

BHUTAN DRAFT RTI BILL 2012

SUMMARY OF COMMENTS

Enclosed are two tables that give detailed comments and suggestions on the draft RTI bill, for which the Government of Bhutan has sought comments from the public. The first table gives clause by clause comments and suggestions. The second table analyses the bill in terms of generally accepted criteria for evaluating a transparency law.

Given below is a summary of the comments, highlighting the main strengths and weaknesses of the draft RTI Bill of 2012.

1. Generally speaking, a transparency law can be evaluated on the basis of seven critical tests:
 - a. Is it comprehensive in its coverage of authorities, institutions, organizations, and functionaries?
 - b. Does it have the minimum of exclusions that are specific, unambiguous, and based on demonstrable harm to public interest?
 - c. Does it prescribe time lines that are reasonable?
 - d. Does it provide for adequate, appropriate and empowered institutional structures?
 - e. Does it prescribe adequate and appropriate penalties for violation of its provisions?
 - f. Is it user friendly, especially for the weakest segments of the society?
 - g. Does it promote *suo moto* (proactive) disclosures?

2. **Comprehensiveness:** The 2012 bill is reasonably comprehensive and covers all agencies of the government and all other agencies that are controlled or substantially funded by the government. However, it does not explicitly allow access to information from private (non-funded by government) bodies which might have an impact on public welfare. [This is an improvement from the 2009 draft, when many agencies and institutions were excluded]

3. **Exclusions:** Unfortunately, this bill has many exceptions that go beyond what is globally recognized as best practice. It seeks to exempt most deliberative information (s. 32(3)); Information received in confidence from any organization (s.32(4)); Information relating to ongoing legal proceeding of a pending case (32(6)); Information related to a third party (s. 33). It also exempts all information that “substantially and unreasonably” diverts resources or interferes with performance (s. 21). Though s. 2 specifies that “The provisions of existing laws and regulations that are inconsistent with this Act are hereby repealed”, however subsequent sections

(9(15) and 31(2)) seem to contradict this and give primacy to exemptions in other laws. Perhaps most problematic is s.31 which states that information can be denied if “ The overall harm caused by release of the information would outweigh the public interest in having such information disclosed.” [This was not in the 2009 draft]

4. **Time lines:** Though the initial time line is 30 days with 48 hours for life and liberty cases. However, it goes on to allow an extension to 45 days and again to 90 days under special circumstances. Ninety days seems excessive. It also prescribes thirty days for appeal to local courts/National Tribunal and ten days to the High Court. These seem to be inadequate.
5. **Institutional Structures:** The bill prescribes adequate institutional structures for accessing information (Information and media officers (IMOs) in each office). It also provides for independent appellate authorities in the form of local courts (decentralized) and a National Tribunal (centralized). It provides for a second appeal to the High Court.
6. **Penalties:** Though it talks about “penalties provided under this act” (s. 45(2)), no penalties are actually provided in the bill.
7. **User Friendly:** It is mainly a user friendly bill, especially as it provides for assistance by IMOs to reduce oral requests to writing, assisting differently abled applicants, automatically transferring applications to the correct public authority, and provides for local appellate authorities in the form of local courts. However, it also mandates prescribed forms for seeking information (s. 14(1)), and allows each public authority to make its own rules (s. 53). These would make the law difficult to use for the poor, semi-literate and rural populations.
8. **Proactive Disclosures:** There is a comprehensive list of information that needs to be proactively disclosed (s. 9). However, the bill does not mandate that responsibility should be fixed for compliance with s. 9 and penalties are impossible if there is non-compliance.

Conclusion

As long as the exclusions list is as extensive as it is, it is unlikely that this bill, if it becomes law, would be effective. Therefore, at the very minimum, sections 21, 31, 32 (3) and 32(6) must be deleted.

DRAFT RTI BILL 1012: CLAUSE BY CLAUSE COMMENTS

Draft Right to Information Bill, 2012	Comments and Suggestions
PREAMBLE	
Whereas, it upholds the principles of gross national happiness, it is essential to ensure an informed citizenry, to secure access to information held by public authorities, and to promote governmental transparency and accountability; and	
Whereas, the Constitution guarantees the right to information in Article 7, Section 3;	
The Parliament of Bhutan at its ____ Session, on the ____ Day of the ____ Month of the ____ Year of the Bhutanese Calendar, corresponding to the ____ Day of ____ 20__, hereby enacts the Right to Information Act, as follows:	
CHAPTER 1 PRELIMINARY Short Title and Commencement	
1. This Act shall:	
1. Be called the "Right to Information Act";	
2. Extend to the all citizens of Bhutan; and	Should consider extending the RTI to even non-citizens, as is the case in many countries.
3. Come into force on the ____ Day of the ____ Month of the ____ Year of the Bhutanese Calendar, corresponding to the ____ Day of ____ 20__.	
Repeal	
2. The provisions of existing laws and regulations that are inconsistent with this Act are hereby repealed.	

