ भन्दै घोषणापत्र जनताले अनुभूत गर्ने गरी व्यवहारमा पनि कार्यान्वयन हुने विश्वास व्यक्त गर्नुभयो ।

सम्मेलनको दोस्रो दिन मङ्गलबार विभिन्न विषयमा सञ्चारकर्मी एकराज पाठक, प्रणव भट्टराई, सञ्जीव चिमिरे र वासुदेव न्यौपानेले कार्यपत्र प्रस्तुत गर्नुभएको थियो ।

यसअघि मङ्गलबारै आयोजित पत्रकार सम्मेलनमा बोल्दै राष्ट्रिय सूचना आयोगका प्रमुख आयुक्त विनय कसजुले जनतालाई बलियो बनाउन सूचनाको हक महत्त्वपूर्ण छ भन्नुभयो ।

नेपालको सूचनाको हकसम्बन्धी कानूनले सरकारी कार्यालयलाई मात्र होइन, राजनीतिक दल, अन्तर्राष्ट्रिय तथा राष्ट्रिय गैरसरकारी संस्थालाई पनि समेटेको जानकारी प्रमुख आयुक्त कसजुले दिनुभयो ।

फ्रिडम फोरमका अध्यक्ष तारानाथ दाहालले दक्षिण एसियाका सबै देशमा

(बौकी पृष्ठ ४ मा)

संविधानमा सूचनाको...

तल्लो तहसम्म सूचनाको हकलाई प्रवाह गर्ने उद्देश्यले फोरमको स्थापना भएको र यो पहिलो राष्ट्रिय सम्मेलन हो भन्नुभयो । दक्षिण एसियाका आठ देश नेपाल, भारत, भुटान, बङ्गलादेश, पाकिस्तान, माल्दिभ्स, अफगानिस्तान र श्रीलङ्काका सूचनाको हकसम्बन्धी कार्य गर्ने सरकारी तथा गैरसरकारी संस्थाका दुई सयभन्दा बढीको सम्मेलनमा सहभागिता थियो ।

सूचना पाउनुपर्छ भन्ने मान्यताका साथ सन् १७६६ मा स्विडेनबाट सुरु भएको यो अभियानलाई विश्वका भन्डै एक सय देशले सूचनाको हकलाई स्वीकार गरिसकेका छन् । नेपालको अन्तरिम संविधान २०६३ को धारा २७ मा प्रत्येक नागरिकलाई आफ्नो वा सार्वजनिक सरोकारको सूचना माग्ने वा पाउने हकको ग्यारेन्टी गरेको छ । सो राष्ट्रिय सम्मेलनको चैत १४ गते राष्ट्रपति डा. रामवरण यादवले उद्घाटन गर्नुभएको थियो ।

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President Dr. Ram Baran Yadav inaugurating the first National Conference on Right to Information (RTI) at the capital on Monday.

(Photo: Natikaji/TRN)

Prez stresses people's right to information

By A Staff Reporter

Kathmandu, Mar. 28

President Dr. Ram Baran Yadav Monday said that establishment of press freedom and informational rights of the people was the foundation of democracy.

He said that democracy would be institutionalized by securing the right to information for all.

Inaugurating a national conference on Information Rights organized by Freedom Forum, he said that information and communication sectors were the soul of democracy and all other sectors should help in establishing the right to information.

He said that democratic norms and values would be saved by transparency and accountability and a robust

See Page 6

Prez stresses...

information system and added that responsible citizenry was only possible when the media were vibrant.

He said that the people's rights would be guaranteed through responsible media.

President Dr. Yadav said, "Good governance, transparency and corruption control are possible when we will succeed in establishing the information rights."

He stressed that the political parties should give the priority to include the provision of information rights in the new constitution to institutionalize democracy and human rights.

He also said that it was a duty of all citizens to institutionalize peace and democracy.

Deputy Prime Minister and Minister for Information and Communications Krishna Bahadur Mahara said that without establishing the right to information, the people would never secure their other rights.

He said that information was essential to establish a democratic nation and the government was committed to informational rights.

DPM Mahara said that the government had given a high priority to implement the Right to Information Act and added that political parties and civil society would have to play their roles to implement the act.

