

NEPAL'S
RIGHT TO INFORMATION ACT, 2064

STAKEHOLDERS' NEEDS ASSESSMENT REPORT
AND
RECOMMENDATIONS FOR EFFECTIVE IMPLEMENTATION

(DRAFT REPORT: DO NOT QUOTE)

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BY

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INTRODUCTION

Information Access Laws in South Asia

Special laws guaranteeing people's right to access information from government and other state agencies are of recent vintage in South Asia. With the exception of Bhutan and Nepal, all other countries in the region were under the colonial rule during the 19th and the first half of the 20th century. The colonial rulers had effectively imposed a veil of secrecy on the functioning of the bureaucracy by instituting special laws to guard official secrets, criminalising unauthorised possession and dissemination of information contained in government files. Suspicion of the intentions of the colonised populations demanding freedom and the need for keeping them under control were the main motivating factors behind the existence of such laws. Even after the South Asian countries secured their independence, these laws continued to operate for the purpose of prosecuting spies. Misuse of these laws to curb press freedoms and fix honest and sincere officials unwilling to bow to pressures exerted by vested interests is not uncommon in the region.

During the second half of the 20th century, even as the newly drafted constitutions in South Asia incorporated noble statements that the sovereign power of the State resided in the people and everybody was equal before the law, control and dissemination of government-held information has been the preserve of the bureaucracy. Almost always officials decide what information ought to be disclosed to the people. People's elected representatives are administered an oath of secrecy prior to assuming ministerial office. The Constitutions of India, Pakistan and later Bangladesh did not guarantee their people the right to information even though their representatives agreed to the incorporation of this right in the Universal Declaration of Human Rights drawn up in 1948. The Indian Supreme Court recognised the existence of the right to seek and obtain information from government in 1975 and reiterated its status as an implied fundamental right in several later decisions. Other apex courts in the region have been reluctant to emulate this progressive interpretation of fundamental rights.

Pakistan is the first country in the region to have formulated a national law on access to information, when in 2002 the then President promulgated the *Freedom of Information Ordinance*. This law applies only to the federal government. Two of the four provinces in Pakistan have similar access laws. India legislated its federal access law the same year as Pakistan but it was replaced by a stronger law in 2005, thanks to a vibrant civil society movement backing up the demand. Bangladesh is the latest country in the region to have an access law when it passed the Right to Information Act in 2009, again thanks to a strong demand from civil society organisations and pressure from at least one prominent donor agency. The new Government in the Maldives tried to push a draft access law in 2008, only to face rejection in Parliament. Executive instructions have since been issued to implement a disclosure policy in government.

Sri Lanka went through the motions of drafting access legislation at least twice during the last decade but could not put it on the statute book due to the lack of adequate political will. Bhutan and Afghanistan have not made much progress along the path towards statutorily guaranteed transparency in the administration.

The Right to Information in Nepal

Nepal is the only country in South Asia that has incorporated in its constitution recognition for people's right to seek and receive information from government bodies. The 1990 constitution adopted under the erstwhile monarchy guaranteed this right for every citizen. This fundamental right has been incorporated with minor modifications in the Interim Constitution of 2007 adopted after the abolition of the monarchy. The Legislature-Parliament of Nepal passed *The Right to Information Act* (RTI Act) during the same year to give effect to this fundamental right. In 2009 the Government of Nepal framed and notified, in the Nepal Gazette, the Rules for implementing its provisions.

The RTI Act has been passed in order to bring about transparency in the functioning of government and all bodies performing public functions. The avowed purpose of engendering openness is to make the Government and its functionaries accountable to the people. The RTI Act recognises the right of every citizen of Nepal to seek copies of documents and records or samples of materials held by any public agency that meets one or more of the stipulated criteria. The criteria listed in the law for identifying a body as a public agency are so broad and comprehensive as to include within their ambit the entire State sector including public sector enterprises owned, controlled or financed by the Government. All bodies in the social sector receiving grants from the Government or foreign funding have obligations of transparency under this law. In addition to organisations and foundations established to provide public services, political parties are also covered by these criteria. In short, the RTI Act of Nepal is one of the most comprehensive in the world in terms of scope and coverage, comparable with the *Promotion of Access to Information Act* in South Africa which includes the private sector within its ambit.

The RTI Act of Nepal places statutory obligations on every public agency to voluntarily disclose certain categories of information within three months of the enactment and thereafter update the information every quarter. It also requires every public agency to either provide access to other kinds of information to the citizen within a specific time limit or notify the reasons for withholding access. The RTI Act lists five circumstances under which access to information may be denied. These exemptions are subject to varying degrees of harm tests. The RTI Act provides for the setting up of the Nepal Information Commission to settle disputes relating to information access. The Commission is a three-member body with a small secretariat assisting it in the performance of its duties.

The Movement for People's Right to Information in Nepal

The RTI Act is the outcome of a four-year long advocacy process led by civil society particularly by the media. The movement for the right to information in Nepal is older than the democratic movement which originated in 1990. The demand for the 'right to information' raised by the media sector formed part of the demand for political change voiced by the people of Nepal. Consequently the Constitution of 1990 recognised citizens' access to information as a fundamental right. Nepal had to wait for another decade and a half for an enabling law to be enacted.

The Nepal Law Commission had released a draft version of the access legislation in 2003.¹ However not much progress was made until the Movement for Democracy was launched in April 2006. A high level Media Commission published a report in September 2006 calling for the adoption of a right to information law. Subsequently the government formed a working group tasked with formulating a new draft access law after taking into consideration all views. The draft produced by the working group received parliamentary approval in 2007.

¹ For an analysis of this draft see the Memorandum on Nepal's draft Public Information Act prepared by the international freedom of expression NGO ARTICLE 19, available at: <http://www.article19.org/pdfs/analysis/nepal-information-act-jan-2004.pdf>

Even though the RTI Act was passed in 2006, the National Information Commission, required to be set up for the purpose of promoting and protecting the right to information and adjudicating access disputes, was established only in 2008.

Even as the working group poured over the draft RTI Act, a group of civil society organisations had started a lobby and advocacy campaign to create awareness at the community level and build up pressure of a critical mass on the government to enact the RTI law. The Citizens' Campaign on RTI (CCRI)- a loose network of organisations and activists- organised seminars, workshops and interaction meetings with different stakeholder groups including parliamentarians. Awareness and advocacy campaigns were organised in different parts of the country.

Since the enactment of the access law CCRI and its allies have begun working towards promoting its use in different parts of the country in order to generate a demand for information at the community level. These groups have targeted both the demand side and the supply side of information access as part of their promotional activities. They have also started testing the efficacy of the law by filing information requests with various public agencies including the Nepal Information Commission. According to data provided by the Commission, they have received about eight appeals for adjudication till date.

Given the size of Nepal the small number of information requests made so far is indicative of the lack of awareness amongst people about this law and the rights available under it. The RTI Act outlines a much broader role for the Nepal Information Commission as a promoter and protector of the right to information as compared with its counterparts in India and Pakistan. The recognition and execution of this role by the Commission is indispensable for the successful implementation and the fulfilment of the objectives of the RTI Act.