Non-Applicability of this Act	
3. This Act shall not apply to:	
1. certain official information which shall be required under this Act or any other existing Act, to be made available to the public without restriction;	
2. any documents serves a governmental purpose that, by its intrinsic nature, requires that it be made available to the public without restriction;	
3. any library materials exclusively for public use or consists of museum materials preserved solely for public reference or exhibition; or	
4. published material or material available to the public.	It should be specified that this Act shall not apply to only such published material that is readily available to the public at a reasonable cost. Otherwise, even out of print/stock documens would get exempted, and documents might purposely be restrictively published and/or exorbitantly priced in order to discourage access.
Definitions	
4. In this Act:	
1. "Exempt official information" means official information that, under chapter 5 of this Act, is exempt from the right to official information requirements of this Act;	
2. "Information" means information in documentary, other recorded form or in any other form of technology, whether stored, maintained or utilized as writing, drawing, electronic media, photographic image, film image, video image, sound transcription, physical object, or otherwise, including administrative decision records, documents, memoranda, e-mails,	

opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, and models;	
3. "Official information" means information in the possession, custody or control of a public authority, including information to which a public authority has access in connection with its functions;	The highlighted portion needs to be made more explicit and should include, for example, information that a public authority is authorised, under any other law or regulation, to access from a private body or any other body that is not on its own a public authority.
4. "Public authority" means a ministry, a government department, an executive agency, a nationalized industry, a public corporation or other entity established by law, including a corporate body or agency owned, controlled or substantially financed by the Government and a non-government organization substantially financed, directly or indirectly, by the Government; and	The term "substantially financed" should be defined in the law, perhaps to include all such inputs, monetary or otherwise, about whom there is a requirement to maintain and/or submit a statement of accounts or a certificate of utilisation, and/or where there is a restriction imposed by the financing public authority on its use and/or disposal.
5. "third party" means a person or organization other than the citizen making a request for information and includes a public authority.	Specify that it only includes those public authorities from whom information is not being sought.
5. "Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:	Also add, in keeping with 4(3) above: "(5) access information that can be accessed by the public authority from any other body or agency under any other law or regulation".
1. Inspect works, documents, records;	
2. Take notes, extract or certify copies of documents or records;	Should be "Take notes, extracts, or <u>certified</u> copies...."
3. Take certified samples of material; and	
4. Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic modes.	
CHAPTER 2 RIGHT TO INFORMATION AND ORGANIZATIONAL RESPONSIBILITY Right to Information	
6. Except as provided in this Act, every	Strike out the highlighted portion and

<p>citizen shall have an enforceable right to official information in the possession, custody or control of any public authority of Bhutan.</p>	<p>replace by “as defined in 4(3) above”.</p>
<p>Responsibility of the Head of the Public Authority</p>	
<p>7. The general supervision and ultimate responsibility for the functions of a public authority under this Act shall vest in the head of the public authority, who shall act through Information Media Officers (IMOs).</p>	
<p>Manner and Form of Maintenance of Official Information</p>	
<p>8. Regardless of format, each public authority shall maintain its official information in an organized fashion, duly catalogued and indexed, in a manner that promotes the right to information under this Act. To the greatest extent possible, each public authority shall:</p>	
<p>1. Maintain its official information in a variety of easily reproducible formats; and;</p>	
<p>2. Ensure that official information in response to a request under this Act is furnished.</p>	
<p>Organizational and Operational Statement</p>	
<p>9. To facilitate public access to official information, each public authority shall make available to the public a detailed organizational and operational statement that describes:</p>	
<p>1. Its structural organization and functions;</p>	
<p>2. The procedures followed in its decision making;</p>	
<p>3. The powers, duties, and responsibilities of its officials and employees;</p>	
<p>4. The norms for the discharge of its functions;</p>	
<p>5. The laws, rules, regulations,</p>	

instructions, manuals and records used in discharging its functions;	
6. The categories of official information held by it or under its control, including details as to formats in which official information is maintained;	
7. Any arrangement that exists for consultation with or representation by, members of the public in relation to the formulation or implementation of its policy;	Replace the highlighted portion with “the discharge of its functions and obligations”.
8. The boards, councils, committees and other bodies consisting of two or more persons constituted for the purpose of advice to the public authority, together with a statement for each such body, as to whether meetings are open to the public and whether minutes of meetings are accessible to the public;	
9. A directory of its officials and employees, including specific contact information of its s;	Sentence incomplete. Perhaps need to add “IMOs” at the end.
10. The budget of each of its component entities, indicating the particulars of all plans, proposed expenditures, and reports on disbursements made;	Add “and actual expenditure incurred” after “disbursements made”. This would allow a greater level of public accountability.
11. The manner of execution of its subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;	Add “and dispersed/expended” after allocated.
12. Particulars of recipients of concessions, permits and authorizations granted by it;	
13. Facilities and resources for obtaining official information with respect to the public authority, including the working hours of any library or reading room maintained for public use;	
14. Matters relating to important policies of the public authority that affect the public; and	

<p>15. Such other information which are not classified or exempted from being disclosed under this Act or any other laws.</p>	<p>The highlighted portion seems to contradict section 2 of the Bill. Should be deleted.</p>
<p>Cost-effectiveness Requirement</p>	
<p>10. In carrying out its obligations under this Act, each public authority shall provide for the greatest possible public access to official information, taking into consideration the need to provide essential Government services at the lowest reasonable cost.</p>	
<p>Updating of Organizational and Operational Statement</p>	
<p>11. Each public authority shall update its organizational and operational statement, as described in section 9 of this Act, at least annually, but more frequently, if greater frequency is determined to be necessary by the head of the public authority.</p>	
<p>Special Effective Dates</p>	
<p>12. The first organizational and operational statement, under section 9 of this Act, shall be made available no later than four months after the date on which this Act comes into force under section 1(3) of this Act.</p>	
<p>13. Every public authority shall, within three months of the enactment of this Act, designate as many IMOs in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.</p>	<p>Needs to be specified whether this would be an additional responsibility for existing staff or new staff would be appointed. The level also needs to be specified, ideally they should be gazetted offices or, where there are no gazetted officers, than the senior most non-gazetted official available.</p>
<p>CHAPTER 3 REQUEST FOR OFFICIAL INFORMATION Request for Official Information</p>	
<p>14. A request for official information shall be</p>	<p>Add "IMO" after "..in writing to the.."</p>