Chairman of Freedom Forum Tara Nath Dahal demanded that the government should give the priority to amend the act and added that democracy would not be saved without protecting the right to information of the people.

Dahal said lawyers, media people and experts of India, Pakistan, Bangladesh, the Maldives, Afghanistan, Bhutan and Nepal were attending the conference.

The conference will discuss the issues of information rights of the people and suggest ways to secure them.

More than two dozen working papers on several topics such as the role of governments in implementing constitutional and legal provisions, and the role of RTI in controlling corruption will be presented in the conference.

Meanwhile, Nepal Sadbhawana Party chairman Rajendra Mahato Monday met President Dr. Ram Baran Yadav at his office at Sheetal Niwas.

During the meeting, President Dr. Yadav inquired about the ongoing peace and constitution drafting processes.

According to sources, Mahato informed about the current political situation and discussed about the deadlock in the constitution drafting process.

बोलिन

रोमान्स छैन | १३

सन्त्रा

नेपालमा सर्वाधिक बिक्री हुने राष्ट्रिय दैनिक

कान्तिपुर

काठमाडौं, विराटनगर, भरतपुर र नेपालगञ्जबाट एकैसाथ प्रकाशित

२०६७ मंगलबार चैत्र कृष्णपक्ष दशमी

नेपाल संवत् १९२९

राष्ट्रिय संस्करण

KANTIPUR, Nepali National Daily, Tuesday, March 29, 2011

सूचनाको हकसम्बन्धी
राष्ट्रिय सम्मेलन
काठमाडौं (कास) - राष्ट्रपति
रामबरण यादवले सूचनाको हक
लोकतान्त्रिक शासन व्यवस्थाको
प्राणवायु भएको उल्लेख गर्दै
यसलाई व्यापक तहमा प्रयोग
गरिनुपर्ने बताएका छन् ।
सूचनाको हकसम्बन्धी पहिलो
राष्ट्रिय सम्मेलन उद्घाटन गर्दै
उनले 'सूचना संस्कृति विकासका
लागि सधैं पक्षबाट ठोस पहल
हनुपर्ने' बताए । समारोहमा
उपप्रधानमन्त्री कृष्णबहादुर महारले
सूचनाको हकसम्बन्धी एन
कार्यान्वयन गराउन सूचना दिन
नखोज्ने अवस्था अन्त्य गनुपर्ने
बताए । विश्व बैंकको सहयोगमा
फ्रिडम फोरमको संयोजनमा सुरु
सम्मेलनमा साके मल्लका सूचना
विज्ञहरू सहभागी छन् ।
सम्मेलनमा सूचनाको हकसम्बन्धी
भन्दा तीन दर्जन कार्यपत्र
प्रस्तुत गरिनेछ ।

THE RISING NEPAL

www.gorkhapatra.org.np

THE FIRST & THE FORMOST NATIONAL DAILY

Vol. XLVI No. 105 Kathmandu | March 30, 2011 | Chaitra 16, 2067 | Nepal Sambat 1131 Chhathwo Ekadashi, Wednesday | Pages 8 | Rs. 400



Chairman of the Constituent Assembly Subash Nemwang at the First National Convention on Right to Information held in the capital Tuesday. (Photo: Naitkaji/TREX)

THE KATHMANDU POST



March 29, 2011

Two-day right to info convention kicks off

POST REPORT

KATHMANDU, MARCH 28

PRESIDENT Dr Ram Baran Yadav on Monday inaugurated the first national convention on the right to information (RTI).

The event has been organised by Freedom Forum-Nepal in collaboration with the World Bank.

On the occasion, President Dr Yadav called on all to put pressure on authorities concerned to implement RTI in the country. He advocated building an information culture which would help the peace and constitution writing processes. He said the convention would contribute to strengthening democratic values.

Speaking on the occasion, Deputy Prime Minister and Minister for Information and

Communication Krishna Bahadur Mahara lauded the initiative and urged all concerned to aid the demand and supply of information in order to fully implement RTI in the country.