TERMS OF REFERENCE

The World Bank has commissioned a study to examine and review the current status of the RTI legislation in Nepal and recommend based on international experience and local context an action plan to support implementation. The study covers the following aspects:

- identifying capacity and systems requirements to implement effective *suo motu* disclosure, improve records management and strengthen the effectiveness of the Information Commission;
- identifying training needs and a process for taking this forward for information officers;
- identifying a strategy to involve civil society organisations to disseminate and support RTI implementation and awareness-building amongst citizens; and
- promoting sharing of learning across national boundaries by bringing in experiences of how India and other countries have sequenced the implementation of RTI.

This report has been prepared in fulfilment of the above terms of reference.

METHODOLOGY

The terms of reference required the adoption of a methodology based on interviews and institutional appraisal for undertaking this study. Accordingly a questionnaire was prepared to guide discussions with representatives of government bodies (Annex 1). Ministries and other bodies in the state sector were carefully selected on the basis of the following criteria:

- i) a representative sample that would indicate the diverse nature of operations performed by the Government of Nepal. Hence ministries performing a regulatory role, line ministries and those involved with engineering and construction activities were

identified. A complete list of ministries and other state agencies included in this study is provided at the end of this report (Annex 2).

- ii) four offices that have considerable amount of public interface were chosen at the district level to assess the degree of preparedness to deal with information requests. Kavre was chosen over others because of its status as a lead district chosen for intensive capacity building to improve governance and strengthen public interface. A district information centre has been set up here under such initiatives. It was assumed that public agencies in this district would be better prepared than others for implementing the RTI Act.²
- iii) senior officers especially those holding the positions of Information Officer or Spokesperson were chosen for the interviews as they have been authorised to represent their ministries and offices for disseminating information.

Secondary research included visiting the websites of the selected ministries to ascertain the types of information that has been disclosed proactively. Detailed discussions were held with the three members of the Nepal Information Commission in order to gain an understanding of their plans for fulfilling their role as the promoter of the RTI Act.

In addition to the State sector interviews were held with media and civil society representatives who have played a significant role in the process of adoption and popularisation of the RTI Act. No questionnaire was used during these group discussions; instead leading questions were asked in order to acquire an understanding of participants' opinion regards the state of implementation of the RTI Act and the steps that require to be taken for improving compliance in public agencies and use of the law by people at the community level.

ASSESSMENT OF IMPLEMENTATION INITIATIVES UNDERTAKEN

Setting up systems: Subsequent to a national level conference on the RTI Act organised by the Nepal Information Commission in 2008 some ministries have begun the task of implementing the RTI Act in right earnest. For example, the Ministry of Planning and Physical Works is said to have set up an information unit in the ministry in order to prepare for the implementation of this Act and deal with people's information requests. A circular was sent out to all offices under the ministry functional at the regional and district level urging them to appoint Information Officers, prepare documents for *suo motu* disclosure and undertake all other steps necessary for giving effect to the provisions of this Act. Cross verification revealed that the Nepal Water Supply Corporation which falls within the jurisdiction of this ministry had received this circular and the representative was aware of its contents. However the Ministry is yet to establish a mechanism for ascertaining and reporting on compliance with its circular. Similarly, the Ministry of Education and the Ministry of Land Reform and Management have also issued circulars highlighting the importance of implementing this law in their regional and district offices. The Police Headquarters also plans to set up an information unit in order to deal with people's information requests. However a significant number of Ministries and offices at the district level had not yet taken any steps to implement the RTI Act. The reasons behind non-implementation are discussed later in this report.

Recommendation:

- *All Ministries and Departments are advised to issue circulars to all offices under their jurisdiction at the secretariat, regional, district and line agency level, outlining the various tasks that need to be undertaken for ensuring effective implementation of the*

² It was not possible to schedule visits to other districts due to paucity of time.

Appointment, continuity and publicity regards Information Officers: The website of the Nepal Information Commission displays list of Information Officers (IOs) at the secretariat, regional and district level.³ All ministries have identified IOs by name and designation for every constituting department. Similarly at the regional level IOs have been appointed⁴ in various offices. However this exercise has not been completed in the district level offices. The list displayed on the Commission's website draws a blank in several districts. District level offices will have to be monitored more closely in order to ensure that IOs are appointed promptly. None of the courts functioning at the district level are said to have appointed IOs.

Several government representatives were critical about the lack of security of tenure for persons appointed as IOs. IOs appointed at the level of the ministry/department being senior and experienced officers are said to be transferred from one post to another frequently. This results in a lack of continuity within the ministry regards work done to implement the RTI Act and non-availability of officers well-informed about the Act. For example, in some of the line ministries included in this study the current incumbent of the post of IO had been transferred only a few months ago and had a very limited knowledge of the RTI Act. The previous incumbent who had attended the national conference on the RTI Act and the knowledge gained by him from the sensitisation workshop organised by the Nepal Information Commission were lost to the department as a result of this transfer. That officer was no longer handling the duties of an IO in the new posting. The training efforts were wasted as no knowledge transfer occurred internally before he vacated his post. Such situations could be avoided if an official policy of granting security of tenure for IOs were adopted.

Few offices visited as part of this study had displayed the name, designation and contact details of the Information Officer designated under the RTI Act. These details are required to be proactively disclosed under section 3(3)(a) of the Act. Displaying this information on prominently visible notice boards at the entrance to the office of every public agency can go a long way in creating convenience for citizens who visit them for obtaining information. Similarly the name and contact details of the authority designated under section 9 to receive complaints regarding non-disclosure of information and the address of the Nepal Information Commission may also be displayed on notice boards for people's convenience.

Recommendations:

- *All Ministries and departments may ensure security of tenure for the individuals appointed as IOs. IOs may be required to hold sensitisation sessions on the RTI Act for their juniors and contemporary colleagues in order to ensure knowledge transfer while the senior officers may be trained by the Nepal Administrative Staff College.*
- *All offices of public agencies may be required to display the name, designation and contact details of the relevant IO and authority designated to receive complaints under section 9 of the Act. The contact details of the Nepal Information Commission may also*

³ For IOs of Central offices, please visit: http://nic.gov.np/1_info_officers_of_central_offices.pdf; for IOs of regional offices, please visit: http://nic.gov.np/2_info_officers_of_regional_offices.pdf; and for IOs of district level offices, please see http://nic.gov.np/3_info_officers_of_district_offices.pdf -accessed on 04 May, 2009.

⁴ It must be noted here that existing officers have been charged with the additional duty of functioning as an IO. No recruitment drive has been undertaken specifically to hire new people for the post of IOs. Decisions about the necessity of recruiting more people to handle the workload generated by the RTI Act may be taken on the basis of a thorough assessment of the working of this law. Such an assessment will have to wait for another 2-3 years during which period the access to information regime would have become firmly entrenched.

be displayed in a similar manner.