<p>submitted in writing to the of the appropriate public authority. The written request shall:</p>	
<p>1. Be submitted in such form and manner as the public authority may prescribe; and</p>	<p>Either delete this or at least specify that such a format would only be recommendatory and not compulsory and no application would be rejected if it is not in the recommended format. Otherwise, the process would become very user unfriendly for the poor and semiliterate person, especially in the rural areas, and promote their dependence of lawyers and paid middle-men and women.</p>
<p>2. Describe the official information with sufficient particularity to permit its identification.</p>	
<p>15. Where such request cannot be made in writing, the IMO shall render all reasonable assistance to the person making the request orally, to facilitate the same in writing.</p>	
<p>No Reason or Personal Information required for Request</p>	
<p>16. A person who makes a request under section 14 of this Act shall not be required to state a reason for the request or to provide personal details, other than contact data, unless the request concerns information deemed to be of a private or personal nature, in which case the individual making the request must provide documentation to demonstrate identity.</p>	<p>The highlighted portion needs to be made less ambiguous. Perhaps it can be replaced by “Where persons seek information concerning themselves that is such that giving it to another person might violate their privacy, as specified in section 32(12), then they may be asked to establish their identity to ensure that they are entitled to access such information”.</p>

Special Assistance	
<p>17. Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is differently abled, the Public Authority shall provide assistance to enable access to the information.</p>	
Transfer of Request	
<p>18. If the public authority determines that requested official information is held by, or is more closely connected with the functions of, another public authority, the public authority shall transfer the request as appropriate and, in writing, and shall so notify the person making the request. A transfer under this section shall be made as soon as practicable, but not later than seven days after the date of receipt of the request.</p>	
Time Period for Furnishing of Official Information	
<p>19. Except as provided by section 26 or 27 of this Act, the public authority shall furnish the official information as requested:</p>	
<p>1. not later than 30 days after the date of receipt of a request for official information;</p>	
<p>2. within 48 hours where a request for information relates to information that reasonably appears to be necessary to safeguard the life or liberty of a person.</p>	
Form of Official Information to be furnished	
<p>20. The public authority may furnish official information in response to a request under this Act in any form, including:</p>	<p>In addition, mention: “(7) Certified samples of materials; (8) Reasonable opportunity to inspect a site or works; (9) Certified copy of any document or other certifiable medium containing information.”</p>
<p>3. Printed copy of a record or document;</p>	
<p>4. Transcript of a hearing or other proceeding;</p>	

5. Computer disk or other electronic medium;	This is in keeping with section 5 of the Bill.
6. Reasonable opportunity to inspect official information and to take notes during such inspection;	
7. Reasonable opportunity to hear or view official information, in the case of a sound recording or visual image; and	
8. Decoded official information in written form or other appropriate form, in the case of short hand or other code.	
Limited Conditions for Denial	
21. Notwithstanding section 5 of this Act, a public authority may deny a request for official information under this Act, if:	This is an undesirable clause, especially as it is impossible to universally define what would be a “substantial and unreasonable” diversion or interference. This could, therefore, well result in a lot of information being denied and in public authorities not feeling the need to appoint an adequate number of IMOs. Perhaps, at best, there can be a restriction to the form in which information is provided, as specified in the Indian RTI law (section 7(9)), with the further clarification that no information can be denied on these grounds, but only given in a more convenient form rather than in the specific form asked for by the applicant.
1. Compliance with the request would substantially and unreasonably divert the resources of the public authority from its other operations; or	
2. Compliance with the request would substantially and unreasonably interfere with the performance of the lawful functions of an official of the Government;	
Partial Denial	
22. In the event that a request is received for information, part of which is exempted from this Act as set forth in section 32, the public authority shall, if possible, remove such information while granting the remainder of the request, and notify the applicant:	
1. that only part of the record requested, after removing those portions containing information which is exempt from disclosure, is being provided;	
2. of the reasons for the decision, including any material on which those reasons were based;	

3. of the name and designation of the official responsible for the decision;	
4. of the right to appeal the denial under section 8 of this Act, including information on the appeals process, fees, and any applicable time limits;	Section 8 appears to be the wrong section to refer to here.
5. that removal of the exempted parts is not possible, and thus the entire request has been denied.	
Permissible reasons for Denial	
23. A request for official information under this Act may be denied only under certain conditions of denial set forth under Section 22, 23 and 30 to 33 of this Act.	Perhaps reference is to sections 21, 22 and 31-33.
Extension of Time	
24. The public authority may extend the time period under section 20 (a) of this Act, to a total of not more than 45 days from the date of receipt of the request if:	Should be stated that there would be no extension of the time period for information that pertains to the life or liberty of a person, as specified in section 19(2)
1. The request is for a large volume of records or necessitates a search through a large volume of records and complying with the request within the time allotted would unreasonably interfere with the operations of the public authority;	
2. Consultations are necessary to process the request and the consultations cannot reasonably be completed within the time allotted; or	
3. The extension is necessary to protect an essential Government interest or to protect the rights of any person.	
25. In the event of the need for an extension, the public authority shall notify the applicant:	Add: The notification of the extension should be given within the prescribed 30 days.
1. of the reasons for the decision, including any material on which those reasons were based;	
2. of the name and designation of the official responsible for the decision.	