Freedom Forum Chairman Tara Nath Dahal said the convention would discuss extensively RTI issues in south Asia, share experiences and make concerted efforts to promote access to information, as a common agenda in the region.

As many as 200 delegates, including government representatives, members of civil society, media professionals, development activists, legal practitioners and rights activists are participating in the convention. Six working papers have been presented in the convention which will be over on Tuesday.

The Himalayan

himalayas.com

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Kathmandu, Tuesday, March 29, 2011, Chaitra 15, 2067, Nepal Sambat 1131

96 per cent public offices sans information officers

Himalayan News Services
Kathmandu, March 28

It has come to light that 96 per cent government offices have not appointed Information Officers (IO) as provisioned by the Right to Information Act enforced in 2007.

According to the Act, every office should appoint IOs to provide and manage information for public dissemination.

A study conducted by National Vigilance Centre made public today at a convention on Right to Information organised by Freedom Forum here in the capital revealed that there are only 351 IOs for 9,000 public offices.

Twelve districts do not have IOs and even diplomatic missions except for Moscow, UN and Bangkok lack IOs.

The lack of IOs at public institutions speaks volumes of the right to information situation. The Right to Information concept was meant to deliver good governance and accountability of people in power, according to Sher Bahadur Dhungana, spokesperson, Na-

Model Call Centre

KATHMANDU: A model e-Governance of a call centre in Bihar pursuing the Right to Information, won the hearts of participants at a convention here in Kathmandu on Monday. The call centre Janakari, that aims to ensure the right to information and good governance began in 2007 and over 40 per cent of the population, mostly illiterate and people with limited means get services with just a phone call. Chief Information Commissioner of Bihar AK Chaudhary presented the success story of Janakari, which won Na-

tionation Sushil Ghimire said the culture of accountability and transparency in information is lacking in government services. "Either IOs are not appointed or the officers are chosen from staff who are capable of hiding information. This is another reality at public offices," said Ghimire. Chief Information Com-

Bangladesh Muhammad Zamir, Central Information Commissioner of India Shailesh Gandhi, Adviser of Civil Service Commissioner of Afghanistan, Rahela Siddiqui, Pakistan's former Minister Ahsan Iqbal and other dignitaries of SAARC countries shared their views and RTI situations in their countries. President Dr Ram Baran

गोरखापत्र

निरोगी सबै हुन् सबै हुन् सुखीया । सबै वेस देखुन् नहुन् सबै दुखीया ॥

चैत १५ गते भदौराखार • चित्र कृष्ण दर्शमी • नेपाल संवत् १९३१ • पृष्ठ १२५८ • मूल्य पाँच रुपैयाँ • GORKHAPATRA DAILY, March 29, 2011 • Website: http://www.gor

लोकतन्त्रको प्राणवायु सूचना संस्कृति : राष्ट्रपति

काठमाडौं, चैत १५ गते । राष्ट्रपति डा. रामवरण यादवले फ्रिडम फोरम नेपालद्वारा आयोजित सूचनाको हकसम्बन्धी प्रथम राष्ट्रिय सम्मेलनको सोमबार राजधानीमा एक समारोहका बीच उद्घाटन गर्नुभयो ।

सो अवसरमा बोल्दै राष्ट्रपति डा. यादवले लोकतन्त्रको बलियो आधार स्वतन्त्र प्रेस हो र लोकतन्त्र अनुकूलको सूचना संस्कृति निर्माण गर्न सम्बद्ध सबै पक्षको सहयोग आवश्यक रहेकाले लोकतन्त्रको प्राणवायु सूचना संस्कृति सशक्त भएर यसको उपयोग सबैले गर्न पाउनुपर्छ भन्नुभयो ।

राज्यव्यवस्थाप्रति जनताको विश्वास बढाउन सार्वजनिक निकायलाई नागरिकप्रति जिम्मेवार गराउन सूचनामा आमनागरिकको पहुँच सहज र सरल बनाएर लोकतन्त्रको शोखत मान्यताअनुरूप अघि बढनुपर्ने धारणा राष्ट्रपति डा. यादवले व्यक्त गर्नुभयो ।