Identifying exempt records: Another exercise that has been launched with considerable earnestness subsequent to the national level conference is the identification of records and documents that can be legitimately withheld from disclosure under the RTI Act. According to clause (a) of sub-section (3) of section 3 of the Act information may be exempted from disclosure under five circumstances namely, if disclosure :

- *seriously jeopardises the sovereignty, integrity, national security, public peace, stability or international relations of the country;*
- *directly affects the investigation, inquiry and prosecution of crimes;*
- *has a serious impact on the protection of economic, trade or monetary interest or intellectual property or banking and trade privacy;*
- *jeopardises the harmonious relationship between various castes and communities in Nepal; and*
- *interferes with the individual privacy, health, security or body.*

A three-member committee set up under the chairpersonship of the Chief Secretary is required to identify records falling within the categories of information mentioned in the Act and classify them indicating the techniques for protecting their confidentiality and the duration for which they will be withheld from public scrutiny.⁵ Several ministries participated in this exercise and their secretaries identified several categories of records that may be exempt from disclosure. A copy of this list running into 13 pages has been handed over to the Nepal Information Commission as required under the Act. Some of the ministries included in the study indicated that they are discussing the possibility of adding more documents and records to this list. Such a list can be a useful ready-reckoner to IOs who are required to make decisions of granting or withholding access to information. However converting circumstantial exemptions into class-based exemptions in order to keep entire categories of records out of public scrutiny is against the letter and the spirit of the Act and contravenes internationally recognised RTI best practice principles.

A cursory reading of the exempt documents list indicates that it is far in excess of the coverage of section 3(3)(a) of the Act. For example, the Ministry of Finance has decided to keep confidential the minutes of the meetings of its Revenue Advisory Committee along with its reports containing recommendations. The job profile of this committee requires it to carry out regular studies of economic activities in Nepal and develop revenue policies for the country. No time limit has been prescribed for declassifying these records implying that they will remain insulated from public scrutiny for all times. It is not clear which specific exemption contained in section 3(3)(a) covers these categories of documents. The Act empowers the Nepal Information Commission to review the exempt status of a document in course of adjudicating over an information-access dispute. This provision acts as an effective check on the tendency of public agencies to claim excessive levels of secrecy. It is advisable for the Information Commission to review every entry in the list and recommend removal of classes of records that do not match the criteria mentioned in section 3(3)(a) of the RTI Act. This Act's primary objective is to engender transparency in the administration and all provisions must be interpreted keeping this purpose in mind. The exemption clauses must be interpreted narrowly in order to facilitate people's access to information rather than frustrate the very purpose of the Act.

⁵ RTI Act, section 27.

Civil society organisations and members of CCRI have expressed serious reservations regards the length and depth of this list. They look upon it as an example of the reluctance of the bureaucracy to fully operationalise the RTI Act in letter and spirit. While the Nepal Information Commission has reservations about this list it does not appear to have held any consultations with various stakeholders to discuss the subject.

Recommendation:

- *The list of exemptions may be reviewed by the Nepal Information Commission against the criteria mentioned in the Act in consultation with all stakeholders. All entries that cannot be justified under the Act may be struck off the list. The revised list may be circulated to all IOs to serve as a ready-reckoner.*

Proactive disclosure: The RTI Act requires every public agency to voluntarily disclose twelve categories of information within three months of the Act coming into force and update the information every quarter thereafter. A description of the public agency's structure and functions; the duties and responsibilities of its functionaries; services it provides to people; fee and time limit applicable; contact details of the IO and the appellate authority; details of income, expenditure and financial transactions and a list of legislation and subordinate legislation implemented by it are all required to be proactively disclosed. The ostensible purpose of this provision is to ensure free flow of information to people so that the need for submitting formal requests is reduced. The document containing the list of exempt records prepared by various ministries also indicates several categories of records that may be disclosed to people under the Act. However it is not clear as to which of these records would be proactively disclosed.

All ministries included in this study have websites of their own. Some websites are more informative than others. For example, the website of the Ministry of Finance contains a wealth of information such as budgets, economic surveys, a brief description of the work profile of the different departments and divisions and their progress reports in English and Nepali.⁶ A list of bank loan defaulters is also available on this website. The website of the Department of Land Reform and Management under the similarly named Ministry contains a description of the services provided and the complete procedure involved for accessing these services.⁷ The registration charges for various categories of land transactions are also displayed. Similar information is displayed on notice boards at prominent places at land records offices in the districts (Annex 3, photo 1). However the website of the Ministry of Home Affairs contains very little information apart from a brief description of its activities, the text of the laws administered and a couple of press releases.⁸ The Ministry of Youth Affairs and the newly set up Ministry for Culture and State Restructuring do not have websites of their own. Even where websites have been developed they are not updated regularly.

Most of the offices at the secretariat level and in the districts display citizens charters- a requirement under the *Good Governance Act* of 2007 (Annex 3, photos 2, 3 and 4). Several points of information contained in the citizens' charters match with the requirements of proactive disclosure under the RTI Act. However there are additional categories of information that will also be required to be disclosed under section 5 of the Act. Very few ministries and offices included in the study had even begun the work of compiling this information.

⁶ <http://www.mof.gov.np/> accessed on 04 May, 2009.

⁷ <http://www.landdepartment.gov.np/en/index.html> accessed on 04 May 2009.

⁸ <http://www.moha.gov.np/> accessed on 04 May 2009. Some of the links do not work on this website.

Proactive disclosure implies that citizens must be able to obtain the information without any difficulty. Merely preparing the information required to be proactively disclosed and uploading it on the website is not adequate. Due to the low levels of internet penetration in Nepal less than 1.5% of the population is able to access the websites of ministries.⁹ Other mechanisms of disclosure must be found. Even where information such as budgets, annual plans, expenditure reports are prepared by a public agency, the limited dissemination strategy ensures that such information is not easily accessible to people. For example, a representative of one of the district level offices included in this study stated that annual reports including income and expenditure statements are prepared and distributed at the village level. However this information is distributed only amongst village development committees (VDCs) and users' committees apart from various government offices working in the district. Journalists interviewed in the same district complained that such information is difficult for them to access directly from the government offices.

Similarly government officers at the district level stated that the project reports and audited accounts submitted by non-governmental organisations (NGOs) while renewing their licences cannot be disclosed to people as it could be misused. The fact that all such information will be required to be disclosed proactively has not been understood. This is a reflection of the poor levels of awareness about the provisions of the RTI Act- a challenge that will be dealt with below in detail.

The list of items of information required to be proactively disclosed has been expanded in the RTI Rules notified in 2009. Every public agency is required to voluntarily disclose details of programmes and projects implemented in the previous fiscal year, details of its website and details of information published elsewhere.¹⁰ Neither the Act nor the Rules provide any more guidance as to the minimum content of each category of information required to be disclosed proactively. Unless minimum standards and templates for proactive disclosure are prescribed, the format and content of disclosure is likely to vary from agency to agency. In the UK the Information Commissioner is tasked with developing disclosure schemes in consultation with the ministries and departments.¹¹ As the protector and promoter of RTI in Nepal the Nepal Information Commission can expand its appointed role and oversee the preparation of comprehensive proactive disclosure scheme for all public agencies. A beginning may be made with the offices at the secretariat level. The Commission may work with representatives from a sampling of regulatory and line ministries and departments with a high degree of public interface for developing the norms and minimum content of proactive disclosure.

In order to ensure better access of these documents for people, copies may be placed in government funded libraries and district information centres. If every office is required to prepare a typed or printed copy of its proactive disclosure documents, place them at a place inside the office that is easily accessible to people and allow free inspection that would serve the purpose of voluntary disclosure. Copies may be provided at the nominal cost prescribed in the Rules. Notice of the availability of information for free inspection may be posted on the display boards situated in every office. This cost-effective mechanism is one of the methods of dissemination of information stipulated in India's RTI Act.¹²

⁹ International Telecommunication Union statistics available for 2007: http://www.itu.int/ITU-D/icteye/Reporting/ShowReportFrame.aspx?ReportName=/WTI/InformationTechnologyPublic&RP_intYear=2007&RP_intLanguageID=1 accessed on 04 May 2009.