<p>Extraordinary Additional Extension</p>	<p>This is avoidable, as information that is delayed for so long mostly loses its use and meaning. In those few cases where circumstances are beyond the control of the public authority, this can be argued before the appellate authorities as mitigating circumstances.</p>
<p>26. After the public authority extends the time period under section 24 of this Act, the head of the public authority involved may further extend the time period for any of the reasons specified in subsection (1), (2) or (3) of that section. An extension under this section shall:</p>	
<p>1. Be by written notice to the person making the request;</p>	
<p>2. Be granted only in extraordinary circumstances, as verified and recorded by the head of the public authority; and</p>	
<p>3. Not extend the total time period beyond 90 days after the date of receipt of the request.</p>	
<p>Notice of Denial of Request</p>	
<p>27. If a request for official information is denied, in part or in whole under Section 23, the Public Authority shall, not later than 30 days in the case of a denial under section 20 or 45 days under section 24 or 90 days under section 27, notify the applicant in writing:</p>	<p>Add: "within 48 hours where information is related to life or liberty, as per section 19(2);"</p>
<p>1. of the reasons for the decision, including any material on which those reasons were based;</p>	
<p>2. of the name and designation of the official responsible for the decision.</p>	
<p>3. of the right to appeal the denial under section 8 of this Act, including information on the appeals process, fees, and any applicable time limits.</p>	

CHAPTER 4 CRITERIA FOR FEES	
28. Criteria for Fees: In exchange for provision of official information in response to requests made under this Act, the National Tribunal may establish a reasonable fee structure dependent upon the resources required to fulfill the request. Fees may be waived for individuals whose wealth or income falls below a poverty line as set by the government.	
29. Where the decision is taken to provide the information upon payment of an additional fee representing the cost of providing the information, the Public authority shall send a written notice to the person making the request giving details of such additional fees and the reasons additional fees are being assigned.	It should be clarified that this cost can only include the actual cost of making copies, including photocopies, or collecting samples, in the most economical way, and cannot include costs of salaries of the staff or other incidental costs which are a part of the normal functioning of the government.
30. The notice for the fees shall consist of the following:	
1. Information on how to pay the fees; the period intervening between the dispatch of this notification and payment of fees shall be excluded for the purpose of calculating the period of 30 days referred to in this Act; and	
2. Information concerning his right to review the decision, including the amount of fees charged or the form of access provided, as well as the particulars of the appellate authority, time limit, process and any other forms.	
3. Upon written request of a person requesting official information, the public authority shall provide a written estimate of prospective fees;	
CHAPTER 5 EXEMPT OFFICIAL INFORMATION Exemption from Disclosure of Information	
31. Notwithstanding anything contained in this	

<p>Act, the right to access of information shall be denied if:</p>	
<p>1. The overall harm caused by release of the information would outweigh the public interest in having such information disclosed.</p>	<p>This one clause would negate the whole law, as there are no objective or universal criteria to judge whether some information would cause more harm or more good. This would most likely get used to deny all information that embarrasses or implicates an official or the government, thereby seriously undermining the law's stated objective of promoting accountability. Such clauses are not found in any of the progressive RTI laws around the world and are not a part of the international standards for transparency laws. This clause should be deleted as there are already more than enough safeguards in the Bill to protect legitimate interests.</p>
<p>2. The disclosure of the information is barred under this Act or any other law for the time being in force.</p>	<p>The highlighted portion violates the letter and spirit of section 2 of the Bill. Should be deleted.</p>
<p>32. The public authority may refuse to disclose any information if:</p>	<p><u>Add a specific provision that "Notwithstanding anything in the Official Secrets Act nor any of the exemptions permissible in accordance with this act, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests."</u></p>
<p>1. The disclosure would harm the sovereignty, integrity, security, or strategic, scientific or economic interests of Bhutan, or the relations of the country with a foreign state.</p>	
<p>2. It concerns the private, non-official affairs of the head of State, the royal family, or the most senior religious officials;</p>	<p>These concerns are adequately addressed under sub-section 12 of this section. Therefore, this subsection is redundant and could lead to problems. Should be deleted.</p>
<p>3. It contains deliberations necessary for the candid advice and consent for the functioning of government</p>	<p>This is too general and would exclude all deliberative information, which is one of the most important categories of information that needs to be made public to achieve the objective of the bill: promoting "government accountability". The people mostly know what the decisions of the</p>

	<p>government are, as they are the ones who are affected by them. For there to be true accountability, the people need to know why the government decided the way it did. This is also the best way an honest and sincere government can keep the trust of its people. Therefore, this sub-section needs to be deleted.</p>
<p>4. The information has been received in confidence from a foreign government or any organization on the understanding that it would be treated as confidential and disclosure of which would constitute a breach of confidence;</p>	<p>The highlighted portion makes this too wide, especially as there are no restrictions on what type of information can be treated as confidential. This might very well lead to many organisations within and outside the government classifying much of their information as confidential, and thereby defeating the very purpose of an RTI law. Therefore, this restriction should be only for foreign governments, and the Government of Bhutan must be willing to give to its people reasons why certain types of information, received from other governments, is being treated as confidential.</p>
<p>5. The information includes commercial confidence, trade secrets or intellectual property rights such as patents, trademarks, or copyrights, and the disclosure of which would harm the competitive position of a third party, unless the relevant authority is satisfied that larger public interest warrants the disclosure of such information;</p>	<p><u>Add after “copyrights” - “except where the copyright subsists with the State, “</u></p>
<p>6. The disclosure relates to an ongoing legal proceeding of a pending case or a case sub judice.</p>	<p>This is unnecessary and undesirable. Legitimate concerns are already more than adequately covered under sub-sections 7 and 11 of this section.</p>
<p>7. The Information is expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court;</p>	
<p>8. The information concerns the well-being of the nation’s cultural and spiritual heritage or natural resources unless the public interest warrants the disclosure of such information;</p>	<p>Instead of “The information concerns...” say “Information the disclosure of which would threaten ...”. Otherwise it would make it difficult to make public any information about these aspects, even that</p>