उहाँले सूचनाको सहज पहुँच, अधिकार एवं उपयोगबाट मात्र स्वस्थ जनमत निर्माण

हुने र स्वस्थ जनमत नै राज्यशक्तिको स्रोत हुने बताउनुभयो ।

नागरिकले राज्यबाट पाउने सेवासुविधालाई गुणस्तरीय बनाएर त्यसको जानकारी प्रभावकारी रूपमा दिएर कामको पारदर्शिता, सुशासन र भ्रष्टाचार हटाउन सूचनाको हक आवश्यक रहेको भन्दै राष्ट्रपति डा. यादवले यससम्बन्धी कानून कार्यान्वयन प्रभावकारी नभए कानूनको लक्ष्य प्राप्त हुन सक्दैन भन्नुभयो ।

लोकतन्त्र र मानवअधिकारको विश्वव्यापी मान्यताअनुरूप सविधानले सूचनाको हक मौलिक हकका रूपमा उल्लेख गरेको र सूचनाको हकसम्बन्धी कानून पनि निर्माण भएको प्रसङ्ग उल्लेख गर्दै राष्ट्रपति डा. यादवले देशमा शान्ति, अमनचैन कायम गरी प्राप्त उपलब्धिहरू संस्थागत गर्नुपर्ने धारणा राख्नुभयो ।

उपप्रधानमन्त्री एवं सूचना तथा सञ्चारमन्त्री कृष्णबहादुर महराले जनतालाई

व्यावहारिक रूपमै राज्यको मालिक बनाउने हो र सबै प्रकारका अधिकार सहज ढङ्गले उपभोग गर्न पाउनुपर्छ भन्ने हो भने राज्यका सबै निकायका सूचनामाथि नागरिकको पहुँच स्थापित गरिनेपर्छ भन्नुभयो ।

राज्यका सूचनाको वास्तविक मालिक नागरिकलाई बनाइएको राज्य नै लोकतान्त्रिक राज्य हुनसक्छ भन्दै उपप्रधानमन्त्री महराले अन्तरिम सविधानले हरेक नागरिकलाई आफ्नो वा सार्वजनिक सरोकारको सूचना माग्न पाउने हकको ग्यारान्टी गरेको बताउनुभयो ।

सूचनाको हकसम्बन्धी ऐन एवं नियमावलीको निर्माण र सूचना आयोगको स्थापना भइसकेको सन्दर्भ उल्लेख गर्दै उपप्रधानमन्त्री महराले सूचनाको हकसम्बन्धी ऐन पूर्ण रूपमा कार्यान्वयन गराउनु सरकारको प्राथमिकता रहेको र यसका लागि सरकार, राजनीतिक दल, सङ्घसंस्था सबैबाट ऐन कार्यान्वयनको

(बाँकी पृष्ठ ४ मा)

लोकतन्त्रको प्राणवायु...

सामा सङ्कल्पको लक्ष्य रहेको औँल्याउनुभयो ।

उहाँले ऐनसँग बाटिएका कानूनहरूको खोरोजी, ऐनमा अग्रग रहेको सुनुलाई पूर्णता दिने र सूचना सार्वजनिक गर्ने कार्यक्रममा सरलता ल्याउनुपर्नेमा जोड दिनुभयो ।

आयोगक संस्था फ्रिडम फोरमका अध्यक्ष तारनाथ दाहालले सूचनाको हक लोकतन्त्रको प्राणवायु भएकाले जनतालाई सशक्त बनाउने सबैभन्दा बलियो हतियार भएकोले सूचना संस्कृतिलाई आमजनतासम्म पुर्याउनु आवश्यक छ भन्नुभयो ।

सीमान्तकृत र गरिब जनतासम्म सार्वजनिक निकायले हिने सूचनाको पहुँच सहज बनाएर निर्णयप्रक्रियामा जस्तैह भागिता बढाउनसक्ने मात्र लोकतन्त्र बलियो हुनसक्छ भन्दै अध्यक्ष दाहालले यो पत्रकारको मात्र नभएर लोकतान्त्रिक संस्कृतिमा आधारित जनमतसंगत गर्ने सबैको सामा एजेन्डा हो भन्नुभयो ।