¹⁰ Rule 3, *Right to Information Rules, 2005 B.S.*

¹¹ Section 19(1)(a), *Freedom of Information Act, 2000*: http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000036_en_1 accessed on 04 May 2009.

¹² Section 4(4)- see the explanation to the term 'disseminated', *The Right to Information Act, 2005*: <http://righttoinformation.gov.in/rti-act.pdf> accessed on 04 May 2009.

Recommendations:

- *The Nepal Information Commission may in consultation with select public agencies develop and circulate schemes containing minimum content and templates for the purpose of proactive disclosure required under the Act and the Rules.*
- *Every public agency may be required to follow these schemes/templates and put the populated contents in the public domain through websites and other forms of mass media and also through government funded public libraries and district level information centres. Where resources pose constraints, such documents may be made available for free inspection at a publicly accessible place within the office. Copies may be made available on demand at nominal cost prescribed in the Rules.*

CHALLENGES TO EFFECTIVE IMPLEMENTATION: SUPPLY SIDE

Poor levels of awareness about the Act and the Rules: A common feature noticed across the offices included in this study is the poor levels of awareness about the provisions of the Act and the Rules notified recently even amongst IOs. For example, an Under Secretary level officer of one of the line ministries interviewed insisted that Rules had not been framed under the Act. The IO of an important regulatory ministry had not seen a copy of the Rules although he had in his possession a copy of the list of exempt information. In fact officers of the Ministry of Information and Communications– the administrative ministry overseeing the implementation of the Act– admitted that not many officials even at the secretariat level were sufficiently aware of the provisions of the RTI Act and its Rules. The representative of a regulatory ministry conceded that ensuring that a copy of the Act and the Rules was supplied to government offices in mofussil areas was in itself a big challenge. This concern seems to be well founded as one of the district level offices visited as part of the study did not possess copies of the RTI Act or the Rules.

It appears that the Government of Nepal has developed a system of sending copies of gazette notifications every week to government offices situated at various levels of the administration. Therefore some IOs at the secretariat and district level admitted that they had a copy of the Act and the Rules by default even though they had not read them yet. A district level officer stated that whenever their officials had any doubt about a legal provision they would approach the administrative ministry for advice. The despatch of weekly compilations of gazette notifications does not seem to inspire officials to go through them always. They are safely stored in the library or in the administration section. Other offices are in more dire straits. One of the district level officers confided that they had stopped subscribing to the weekly compilations of the gazette due to budget cuts. As they received the operational manuals relevant to their departments free of cost from the controlling ministry absence of other relevant information about the government was not seen as a lacuna or impediment in their functioning. Ensuring that all IOs have a copy of the Act and the Rules readily accessible at their desks is the need of the hour.

Very few IOs seem to have attended any sensitisation or training programme on the provisions of the RTI Act. An exception was the Dy. Superintendent of Police in Kavre who remembered attending a sensitisation workshop organised by civil society organisations (CSOs) during his previous posting in another district. Poor levels of awareness about the provisions was clearly evident from the confusion in the minds of the officers about what information is required to be given and what is to be withheld. Several government representatives identified this lack of clarity about what to give and what not to give as the biggest challenge facing the implementation of the Act. Few officials, except those who drew

up the list of exempt and accessible documents, seem to have made the attempt to secure a copy of the Act and the Rules and browse through the provisions in details. IOs would rather be spoon-fed about exempt and open information rather make those decisions themselves in a judicious manner. This tendency needs to be overcome if IOs are to perform their duties professionally. However detailed the list of exempt documents may be, it would still not cover the entire gamut of information held by a public agency and the IO may still be required to make a decision regards disclosure sans any up-to-date list to provide guidance. Under such circumstances in-depth training on the interpretation of the provisions of the Act is a sine qua non for the successful implementation of the RTI Act.

Recommendations:

- *The Ministry of Information and Communications may immediately despatch a copy of the RTI Act and the Rules to all IOs at all levels of the administration.*
- *The Ministry of Information and Communications may develop simple guidelines about the steps that need to be taken by every public agency to implement the RTI Act. These guidelines may be similar to the office memoranda issued by the Ministry of Personnel in the Government of India to public authorities regards implementation and interpretative aspects of the Act and the Rules.¹³*

Confusion between RTI Act and other laws: Several laws enacted earlier in Nepal already contain information disclosure provisions. According to the Registrar of the Supreme Court, these provisions have never been implemented seriously, hence the requirement of a special mechanism for giving access to information in the form of the RTI Act. According to him, the provision of a grievance redress mechanism in the form of the Information Commission empowered to impose sanctions on officials in the RTI Act can help overcome the existing culture of secrecy. However the existence of multiple laws requiring transparency has caused some confusion in the minds of some government representatives interviewed for this study. For example, some of the representatives of ministries and district level offices thought that the IO was the same official designated as the 'nodal officer' under the *Good Governance Act* passed in the same year as the RTI Act.¹⁴ Several others have confused the IO with the office of 'Spokesperson' appointed by different ministries and departments of the government, a practice that has been in vogue for several years in Nepal.

¹³ For example see Office Memoranda dated 25 April, 2008 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India regards the obligations of public authorities under the RTI Act, 2005:

[http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_4_2008_IR\(Eng\).pdf](http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_4_2008_IR(Eng).pdf)
accessed on 04 May 2009.

¹⁴ Section 35 of the *Good Governance Act* requires all ministries, departments and offices to appoint nodal officers for the purpose of giving information to people and the media. In some offices both positions are held by the same official, eg. Ministry of General Administration and Ministry of Physical Planning and Works. However in other offices included in this study the two posts were held by different officials, e.g. in the Ministry of Women, Children and Social Welfare an officer of Joint Secretary grade has been designated as the nodal officer and Spokesperson (interviewed for this study) whereas an officer of Under Secretary grade has been appointed the IO for the purpose of the RTI Act. See page 8 of the list of IOs for secretariat level offices displayed on the Nepal Information Commission's website: http://nic.gov.np/1_info_officers_of_central_offices.pdf accessed on 04 May, 2009.

At the District Development Committee's Office in Kavre district, the representative interviewed for this study stated that an IO had already been appointed for operating the district information centre established under previous capacity building initiatives. No separate officer has been appointed as the IO. However the information placed on the Nepal Information Commission's website lists that the *Kāryakram Adhikrt* of the District Development Committee as the IO. The IO of the Ministry of Land Reforms and Management stated that IOs have been appointed under land-related laws for giving information to people in the land records offices at the district level. No fresh IO appointments had been made at this level. Officials in some of the ministries and the district level offices believed that giving information under the RTI Act was similar to meet the press programme organised every week. The only difference is that information will now have to be given to any citizen and not only journalists as is the current practice. It is advisable for all the heads of all ministries, departments and offices at the lower levels of the administration to clearly indicate in the public domain who has been appointed as the IO under the RTI Act and who has been designated as the spokesperson. This can help avoid confusion in the implementation of the two laws. As the role of the IO is quasi-judicial in nature, there is an urgent need for absolute clarity regards the identity of the individual who has been assigned this role.