	which is harmless or supportive.
9. The disclosure of which would endanger the life or physical safety of any person;	
10. The disclosure would lead to revelation of the identity of a source of information or assistance given in confidence for law enforcement or security purposes;	
11. The disclosure of such information would impede the process of investigation or apprehension or prosecution of offenders;	
12. Such information 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 Public authority or the Assistant Public authority or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;	“Assistant Public Authority” not defined in the Bill.
Third Party Information	
33. No information shall be disclosed which relates to or has been supplied by a third party and has been treated as confidential by that third party.	This section is too sweeping when it categorically states that third party information will not be disclosed (if supplied in confidence). In any case, this contradicts the next section (34) which allows the possibility of such information being disclosed. The only legitimate provision regarding third party information is that they should be provided a reasonable opportunity to argue, at all stages of the process, why (given the exclusions in this law) the information being asked for is exempt. If they are not able to establish that, then the information must be made public. In any case, this is the gist of sections 34-36. The law must explicitly state this. Delete S. 33.
34. Where an Public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a	

<p>third party and has been treated as confidential by that third party, the Public authority shall within seven days from the receipt of the request, give a written notice to such third party.</p>	
<p>35. A notice given under Section 36 shall include:</p>	<p>Perhaps reference should be to section 34.</p>
<p>1. A statement that the concerned public authority giving the notice intends to disclose the information or release a record or a part thereof that might contain material or information concerning the third party;</p>	
<p>2. A description of the information needed or the contents of the record or part thereof that, as the case may be, belong to, were supplied by or relate to the third party to whom the notice is given; and</p>	
<p>3. A statement that the third party may, within seven days after the notice is given, make representations to the concerned Information and Media Officer as to why the record or part thereof should not be disclosed.</p>	
<p>36. Where a third party has failed to register a representation in writing or orally against the proposed disclosure within the time limit, the third party shall be deemed to have waived the right to object.</p>	
<p style="text-align: center;">CHAPTER 6 DISPUTE RESOLUTION</p>	
<p>37. Any disputes relating to and arising under this Act may appeal first at the local Court level or the National Tribunal whichever is convenient.</p>	<p>Instead of “may appeal”, perhaps “may be appealed”.</p>
<p>38. The National Tribunal shall be constituted by the government and consist of one presiding officer who shall be a retired judge and two assessors, to act as an independent body.</p>	
<p>39. A denial of a request for official information under this Act by the Information and Media Officer of a Public authority is an administrative adjudication, whereby, the</p>	<p>Or, presumably, in the local court, as specified in 37 above?</p>

person requesting for the official information may file an appeal in the National Tribunal.	
40. Subject to the provisions of this Act, it shall be the duty of the National Tribunal to receive and inquire into a complaint or an appeal from any person:	And, presumably, of the local court?
1. Who has been unable to submit a request, either by reason that no Information and Media Officer has been appointed under this Act, or because the Officer, has refused to accept his or her application for information;	
2. Who has been refused access to any information requested under this Act;	
3. Who has been required to pay an amount of fee which he or she considers unreasonable;	
4. Who has not been given a response to a request for information or access to information within the time limit specified under this Act;	
5. Who believes that he or she has been given incomplete, misleading or false information under this Act; and	
6. In respect of any other matter relating to requesting or obtaining access to records under this Act.	Better to say "access to information" rather than "access to records". Information is defined more widely than just records.
41. Any person who, does not receive a decision within the time specified or is aggrieved by a decision of the Information and Media Officer may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to the local Court or National Tribunal, whichever is convenient	Thirty days is too short a time. This should be atleast 90 days. Section 37 becomes redundant in light of this section.
42. Where an appeal is preferred against an order made by Information and Media Officer to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.	
43. Where the local Court or National Tribunal is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.	
44. Notwithstanding anything inconsistent	

contained in any other Act of Parliament, the local Court or National Tribunal may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.	
45. In its decision, the Local Court or National Tribunal has the power to:	
1. Enquire the public authority to compensate the complainant for any loss or other detriment suffered;	Require??
2. Impose any of the penalties provided under this Act;	No penalties seem to have been specifically provided under this act.
3. Reject the application; and	
4. Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act.	
46. In addition to the preceding section, in its decision, the National Tribunal has the power to:	
1. Provide access to information, if so requested, in a particular form;	
2. Ensure appointment of Information and Media Officer;	
3. Publish certain information or categories of information; and	Perhaps It should be "Have published...".
4. Make necessary changes to its practices in relation to the maintenance, management and destruction of records.	Replace "its practices" by "the practices of a public authority..."
CHAPTER 7 APPEALS Appeal to High Court	
47. Any person who is aggrieved by a decision of the Local Court or National Tribunal may, within ten working days of receipt of such a decision, file an appeal to the High Court under section 23(a) of the Civil and Criminal Procedure Code of Bhutan.	This is too short a time to file an appeal in the High Court. This should be at least 90 days.
48. If the decision of the Information and Media Officers against which an appeal is preferred relates to information of a third party, the Court shall give a reasonable opportunity of	This should also be specifies for local courts and the National Tribunal.