तुङ्गदिने सो सम्मेलनमा दक्षिण एसियाली देश भारत, श्रीलङ्का, पाकिस्तान, बङ्गलादेश, माल्दिव्स, अफगानिस्तान, भुटान र नेपालका सूचनाको हकका क्षेत्रमा कार्यरत विशेषज्ञ, वकालतकर्ता र उच्च अधिकारी गरी १५० जनाको सहभागिता छ ।

कार्यक्रममा सूचनाको हक कार्यान्वयनमा सरकारको भूमिका, सूचनाको हकको संवैधानिक एवं कानुनी सन्दर्भ, त्यसको प्रभावकारी कार्यान्वयनका लागि नागरिक समाज, सरकार र राजनीतिक पार्टीबीचको सहकार्य, सञ्चारमाध्यमको भूमिका तथा भ्रष्टाचार नियन्त्रणमा सूचनाको हकको भूमिका विषयमा तीन दर्जन कार्यपत्र प्रस्तुत हुनेछ ।

सम्मेलनले सूचनाको हक कार्यान्वयनलाई प्रभावकारी बनाउन राष्ट्रिय घोषणापत्र जारी गर्नुका साथै सो विषयका विद्वद्हरूको सल्लाहकार समितिको बैठक पनि काठमाडौंमा बस्ने अध्यक्ष तारनाथ दाहालले बताउनुभयो ।

सूचनाको हक कार्यान्वयनको वर्तमान अवस्था मूल्याङ्कन गर्ने त्यसमा गर्नुपर्ने सुधारको बहुआयामीक सोभाव तयार गर्ने उद्देश्यले आयोजित सो सम्मेलनले सूचनाको माग र आपूर्ति दुवै पक्षलाई सबल र संक्षम बनाउनका लागि आवश्यक रणनीति तय गर्ने बताइएको छ ।

साथै सूचनाको हक कार्यान्वयनका लागि आवश्यक कानुनी संरचना निर्माणका लागि सम्मेलनले सुझाव दिनेछ । सम्मेलनको पहिलो सत्रमा भारतीय सूचना आयोगका प्रथम अध्यक्ष बाजात ढिबुल्लाहाले भारतमा सूचनाको हकसम्बन्धी पाँचवर्षे अनुभव सुनाउँदै यसले जनतालाई सशक्तिकरण गराउँदै राज्य र राज्यका निकायलाई पनि बलियो बनाउने धारणा राख्नुभयो ।

नेपालस्थित विश्व बैङ्कका निदेशक सुरान गोलडमर्कले लोकतन्त्रलाई बलियो बनाउन सूचना संस्कृतिको विकास आवश्यक छ भन्नुभयो ।

वरिष्ठ पत्रकार कनकमणि दीक्षितले गरिब र सीमान्तकृत जनतासम्म सूचनाको हकको वितरण बढाउँदै प्रशासन र प्रेस स्वतन्त्रता बलियो बनाउन यो ऐनको कार्यान्वयन प्रभावकारी बनाउनुपर्छ भन्नुभयो । रासस



राष्ट्रपति डा. रामवरण यादव सूचनाको हकसम्बन्धी प्रथम राष्ट्रिय सम्मेलनको सोमबार राजधानीमा उदघाटन गर्नुहुँदै ।
तस्विर : नातिकाजी/गोरखापत्र

‘सर्वस्वीकार्य संविधानले मात्र विकास’