It is important to note that the Good Governance Act (GG Act) also places obligations of transparency on every ministry, department and government office. This law is administered by the Ministry of Home Affairs unlike the RTI Act which is administered by the Ministry of Information and Communications. The opening line of the preamble of this law states that it has been brought in with a view to improve transparency, accountability and people's participation in government. Various provisions in this Act require officials to function in a transparent manner.¹⁵ Nevertheless according to section 16 of the GG Act, the meaning of the term 'transparent' should not be so construed as to override the confidentiality of secret documents maintained as per requirements of any other law. This provision has the potential to cause some confusion when read in the light of section 3(3)(a) and 27 of the RTI Act. While section 16 of the GG Act grants a status of permanence to confidential documents the RTI Act makes such confidentiality subject to adjudication by the Nepal Information Commission. A further complication is created by section 37 of the RTI Act because it grants exclusivity to other laws regards matters not pertaining to providing access to information. This allows room for public agencies to take a tough stance against declassification of secret records by arguing that assigning security classification to sensitive information is a matter of national security interest and cannot be interfered with under the RTI Act. As the RTI Act of Nepal does not have an overriding effect on other laws to the extent of inconsistency (as is the case in neighbouring India¹⁶) every dispute involving confidential documents is likely to be fought in the courts beyond the adjudication process at the Nepal Information Commission. This problem can be tackled in the short term by the administrative ministries responsible for the implementation of these two important laws by issuing comprehensive policy guidelines regards classification of sensitive information and their relationship to providing access to information in general. The Nepal Information Commission may be involved in this exercise keeping in mind its powers to strike down any classification granting exempt status to a document if it is not in tune with section 3(3)(a) of the RTI Act. The international best practice principles of maximum disclosure and narrowly drawn minimalist exemptions may be used as a guide for drafting these policy guidelines. A long term strategy is to amend every law or legal instrument that is in conflict with the RTI Act to give primacy to requirements of transparency. The Ministry of Law is willing to launch this exercise as it is an essential part of the law reform process that is underway in Nepal.

¹⁵ See sec. 16, 17 and 30.

¹⁶ Sec. 22 of India's RTI Act grants primacy to this law over all other laws in the event of any inconsistency in their provisions regards access to information.

Recommendations:

- *The respective roles of the IOs appointed under the RTI Act and the Spokespersons and nodal officers appointed under other laws and official instructions may be clearly delineated and a guidance note on the same may be disseminated amongst all public agencies in the State sector.*
- *As a short term measure, the provisions of the GG Act and RTI Act and all other laws containing information disclosure provisions may be harmonised in a policy guidance note and disseminated for the benefit of IOs and all heads of public agencies in the State sector.*
- *In the long term, the Ministry of Law may undertake a comprehensive exercise to review all existing laws that are in conflict with the transparency provisions contained in the RTI Act and amend them to bring about uniformity in the access to information regime in Nepal.*

Weak internal communications mechanisms: A major challenge to the effective implementation of the RTI Act in Nepal is the weakness of the internal communications mechanism between ministries and between sections and departments of the same ministry. This problem was identified as a major challenge by the representatives of at least five ministries some of which have large scale of operations at the field level. Officers from the Secretary's grade down to the Section Officer grade were in agreement that they do not have easy access to files and records maintained by their own subordinates or colleagues. This is a worrisome factor which needs to be urgently addressed and remedied. When the source of the problem was explored in detail, it turned out that some of the important arrangements that must be part of any bureaucratic set up are not being observed in many offices. For example, there is no practice of maintaining a precedent book which contains a compilation of all important decisions taken by the ministry/department every year that can serve as a guide for future decision-making processes. The practice of recording the history of a ministry/department's evolution and growth for future incumbents has not been institutionalised. Records/registers tracing the movement of files from desk to desk or between offices are not scrupulously maintained. Often IOs and spokespersons learn about important decisions made by the Ministry from media persons rather than from internal sources. Accessing information is also not easy for many IOs appointed at the level of the Secretariat as they are junior grade officers and have to deal with their seniors who are often custodians of most information held by the department. It appears that the job of IO have been perceived as a 'clerical job at the higher levels of the administration. Internal despatches regards decisions taken and actions recommended by the ministry reach them late putting them in a state of confusion about the position they should take when queried by the media. Frequent transfers of senior officials from one department to another are pointed out as another cause for the poor state of organisational memory in the ministries. The situation is not very different in the district level offices.

However the lone exception to this trend seems to be the Kathmandu Metropolitan City Office (KMCO). The representative stated that KMCO had several senior officials who had been working with them for more than a decade. So identifying old files and records if requested under the RTI Act is not likely to pose a serious problem. The Police Headquarters is implementing a USAID-supported project to link up district level police offices using fibre optic based computer networking with the purpose of improving internal communications mechanisms. During the second phase of the project similar connectivity is planned for the police stations (*thāna*). These measures have the potential for improving the process of information exchange between various offices of the public agency. However in paper-based offices other initiatives will be required to capture organisational memory and the movement of

files and records. These initiatives also have a direct relationship with records management practices adopted by the public agencies- the poor state of which is another major obstacle to the implementation of the RTI Act in Nepal.

Recommendations:

- *Immediate steps may be taken for improving internal communications mechanisms in public agencies in the State sector.*
- *Modern information-communications technology (ICT) may be harnessed for improving connectivity between offices of public agencies.*

State of records management: One of the biggest challenges to the effective implementation of the RTI Act is the state of maintenance and management of records. Few offices have paid serious attention to keeping the documents and records they generate in a manner that is easily accessible. None of the public agencies included in this study have a centralised records maintenance facility. Instead records generated by a specific section are held in that section. This is also one of the reasons behind the difficulty experienced by officers occupying senior positions in accessing records from their subordinates. There is no records officer in any of the ministries included in this study. The Supreme Court is the only public agency that has appointed a records officer who maintains custody of court records. In all other offices records are said to be held individually by officers in each section. Several government representatives were unaware of any record retention schedule or record weeding rules prescribed for the purpose of records management. A couple of officers remembered that records were destroyed as per a schedule mentioned in the civil code.¹⁷ At the district level officers stated that they did not have clear instructions for destroying old records that are no longer relevant. For example one of the offices in Kavre district is maintaining records that are more than 30 years old. In the absence of clear instructions for weeding out obsolete records officers have preferred to retain all of them. The fear is about destroying a record which may be called for by a senior or the ministry at a later date. Further, paying attention to records maintenance implies extra work which few officers would like to take up because they believe they are already overburdened with other onerous duties.

At the level of the ministries access the quarters where records were stored was denied as prior permission had not been obtained. A visit to a district level office of the police department in Kavre indicated that poor records management was not a common feature across all offices. All old and unused records were neatly tied up in cloth bundles, labelled and stored on dust free shelves. This is perhaps the best maintained of all records rooms visited as part of this study. The state of records maintenance could be much worse in areas with climatic extremes.