being heard to that third party	
Court's Access to Exempt Official Information	
49. Notwithstanding that official information at issue in an appeal under this chapter may be exempt official information under chapter 6 of this Act, the Court may order production of any or all of the official information involved.	The reference should perhaps be to chapter 5.
Damages and Costs for unreasonable Denial of Request	
50. If any Public Authority or the Information and Media Officers refuses without any reasonable ground to give or provide the information to the person making the request, he shall be guilty of the offence of withholding information unlawfully. The offence of withholding information unlawfully shall be a petty misdemeanor.	
51. In addition to any other penalty permitted by law, if the Court holds that denial of a request for official information was without reasonable grounds, the Court may hold the public authority liable for damages and costs.	
52. In the event of non-compliance with the order of the Court, the public authority or the responsible official shall be liable for contempt of Court.	What about non-compliance with orders of the National Tribunal? The Bill should specify what would be the consequences.
CHAPTER 8 MISCELLANEOUS Power to make Rules and Regulations	
53. Every public authority or the National Tribunal shall make rules and regulations, consistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary to be prescribed for carrying out or giving effect to this Act.	There should be one uniform set of rules for the whole country. Otherwise it would be very difficult for people to find out which rule applies to which office.
54. Every rule made by the public authority or the National Tribunal under this Act shall be laid, as soon as may be after it is made, before Parliament, while it is in session, and if Parliament agrees in making any modification in the rule or agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect,	

as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	
Where no Suit lies	
55. No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under this Act or any rule made there under.	
Annual Report	
56. Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the National Tribunal, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.	
57. Each report shall state in respect of the year to which the report relates,-	
1. The number of requests made to each public authority;	
2. The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;	Specify "full or partial access..".
3. The number of appeals referred to the National Tribunal for review, the nature of the appeals and the outcome of the appeals;	Should also list the number of appeals to local courts and the High Court.
4. The amount of charges collected by each public authority under this Act; and	
5. Recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access	

information.	
58. The National Tribunal shall publish an annual report on the compliance of the public authority with its obligations under this Act. The report shall be submitted not later than 30 th June of each year.	
CHAPTER 9 AMENDMENT AND AUTHORITATIVE TEXT Amendment	
59. The amendment of this Act by way of addition, variation or repeal may be made by Parliament, subject to the requirement that amendments shall not undermine the effectiveness of the Right to Information.	
Authoritative Text	
60. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text.	

ISSUE BASED COMMENTS ON THE DRAFT BHUTAN RTI BILL 2012

DRAFT BHUTAN RTI ACT OF 2012			
CRITERIA	STATUS	REMARKS	RECOMMENDATIONS
BASIS OF THE LAW¹			
1. Is it derived from the Constitution?	Yes	Stated in the preamble, paragraph 2.	
2. Is transparency recognised as a fundamental human right?	?	Not clear from the Act.	<u>Perhaps this should be explicitly stated</u> , as such a statement is known to help the cause of transparency, especially during judicial review.
3. Does it override other acts, especially secrecy acts?	Yes and no	Though section 2 repeals provisions of existing acts that are inconsistent with this act, however at least in two other sections (9(15) and 31(2)) provisions of other acts are allowed to override this act.	<u>Make the provisions of this act override all repugnant provisions in all present or future acts, unless specifically provided for otherwise.</u>
4. Does it override Future acts?	No		<u>See above</u>
5. Does the right to information and the institutions set up under it (like the National Tribunal) have a Constitutional status?	No	Giving a constitutional status to the RTI helps it to override all laws and makes it more difficult to amend.	<u>Give it a constitutional status.</u>
ASSUMPTIONS			

¹The questions are so framed that a “yes” answer indicates the most desirable status.

UNDERLYING THE ACT			
6. Does it explicitly assert that transparency is the rule, secrecy the exception?	No	This is useful to have in the preamble, as it helps in properly interpreting the specific provisions of the law and gives due weightage to transparency. From such an assumption follows (in laws of other countries) the requirement that the onus of proof lies with the refuser of the information.	<u>Include an explicit statement in the preamble.</u>
7. Is information accessible to all – not just to citizens?	No	The preamble talks of “citizenary” and section 6 gives the RTI only to citizens.	<u>It should be open to even non-citizens.</u> First, it is not clear whether all or a majority of the inhabitants of Bhutan have adequate documentary proof of citizenship, and therefore would not be able to use the provisions of this act. Also, would not the demand for such proof violate S. 16 of the act. Further, if the RTI is a fundamental human right (?) then it should be applicable to all human beings.
8. Is information accessible independent of the reason or purpose for accessing such information?	Yes	As per S. 16	