कारोबार संवाददाता

काठमाडौं, १४ चैत

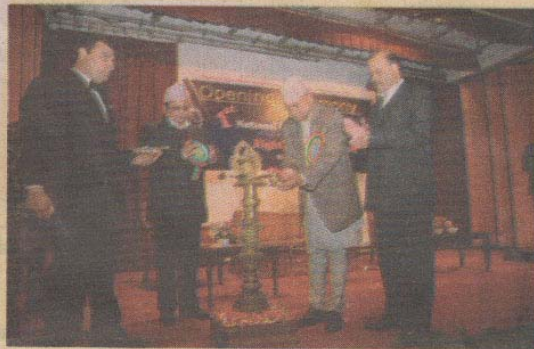
राष्ट्रपति डा. रामवरण यादवले दुईतिहाइबाट संविधान जारी भए त्यस्तो संविधान ‘सर्वस्वीकार्य’ हुन नसक्ने बताएका छन्। शान्ति प्रक्रिया र संविधान निर्माण कार्यको सुरुवात आपसी सहमति र सहकार्यबाट भएको स्मरण गराउँदै राष्ट्रपति यादवले राष्ट्रिय सहमति बेगर्को संविधान ‘टिकाउ’ नहुने दाबी गरे। “राष्ट्रिय सहमतिका आधारमा संविधान जारी भएमात्र त्यस्तो संविधान ‘टिकाउ’ र ‘सर्वस्वीकार्य’ हुन्छ,” सोमबार सद्भावना पार्टीका अध्यक्ष राजेन्द्र महतोलाई राष्ट्रपति भवन शीतलनिवासमा बोलाई राष्ट्रपति यादवले भने, “बहुमतीय आधारमा संविधान जारी भए त्यसले समस्या समाधान गर्नभन्दा थप जटिलता ल्याउन सक्छ।”

राष्ट्रपति यादवले बहुमतीय संविधान जारी भएको दिनबाटै असहमतिका स्वरहरू सडकमा आउन सक्ने भन्दै दलहरूलाई यसप्रति गम्भीर बन्न सुझाव दिए। “उहाँ (राष्ट्रपति)ले बहुमतीय संविधान बने त्यसको भोलिपल्टदेखि नै सडकमा आन्दोलन हुन सक्ने चिन्ता व्यक्त गर्नुभयो,” राष्ट्रपतिको भनाइ उद्धृत गर्दै महतोले भने। राष्ट्रपतिसँगको भेटपछि महतोले ‘माओवादी-एमाले गठबन्धन’ आफूवुसी अघि बढ्न खोजे संविधानसभाबाट राजीनामा दिएर सशक्त आन्दोलनमा उत्रने

चेतावनी दिए।

“माओवादी-एमाले गठबन्धन प्रजातान्त्रिक शक्तिलाई उपेक्षा गरेर अघि बढ्ने सोचमा देखिएको छ,” महतोले भने, “यदि ‘वामपन्थी’ हरू प्रजातान्त्रिक शक्तिलाई ‘पेलेरे’ जान्छु भन्ने सोचमा छन् भने हामी (सबै प्रजातान्त्रिक शक्ति) संविधानसभाबाट राजीनामा दिएर लोकतन्त्र बचाउनका लागि आन्दोलनमा होमिन्छौं।” महतोले राष्ट्रपतिसँगको भेटमा ‘माओवादी-एमाले समीकरण’ लोकतान्त्रिक संविधान निर्माणका लागि ‘चुनौती’ भएको बताए।

राष्ट्रपतिसँगको छलफलमा सहभागी नेपा: राष्ट्रिय पार्टीका अध्यक्ष डा. केशवमान शाक्यले दलीय स्वार्थ त्यागेर शान्ति प्रक्रिया र संविधान निर्माण कार्यमा लाग्न राष्ट्रपतिले सुझाव दिएको बताए। राष्ट्रपतिका प्रेससल्लाहकार राजेन्द्र दाहालले शान्ति प्रक्रिया र संविधान निर्माणमा भएको प्रगतिबारे दलहरूको धारणा बुझ्ने क्रममा राष्ट्रपतिले छलफल गरेको बताए। “जेठ १४ नजिक आइसक्यो, शान्ति प्रक्रिया र संविधान निर्माणमा के प्रगती भइरहेको भनेर राष्ट्रपतिले जिज्ञासा राख्नुभयो,” महतोसँगको छलफलपछि राष्ट्रपतिका प्रेस सल्लाहकार दाहालले कारोबारसँग भने। राष्ट्रपतिले जारी राखेको राजनीतिक भेटघाटप्रति प्रधानमन्त्री भलनाथ खनालले असन्तुष्टि जनाएको चर्चा चलि रहेका वेला