In several offices where access to the quarters containing records was allowed the poor state of their preservation was starkly visible. In one of the district level offices old records were in tatters (Annex 3, photo 5). Some of the representatives of the ministries complained about lack of adequate space to store the records. Files and documents currently in use were stacked in shelves behind the desk of the officer concerned. (Annex 3, photo 6) Others were consigned to shelves along poorly lit corridors (Annex 3, photo 7) or simply tied up in bundles and hung from the rafters (Annex 3, photo 8 and 9).

Some of the ministries and district level offices have begun computerisation of records. For example, the Ministry of Education has computerised all personnel records of teachers. A

¹⁷ As a copy of the *Muluki Ain* (civil code) in English could not be obtained it is not possible to comment on the comprehensiveness or otherwise of the record destruction rules it contains. This law is of 1854 vintage and has been amended several times thereafter.

massive exercise to computerise land records has been launched in Nepal with assistance from the Asian Development Bank (Annex 3, photos 10 and 11) The Police Headquarters has also launched a computerisation of records drive and is establishing electronic connectivity with the district level police offices. The Nepal Army has also launched a records computerisation exercise recently. Computerised records management for drivers' licenses and vehicle records are also being implemented in phased manner in the Department of Transport Management.

Computerisation of records is a useful way of ensuring that records are preserved for posterity. But this measure is not without its disadvantages. As electronic storage mechanisms become obsolete very quickly continuous investment is essential to upgrade the facilities. Considerable investment will be required to be made in training existing personnel or hiring qualified data managers. As power supply is a major problem area in Nepal if records are maintained solely in electronic form they may not be accessible during power outages of long duration affecting the operational efficiency of the government. However in the long term computerisation of records can pay good dividends.

Perhaps the biggest challenge to the implementation of the RTI Act is the improvement of records management practices in the majority of offices that are paper-based and short on resources to go in for computerisation. In all such offices a planned strategy needs to be implemented for improving the state of records management. Some of the components of this strategy are given below:

- Undertake a research study of the records retention schedules prescribed under the *Muluki Ain*, any archives law that may be operational¹⁸ and other laws, rules, regulations and office procedure manuals applicable to key agencies such as the ministries of Finance and General Administration, offices of the police, the Auditor General and the Financial Comptroller General. Laws governing municipal bodies in South Asian countries also prescribe record retention schedules in the rules. This may be another area worthy of exploration. The purpose of the study is to identify the various retention schedules and make a compilation that can form the basis for developing a comprehensive records retention scheme.
- Collect information about the records management processes and the applicable rules and regulations in other countries like India, UK and Canada.
- Compile the software, i.e., a practical plan for records maintenance and management that includes records categorisation scheme, hierarchy of responsibilities, duties of records officers, procedure for classifying records and time bound declassification and archiving, a schedule prescribing the life-span of each category of record
- Make budgetary provisions for acquiring the hardware. This could be dependent on the availability of resources. Where resources are not a constraint computerisation may be resorted to. Where resources are short allocations may be made for the acquisition and use of spacious rooms, metallic shelves and lots of cardboard boxes and adhesive labels.
- Develop practical training and user guides for records management in Nepal by engaging the services of a subject expert.
- Run a pilot on improving records management practices in 1-2 offices for demonstration purposes.

The Ministry of Education and the Kathmandu Metropolitan City Office were both willing to undertake pilot projects aimed at improving their records management practices. A sound

¹⁸ Some of the officials referred to a law governing the declassification and archiving of confidential records. However the author was unable to get any information about this law on government websites.

records maintenance and management system is the backbone of a strong access to information regime. Unless supply-side bottlenecks are cleared up it may not be possible to meet the demand for information generated due to improved levels of knowledge about access rights amongst the people and civil society as a result of the awareness building activities recommended later in this report. Improvement of records management systems is also in the self-interest of public agencies in the State sector as it will help improve the efficiency of their operations by reducing delays.

Recommendation:

- *Improve records management practices in order to facilitate quicker access to information (details are given above)*

Tackling the embedded culture of secrecy in the bureaucracy: Civil society and the media have frequently complained and criticised the culture of secrecy that has enveloped the working of the bureaucracy in Nepal. This is not surprising given the fact that every officer enters the public service after taking an oath of secrecy. Civil service rules governing the conduct of public servants criminalise unauthorised possession or transfer of information. Secrecy therefore becomes one of the fundamental guiding principles of the administration. While this culture may have served the purposes of the erstwhile monarchy, it is anathema to the very notion of democracy whose underpinning value is 'equality'. If it is accepted that the starting point for Nepal's nascent democracy is the equality of all people by virtue of their being citizens who are not entitled to any special privileges on account of birth, religion or caste or any other basis for discrimination, there is no reason why access to information should be restricted to and controlled by a few people in government. As a first step towards ushering in the regime of openness the oath of secrecy may be replaced with an oath of transparency and accountability and every officer may be required to take this oath before entering service.

On the surface level, hardly any officer interviewed for the study, was against the idea of increasing transparency in the administration. Almost every officer claimed that his/her department always shared information with people, especially the media. When probed deeper about providing access to specific documents and records, the responses indicated the deep-seated attitudes of resistance to openness. For example, some of the manuals published for use in relation to registration of land rights are themselves marked confidential. When asked whether those manuals would now be placed in the public domain, given the requirements of proactive disclosure under section 3(3)(a) of the RTI Act, the officials resisted the idea and wanted to retain their confidentiality (Annex 3, photo 11).¹⁹ Representatives of offices at the district level charged with the responsibility of implementing construction works claimed that they were very transparent in their working. Boards displaying basic information about the construction work being undertaken had been set up at on the site to inform people. However when quizzed about providing people with access to copies of the work contract, bills and vouchers and the measurement books, the officers clearly stated that such information should not be given as it could be misused.²⁰ The representative of a major

¹⁹ The RTI Act requires every public agency to proactively disclose the duties, powers and responsibilities of a public agency and its functionaries in addition to the details of the decision-making process. The manuals of the Ministry of Land Reform and Management contain all this information. However according to the representative of the Ministry they are meant for official use only and may not be disclosed to any other person. The author could not obtain a copy of these manuals from this office. They are not available on the Ministry's website either.

²⁰ According to the disclosure requirements prescribed by the Rules in addition to the requirements under the principal Act, all information relating to projects implemented during the previous calendar year must be voluntarily disclosed to people.

service providing agency in Kathmandu stated that measurement books may be given only with the authorisation of the controlling ministry. These examples are illustrative of old habits and practices that have acquired the status of conventions that must be followed without question.

Similarly according to district level officers, the reports and audited accounts submitted by NGOs implementing government funded projects for renewing their licences could not be shared with any third party. However if necessary where an information seeker could give valid reasons some of the contents of the reports and accounts statements may be disclosed verbally. They stated that under no circumstances should a copy of these documents be given to a third party.