9. Is the onus of denial on the denier?	No	A specific provision towards this end goes a long way in facilitating access to information.	<u>Add a specific provision to the effect.</u>
10. Is there an obligation for <i>suo moto</i> (proactive) disclosure [timely, accurate, comprehensible, updated, appropriate]	Partly	Though S. 9 specifies 15 categories of information that must be proactively made public, there is no provision for fixing of responsibility or imposition of penalty for non-compliance. Experience in other countries has shown that, without such provisions, compliance with requirements of proactive disclosure remains very weak. There need also to be greater detail of the modes by which such information should be made public – specifically to be accessible to the rural populations and those without access to the internet.	<u>Specify that compliance with provisions of S. 9 would be the responsibility of one or more designated PIOs, who could be penalized for violations. Also specify modes of communication, especially in rural areas and for illiterate and semi-literate populations.</u>
COVERAGE OF THE ACT			
11. Are all levels of government covered – President/ PM/ Monarch	Partly	S. 32(2) especially mentions that information concerning “the private, non-official affairs of the	<u>This special mention should be deleted.</u> Private information is already exempt under s 32(12) for everyone. There seems to be no need to especially mention these

		head of state, the royal family, or the most senior religious officials” is exempt from disclosure.	three categories.
12. Are all wings of the government – executive, legislature, judiciary, military, police – covered?	Yes		
13. Are NGOs / Corporates/ Other private bodies/international organisations, covered?	Partly	NGOs and corporates “substantially” funded by government are covered.	<u>There should be a provision empowering people to access information through the government from all private bodies and international organisations located/working in Bhutan.</u>
14. Does it provide access to file notings/ samples/ inspections/basis of decisions/ compilations/ certified copies/ electronic versions/ audio-visual material?	Mostly	S. 4(2) gives a wide definition to the term “information” and S. 5 gives the right to inspection and to certified copies. However, section 32(3) exempts from disclosure “deliberations necessary for the candid advice and consent for the functioning of government”.	<u>Section 32(3) should be deleted. Further, there should be suo moto obligation to make public the basis of all decisions that affect the public and also suo moto disclosure of the material and opinions on the basis of which policy is being formulated, while it is being formulated.</u>
EXEMPTIONS			
15. Are exemptions restricted to only	No	S. 31(1) exempts all information whose	<u>Delete S. 31(1), 32(6) and 9(15),</u>

<p>where real harm to public interest is realistically anticipated – in keeping with global best practice?</p>	<p>disclosure is barred under any other law, as does S. 9(15). This not only contradicts S. 2 (see point 3 above), but makes the RTI Act totally ineffective, especially as there is no corresponding restriction on the type of information that can be classified under the Official Secrets Act or barred under other acts.</p> <p>S. 32(6) exempts all information relating to a pending case or which is <i>sub judice</i>; 32(8) exempts all information concerning “the well-being of the nations cultural and spiritual heritage or natural resources (though with a public interest override);. All these exemptions violate the globally accepted principle of exempting only that information whose disclosure would cause harm, and to describe the information in terms of the harm it would cause (like</p>	<p><u>and reword S. 34(s)</u></p> <p><u>Redraft 32(8)</u></p>
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	<p>compromise security or economic interests, interfere with a legal process, incite an offence or compromise someone's safety or privacy, etc.).</p> <p>31(1) exempts information if "The overall harm caused by release of the information would outweigh the public interest in having such information disclosed". This is too wide and sweeping, and leaves the decision to the public authority. In effect it negates all the other exemptions and the whole act itself, as it gives freedom to the public authority to deny anything they like without having to conform to any objective criteria.</p> <p>32(5) exempts information that is copyrighted but does not exclude from this exemption government copyright, thereby exempting most government</p>	<p><u>Delete S. 31(1).</u></p> <p><u>Add "except where the copyright subsists with the State. "</u></p>
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		<p>information;</p> <p>S. 33 says “No information shall be disclosed which relates to or has been supplied by a third party and has been treated as confidential by that third party”. However, S. 34-36 then go on to lay down a procedure for seeking the view of third parties, where the concerned public authority intends to disclose such third party information, thereby contradicting S. 33.</p> <p>S. 21 allows an application to be rejected if the request “substantially and unreasonably divert the resources” of the public authority or “substantially and unreasonably interfere with the performance of the lawful functions of an official of the Government;” These are vague and very arbitrary exemptions that would be liable to rampant misuse.</p>	<p><u>Delete S. 33.</u></p> <p><u>Delete S. 21, or at best modify it to read “where the supply of information in the form asked for would unreasonably divert the resources of a public authority, the public authority could make the information available in the form most convenient to it, provided that all the information asked for and not otherwise exempt is made accessible to the applicant”.</u></p>
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16. Does it exempt legitimate privacy and fiduciary interests, and legitimate proprietary or copyright interests?	Yes	S. 32 (10), (12), and 34-36 adequately protect these interests.	
17. Are there adequate and appropriate public interest override provisions?	Partly	Though public interest overrides are provided in relation to specific clauses (32 (5), (8), (12), there is no general public interest override covering all the exemptions,	<u>Add a specific provision that “Notwithstanding anything in the Official Secrets Act nor any of the exemptions permissible in accordance with this act, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”</u>
PROCESS OF ACCESSING INFORMATION			
18. Is it user friendly in terms of not requiring any forms?	No	S. 14(1) allows for forms to be prescribed by each public authority. This would not only lead to a lot of inconvenience, especially for those living in rural and remote areas, as they would first have to access the form relevant for each public authority, but could also lead to applications being rejected because they are not in the prescribed forms, and	<u>Specifically ban all forms, or at best they should be optional.</u>

		the supply of forms themselves becoming a source of corruption.	
19. Is it user friendly in terms of fees being reasonable?	Partly	S. 28 specifies that the fees should be reasonable and provides for fee waiver for those below the poverty line. However, there no fee waiver if information is not given in time. Also, S. 29 allows the fee to include the cost of providing information, without specifying that this should be restricted to actual photocopying and sample collection costs.	Experience in other countries shows that the term “reasonable” is often liberally interpreted. <u>Perhaps it would be desirable to specify a fee or at least put an upper cap to it.</u> <u>It is a good practice to waive all fee in the case of delayed information. Also, the law must explicitly exclude the cost of salaries and other incidental expenses being charged to the applicant.</u>
20. Is it user friendly in terms of being accessible to the poor, the illiterate, and those living in remote areas?	Partly	S. 16 specifies that the information and media officer shall render all reasonable assistance to reduce oral requests to writing. However, there appears to be no provision to generally obligate a PIO to render all reasonable assistance to an applicant to help the applicant in filing an effective application.	<u>Put a general clause so obligating the PIO.</u>
21. Is it user friendly in terms being	Yes	Specified in S. 17	