दाहालले भेटघाटप्रति असन्तुष्टि जनाउनुपर्ने कुनै कारण नभएको बताए। “प्रधानमन्त्रीले भेटघाटप्रति असन्तुष्टि जनाउनुभएको भन्ने कुनै जानकारी हामीलाई आएको छैन,” उनले भने, “राष्ट्रपतिले प्रधानमन्त्रीबाटै भेटघाट प्रक्रिया सुरु गर्नुभएको हो, यो भेटघाट र छलफल शान्ति प्रक्रिया र संविधान निर्माण कार्यलाई ‘सहजीकरण’ गर्नका लागि हो।” राष्ट्रपतिले यसअघि प्रधानमन्त्री तथा एमाले अध्यक्ष भलनाथ खनाल, माओवादी अध्यक्ष पुष्पकमल दाहाल, कांग्रेस सभापति सुशील कोइराला, राप्रपा अध्यक्ष पशुपतिशमशेर राणा, राजपा अध्यक्ष सूर्यबहादुर थापा लगायतसँग भेट गरिसकेका छन्।

सूचनाको हकलाई बलियो बनाउनुपर्ने
यसैबीच राष्ट्रपति डा. रामवरण यादवले लोकतन्त्रको मेरुदण्ड भनेकै सूचनाको हक भएकाले राज्यले सूचनाको हकलाई मजबुत

बनाउनुपर्ने धारणा राखेका छन्।

फ्रिडम फोरमको आयोजनामा राजधानीमा सोमबारदेखि सुरु सूचनाको हकसम्बन्धी राष्ट्रिय कार्यशाला गोष्ठीको उद्घाटन गर्दै राष्ट्रपति यादवले सूचनाको हकलाई बलियो बनाउनुपर्ने धारणा राखेका हुन्।

उनले सञ्चारमाध्यमको विकाससँगै लोकतन्त्रको जन्म भएको बताउँदै नेपालको परिवर्तनमा सूचना क्षेत्रको उल्लेखनीय भूमिका रहेको स्मरण गरे। मुलुक संक्रमणकालीन अवस्थामा गुञ्जिरहेका कारण परिवर्तन संस्थागत गर्नका लागि सञ्चारमाध्यमको उत्तिकै भूमिका रहेको राष्ट्रपति यादवको भनाइ थियो।

कार्यक्रममा सूचना तथा सञ्चारमन्त्री कृष्णबहादुर महाराले सूचनाको हक सुरक्षित गर्नका लागि सरकारले कुनै पनि कसर बाँकी नराख्ने प्रतिबद्धता जनाएका थिए। ●

राष्ट्रपतिले सोधे 'कुनै दलले संविधान च्यातिदिए के हुन्छ ?'

काठमाडौं, चैत १४ (नागरिक)- राष्ट्रपति रामवरण यादवले राजनीतिक सहभागिताविना दुई तिहाइले संविधान जारी गरे त्यो दिगो नहुने दोहोर्‍याउँदै त्यसका लागि सहमति जुटाउन दलहरूलाई आग्रह गरेका छन्। प्राविधिक रूपमा संविधानसभामा दुई तिहाइ पुर्‍याएर संविधान जारी गर्न सकिने भए पनि त्यसलाई दिगो बनाउन राष्ट्रिय सहमति अनिवार्य रहेको उनले सुभाए।

'शान्ति र संविधान दुवै लगाउन सहमति चाहिन्छ,' सोमबार शितल निवासमा नौना कोइरालाको स्मृतिमा स्थापित पत्रकारिता पुरस्कार वितरण गर्न आयोजित कार्यक्रममा राष्ट्रपति यादवले दलहरूसँग प्रश्न गरे, 'दुई तिहाइ बहुमतले संविधान जारी गरिए पनि कुनै दलले त्यो च्यातिदिए के हुन्छ ?'