Almost all government representatives interviewed for the study stated that information about any matter where a decision has not been taken yet should not be disclosed to any person.²¹ The representative of a law enforcement agency stated that records relating to investigation and prosecution should not be given. Copies of first information reports (complaints made to the police to investigate a crime) may be given only to the complainant. Others may be told verbally about its contents, but copies are not to be given. Similarly information about the operational budgets of these agencies may be given only to *bona fide* researchers with sufficient guarantees against misuse of the data. The representative of a line ministry that distributes pensions and other similar benefits stated that information about recipients is not disclosed in the public domain as it is not compulsory to do so.²²

The impression one gathers from these responses is that the resistance to transparency is not a function of the arrogance of power that one would expect in bureaucrats habituated to speak and act with impunity. Instead it is based on a fear of the uncertain consequences of disclosure. For example, a representative of the line ministries interviewed for the study was of the opinion that disclosure about the adoption policy could lead to its misuse by human traffickers.²³ Several government representatives at the secretariat and district level were very wary of the consequences of giving information to the media. The media is looked upon with suspicion as they are frequently known to put a negative spin on the information about the government before they publish it. One government representative stated that he would not be comfortable giving out any information that would cause embarrassment to his ministry or reveal the wrongdoings of his colleagues. Giving information, especially to the media is often viewed as an image-building exercise that ought to benefit the government, rather than cause discomfiture. Some officers claimed that giving too much information to the media can be dangerous as they may use it to blackmail government officers. A senior representative of a regulatory ministry interviewed for this study recommended that capacity building programmes should be designed for officers who interact with media-persons so that they may speak confidently without being perturbed by their pointed questions and giving away too much.

²¹ There is little realisation of the fact that a blanket exemption for records of deliberations of officials is not permitted under the RTI Act either before or after a decision-making process is completed.

²² There is little realisation of the fact that information about welfare schemes and the transactions involved must be proactively disclosed under section 3(3)(a) of the RTI Act. This is similar to the statutory requirements of transparency in India and Bangladesh.

²³ This can always be countered by arguing that transparency in policy matters as a rule creates a more open environment within which to conduct one's operations. Openness and endows a higher degree or predictability to the outcomes of the administrative process. Opacity on the other hand creates uncertainty and gives rise to corruption and impunity in the event of abuse of power. If the adoption policy is misused on account of disclosure then the policy and its implementation mechanisms are weak; the praxis of transparency should not be blamed for the same.

This attitude is not surprising given the confusion about the roles of the IO appointed under the RTI Act and the spokesperson designated under the *Good Governance Act*. This issue has been discussed in detail above. In-depth training is one of the methods by which the fear of disclosing too much can be overcome. The first lesson that needs to be learnt in such a training programme is that it is good to give as much information as possible and withhold only that which is covered by section 3(3)(a) of the RTI Act. A representative of a regulatory ministry correctly pointed out that the training programme should first target the ministers and secretaries who are the primary decision-makers in government. When they are sufficiently sensitised about the need for institutionalising transparency in the working of their respective ministries, the culture of openness is more likely to percolate down to the lower levels. In the absence of a clear signal from the top levels of the bureaucracy about the change of policy from undue secrecy to compulsory transparency, IOs who are lower ranking officers may not implement the Act faithfully. The Nepal Administrative Staff College- the premier officer training academy may be asked to spearhead the national level officer training efforts. Other line ministries are also said to have their own training institutions. These may also be roped in to reach out to IOs and other officers at the regional and district level.

Another source of bureaucratic resistance is the imagined increase in the workload of officers appointed as IOs. Some of the officers interviewed for this study complained that they were already underpaid and the RTI Act would be looked upon as being burdensome especially due to the ever present threat of penalty for non-disclosure. So far, there has been no flood of applications in any office. However that situation may change in the future with increasing levels of awareness in urban and rural areas. The experience from India indicates that some offices already having a high degree of public interface will receive a large number of applications every year while requests will trickle in at other offices. In Nepal if a large number of applications is received by any office, a simple and cost effective plan to deal with the demand can be to increase the number of IOs so that the workload is shared by more officials. Such officials may be asked to handle only RTI-related duties. Another method for reducing the submission of formal requests for information is to put more and more information in the public domain.

Recommendation:

- *The oath of secrecy may be substituted with an oath of transparency which every public servant may be required to take before entering service.*
- *Sensitisation and in-depth training programmes may be designed and conducted in order to overcome the bureaucratic attitude of resistance to information-giving.*
- *The sensitisation programmes may focus on ministers and the senior-most officials in every ministry/department while the in-depth training programmes may target IOs and other junior level functionaries.*
- *The Nepal Administrative Staff College may be designated as the nodal agency to develop and conduct training programmes at the national level. Training agencies of other ministries may also be roped in to conduct training programmes for officers at the regional and district level.*
- *Basic orientation on RTI Act may be made part of the in-service training for officer level staff of the Government of Nepal so that all the newly recruited officers have basic understanding of the requirements of the pro-transparency law at the time of entering service.*
- *More IOs may be appointed when the RTI workload increases in any office due to greater levels of awareness amongst people.*
- *Every public agency may endeavour to proactively disclose more and more*

information so that people's need for submitting formal requests is reduced.

Other recommendations made by public agencies: In addition to the recommendations mentioned above some of the ministries and offices had additional suggestions for better implementation of the RTI Act. These suggestions are given below:

- *The Ministry of Women and Social Welfare being a line ministry with most of its programmes implemented at the community level prefers that Programme Officers be appointed as IOs instead of officers handling administrative duties. This is a good idea. One of the guiding principles behind RTI laws is that the office responsible for creating and maintain records should be made responsible for deciding questions of granting access. If a programme officer is appointed IO he/she will be in a better position to make decisions regards access than an administrative officer far removed from the area of operations.*
- *Filing information requests with IOs situated at the Secretariat level can be cumbersome or even impossible for any person as he/she has to obtain a gate pass for gaining entry into the Singha Durbar complex. The Ministry of Finance has suggested that a single window system for accepting RTI applications at the reception to the complex may be introduced. Citizens may walk in and submit their application at this window. It will be the responsibility of the receiving clerk to give a written acknowledgement to the requestor and ensure that the request is forwarded to the IO of the concerned public agency within 24 hours.*
- *The Ministry of Information and Communications has recommended that post offices be used as conduits for information requests. As post offices are spread all over the country, a facility could be created for citizens to walk into one such office and hand over a request to the receiving clerk with a request to forward it to the IO of the concerned department. The requestor may be required to pay the regular postal charges for availing this service. In fact Post Offices in India provide this service to requestors who wish to obtain information from the Central Government. Nepal could create a similar facility in its post offices for its citizens. However for the successful working of this system it is essential that all post offices are provided with an up-to-date list of all IOs designated in public agencies in the State sector.*

DEMAND SIDE CHALLENGES

Poor levels of awareness: The President of the Supreme Court Bar Association described Nepal as a society where respect for the rule of law is not an entrenched value. Politically Nepal has a long history of autocracy and socially an equally long trend of feudalism where socio-religious status, patronage and privilege determined one's relationship with State agencies. Democracy is a nascent idea and its fundamental values will take root in Nepal's soil over time. According to him, civil society played a significant role in the pro-democracy movement in Nepal and must again take the lead role in popularising RTI as part of its efforts to spread awareness about other constitutionally guaranteed fundamental rights.

While a small set of officers interviewed for this study believed that awareness about one's rights were of a very high order amongst people in Nepal, a large majority of officers believed that not many people knew about their access rights under the RTI Act. The absence of any flood of RTI applications targeting public agencies till date is indicative of the poor levels of awareness amongst people in both rural and urban areas. This low level of awareness, according to officials, is to be blamed for the correspondingly low levels of transparency in public agencies of the State sector. "We are very transparent, and willing to give information, but people do not come to ask us for any information" is a remark frequently voiced by government representatives.