sensitive to those who are differently abled?			
22. Is it user friendly in terms of providing for automatic transfer of requests to the correct public authority?	Yes	Specified in S. 18	
23. Are there appropriate time limits for providing information?	Partly	<p>S. 19 of the act lays down a time limit of 30 days for providing information. However, S. 24-25 allows this to be extended to 45 days, and S. 26 to three months, which is unreasonably long.</p> <p>Further, S. 19(2) obligates the public authority to supply information that relates to life or liberty within 48 hours.</p>	<u>Time limits should be 15 days with a possible extension of another 15 days in exceptional circumstances, to be recorded in writing.</u>
24. Does it provide for user friendly and easily understandable rules?	No	<p>S. 53 specifies that every public authority shall make rules. However, this would result in a great multiplicity of rules and it would become very difficult for the applicant if he/she has to procure and</p>	<u>It would be desirable to have one set of rules for all the public authorities, to ensure consistency and ease of use.</u>

		understand separate rules for each of the public authorities.	
25. Are the definitions comprehensive and clear?	Partly	<p>S. 4(5) states: ““third party” means a person other than the citizen making a request for information and include a public authority.” But this is misleading and could also be understood to include the public authority to whom the request is being made.</p> <p>S. 32(12) talks of an “Assistant Public Authority” but does not define what this means.</p>	<p>Amend the section to read as: ““third party” means a person other than the citizen making a request for information <u>and the body to whom the request is being made, but</u> includes a public authority <u>other than the one to whom the request is being made.</u></p> <p><u>Define.</u></p>
REVIEW AND APPEAL MECHANISMS			
26. Does it have a decentralized appeal mechanism?	Yes	Local courts have been designated as optional first appellates to the National Tribunal.	
27. Does it have provisions for an external independent appeal?	Yes	To the local courts/National Tribunal and then to the High Court.	
28. Are there appropriate	No	S. 41 gives only 30 days for appeal to the	

<p>time limits for filing and disposing appeals?</p>		<p>local court/tribunal. This is too short.</p> <p>S. 47 ten working days for filing an appeal in the High Court. This is far too short.</p> <p>No time limits have been prescribed for disposing appeals.</p>	<p><u>The time allowed for filing an appeal should be extended to 90 days.</u></p> <p><u>Time limits should be prescribed for the local court/National Tribunal to dispose an appeal. If the appeal is not disposed in the prescribed time, the High Court can be moved.</u></p>
<p>29. Does the appellate authority have powers to penalize?</p>	<p>?</p>	<p>S. 45(2) empowers the local court/National Tribunal to impose any of the penalties “provided under this Act”. However, the Act does not provide for any penalties.</p> <p>S. 50-52 provides for penalties by the High Court for wrongful denial of information. However, it does not specify that delay in provision of information can also be penalized.</p>	<p><u>Specify penalties for different violations, and on a per day basis for delay.</u></p> <p><u>The Act must specify that delay can be penalized at all levels and specify the level of penalty, which must be on a daily basis.</u></p>

<p>30. Does the appellate authority have adequate powers to perform its functions?</p>	<p>No</p>	<p>The Act does not specify the powers of the National Tribunal.</p>	<p><u>The National Tribunal should be given the powers of a court in order to collect and secure evidence, examine and ensure the presence of concerned persons, and ensure that its directions are followed.</u></p>
<p>31. Does the appellate authority have adequate independence and resources to perform its functions?</p>	<p>?</p>	<p>The Act is silent on the staff and budget of the National Tribunal.</p>	<p><u>The National Tribunal should not be under the administrative control of the government and should have its own budget, voted by Parliament, and its own staff, selected and appointed by it.</u></p>
<p>32. Is there a mechanism for an institutionalised public review of the functioning of the RTI regime?</p>	<p>No</p>		<p><u>The Act should specify the creation of a National Council for the RTI headed by the concerned minister and having both pifficial and non-government members. This body should periodically meet and review the functioning of the RTI Act.</u></p>
<p>33. Is there an obligation and empowerment to ensure that the backward linkages in terms of proper record management, record creation and preservation are properly managed?</p>	<p>Partly</p>	<p>Though there is an obligation on public authorities, under S. 8(1), to “Maintain its official information in a variety of easily reproducible formats”, there appears to be no obligation to computerise the records or make them easy to understand by the public.</p>	<p><u>The Act should cast such an obligation on public authorities and empower the National Tribunal to review performance.</u></p>

<p>34. Are there provisions for forward linkages designed to facilitate the required systemic changes to tackle the problems identified by use of the RTI Act?</p>	<p>No</p>	<p>It is important to move beyond a system which responds only to an RTI application, often emanating out of a failure in governance. Progressive laws must ensure that the lessons learnt from such exposure lead to systemic and sustainable changes.</p>	<p><u>Add provisions in the Act which require public authorities to analyse the pattern and quantum of RTI applications, the problems that they reveal, and link the assessment of the performance of each public authority with their success in solving the problem, as witnessed by a decrease in RTI applications related to that problem.</u></p>
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