राष्ट्रपतिले अन्तिम समयमा हतारहतार सहमति नगर्नसमेत दलहरूलाई सुभाए। 'समय बितिसकेपछि रातिराति निर्णय गर्दा अनेक चलखेल हुन सक्छ,' उनले भने, 'समय छँदै सहमतिमा पुग्न राम्रो हुन्छ।'

संविधानसभाको थप म्याद पनि अब दुई महिनामात्र बाँकी रहेको भन्दै राष्ट्रपति यादवले २०६८ जेठ १४ पछि देशमा के हुन्छ भन्नेबारे त्यसअघि नै जनतालाई सुसूचित गराउनुपर्ने पनि बताए।

उनले आफूले विभिन्न दलका नेतालाई भेटेर शान्ति र संविधानलाई विगतका सहमतिमा टेकेर पूर्णता दिन सुभाए दिएको जनाए। उनले जनताको लामो सङ्घर्ष र बलिदानबाट प्राप्त उपलब्धिहरूलाई संस्थागत गर्न नेताहरूलाई सुभाए दिएको पनि बताए। पछिल्लो समय राष्ट्रपति यादवले पालैपालो विभिन्न दलका नेतालाई भेट्दै आएका छन्।

राष्ट्रपति यादवले आगामी १५ दिनभित्र माओवादी लडाकु समायोजन प्रक्रियालाई पूर्णता कसरी दिने भन्नेबारे खाका आउनुपर्ने र वैशाख २० भित्र नयाँ संविधान निर्माण कहाँ पुग्यो भन्नेबारे जनतामा स्पष्ट विवरण दिनुपर्नेसमेत बताए।

यसैबीच, फ्रिडम फोरम नेपालले सोमबार राजधानीमा आयोजना गरेको सूचनाको हकसम्बन्धी प्रथम राष्ट्रिय सम्मेलनको उद्घाटन गर्दै राष्ट्रपति यादवले लोकतन्त्रको बलियो आधार स्वतन्त्र प्रेस भएको बताउँदै 'लोकतन्त्र अनुकूलको सूचना संस्कृतिको निर्माण गर्न सबै पक्षको सहयोग आवश्यक रहेको'

'अनावश्यक सक्रिय नहुन' राष्ट्रपतिलाई सुभाए

चितवन, चैत १४ (नागरिक)- कांग्रेस नेता नरहरि आचार्यले संविधान निर्माणबारे दलका नेताहरूसँग राष्ट्रपतिको परामर्शप्रति असन्तुष्टि व्यक्त गर्दै 'अनावश्यक सक्रिय नहुन' सुभाए दिएका छन्। 'संविधानसभापछि मेरो पालो भन्ने भ्रम राष्ट्रपतिमा परेको हुन सक्छ,' सोमबार नारायणगढमा कार्यकर्ताबीच आचार्यले भने, 'अनावश्यक सक्रिय हुन खोजे त्यो कांग्रेसलाई मान्य हुँदैन।'

संविधानसभानरहेपनि अन्य जननिर्वाचित निकाय रहने उनले बताए। 'संविधानसभापछि राष्ट्रपति मात्र होइन, जननिर्वाचित अन्य निकाय पनि हुन्छन्, प्रधानमन्त्री हुन्छन्, सरकार हुन्छ, मेरो पालो भनेर राष्ट्रपतिले मनलाग्दी गर्न पाउँदैनन्,' आचार्यले भने।

संवैधानिक दायराभित्र रहेर काम गरे राष्ट्रपति आलोचित हुने उनको भनाइ छ। 'सुभाए-सल्लाह दिए पनि राजनीतिक रूपमा आफैं सक्रिय रहेजस्तो प्रवृत्ति राष्ट्रपतिले देखाउन खोज्नुहुन्छ,' उनले भने। पहिले एकीकृत माओवादी अध्यक्ष पुष्पकमल दाहाल र एमाले नेताले पनि यस्तै गल्ती गरेको औल्याउँदै आचार्यले भने, 'राष्ट्रपति यसप्रति सचेत रहनुपर्छ।'

बताए। 'लोकतन्त्रको प्राणवायुको रूपमा रहेको सूचना संस्कृतिको उपयोग सबैले गर्न पाउनुपर्छ,' उनले भने।

राज्यव्यवस्थाप्रति जनताको विश्वास बढाउन सार्वजनिक निकायलाई नागरिकप्रति जिम्मेवार गराउन सूचनामा आम नागरिकको पहुँच सहज र सरल बनाएर लोकतन्त्रको शाश्वत मान्यताअनुरूप अघि बढ्नुपर्ने उनले बताए।