There have been exceptions in the past where information that was ordinarily intended to be kept confidential was shared with people because of a strong demand. For example, the representative of the Nepal Water Supply Corporation recollected an instance when a newly constituted water user committee in Pokhara had sought access to the budget and all documents relating to a water supply project as there were allegations of corruption against the previous members of the committee. The Corporation is said to have disclosed the documents at that stage. It goes without saying that in a country with adult literacy levels of 57% not many people will be aware of the existence of the RTI Act unless efforts are made to spread awareness about the Act at the community level.

Public education initiatives using mass media channels: Unlike the Indian RTI Act which requires the Government to educate people about their access rights and in particular develop promotional programmes targeted at disadvantaged communities, the RTI Act of Nepal does not place any such obligation on the Government. Some public education initiatives have been launched by CSOs and advocacy groups that participated in the process of drafting the RTI law. For example, Freedom Forum and the Federation of Nepali journalists have held workshops in several districts for training CSO representatives, media-persons and officials about the salient features of the RTI Act. The country representative of Article XIX- an international organisation of long standing with expertise in RTI- has resourced some radio programmes on RTI broadcast through FM channels. These efforts have had a laudable but limited impact going by the small number of information requests that have been actually submitted to various government offices. Radio stations have broadcast programmes on the importance of the RTI Act at the behest of CSOs. For example, Pro-Public is said to have organised the broadcast of a panel discussion on the salient features of the RTI Act a few months ago. Some of the newspapers have been reporting on RTI-related stories such as the appointment of members of the newly set up Information Commission, the rules that have been notified for implementing the Act and some of the stories generated by CSOs that had filed RTI requests. Nepal Television- the channel with the widest coverage has not yet aired any programmes on RTI as there was no programme budget for the same.

Utilising existing broadcast potential for popularising RTI: Radio channels are best placed for airing sensitisation and educational programmes on RTI because of their outreach. Close to 150 FM channels are operational in Nepal with 33 of them operating from Kathmandu

alone. Radio Nepal has the largest outreach covering more than 90% of the population broadcasts programmes in 20 languages spoken in different parts of Nepal. However they conceded that they had not conducted any programme on RTI till date. Several media representatives interviewed for this study suggested that the Government should allocate a budget for broadcasting and telecasting public service announcements on the RTI Act.

Building CSO capacity to conduct training programmes at community level: While radio and TV programmes have their use in spreading awareness about the concept and potential of the RTI Act, this is not adequate for inculcating skills of making concrete information requests. There are only a handful of CSOs and advocacy groups that have in-depth knowledge of RTI Act and the Rules. Almost all of them are based in Kathmandu. Hardly any CSO working in the rural and outlying areas being based there appears to have developed the expertise to conduct training programmes on RTI for other CSOs and the people in general. Drafting information requests is an art requiring precision in language, brevity of words and adequate prior knowledge of the working of the public agency from which information is sought. Mastering this technique requires more than one training session. Further, drafting appeals by basing one's arguments on the provisions of the law is also not an easy task and requires to be perfected with practice. As the author could not avail any opportunity of attending a CSO workshop it is not possible to comment on the quality of training imparted at the CSO workshops. However there is an urgent need to increase the number of specialists who can train people at the community level to link RTI to their developmental needs and file concrete information requests to bring about accountability in the spending of public monies. Capacity building efforts must target CSOs working at the community level on development, social justice and governance issues in with the objective of creating expert resource organisations in every region and district in adequate numbers. Capacity building should aim at developing skills of these organisations to link RTI to people's information needs from government offices, to assist people in drafting information requests and appeals and complaints against decisions of non-disclosure, to regularly monitor compliance in public agencies and suggest measures for effective implementation.

Strengthening the civil society coalition: The handful of organisations working to promote RTI in Nepal have come together to form a Citizens' Campaign for RTI. Freedom Forum is one of the leading organisations in this platform. They have filed 13 information requests with various public agencies and have been successful in obtaining the desired information. The Citizens' Campaign proposes to be a think tank on RTI. It is also developing plans to spread awareness and promote the use of RTI at the grass roots level and persuade public agencies in the State sector to develop a culture of *suo motu* disclosure. As awareness levels spread and more and more organisations work to promote the knowledge and use of RTI they will need each others' support to face up to the twin challenges of public education and ensuring effective compliance. Strong communication channels need to be developed between the members of the coalition to share experiences and seek advice and assistance from each other. Given the limited resources at the disposal of these organisations there is a n evident need for donor support for their promotional activities. With adequate resources at their disposal civil society organisations in Nepal will be able to emulate the efforts of their counterparts in India and Pakistan who have played the lead role in popularising their respective information access laws at the community level.

Recommendations:

- *The Government of Nepal may consider allocating adequate budgetary support for conducting promotional programmes on RTI throughout the country suing mass media channels.*
- *Public service announcements, talk shows and infotainment programmes on RTI may be developed and broadcast over the large radio network to reach out to*

people in mofussil and far flung rural areas.

- *The civil society campaign on RTI may be expanded and the capacity of its members built up to undertake, promotional and monitoring activities.*
- *Donor support is essential for CSOs involved in promotional and capacity building activities as there is no statutory obligation on the Government to fund CSOs to promote RTI.*

THE NEPAL INFORMATION COMMISSION

Composition and status: Section 11 of the RTI Act provides for the establishment and constitution of the Nepal Information Commission. It consists of three members including the Chief Information Commissioner who is the Chief Executive of this body. The Chief and other Information Commissioners are appointed by the President on the recommendation of an advisory committee. One seat on the Commission is reserved for a woman member. All members of the Commission are appointed for a term of five years duration and are ineligible for reappointment to the same post. A member of the Commission may be removed by a resolution of the Legislature-Parliament upon the recommendation from the parliamentary committee on information and communication. The conditions of service are stipulated in the RTI Rules. The rank of the Chief Information Commissioner and other Information Commissioners is not specified in the Act or the Rules. Instead specific figures regards remuneration are mentioned in the Rules.²⁴ It is advisable to clearly indicate where the members of the Commission fit in in the order of precedence drawn up by Government. It is advisable to grant to the Commissioners ranks that are sufficiently high as to ensure respect from all public agencies and compliance with their orders. For example, in India the status of the Information Commissioners is equal to that of the members of the Election Commission who are in turn equal in rank to judges of the Supreme Court. A similar status may be granted to the members of the Nepal Information Commission by amending the Act.²⁵

Composition and staffing: The Nepal Information Commission is headed by an eminent person with long years of service in the field of journalism and mass communication. The second member has also been selected from the field of journalism and perhaps is a reflection of the strong advocacy role played by the media during the passage of the RTI law. The woman member brings in experience from the field of law. In addition to administrative and research staff, the Commission is entitled to have a full-time secretary who is required to be a serving bureaucrat. The Secretary is the administrative chief of the Commission.

In reality the Commission has been provided with skeletal staff. Currently two staffers are of Section Officer grade. One Accounts officer and another non-gazetted officer has been deputed to work with the Commission. An officer of the grade of Under Secretary posted in the Commission was transferred out by the Government. No replacement has arrived despite the passage of three months. The members of the Commission are said to have made several representations to the Government for filling up the Secretary's position without success. From a discussion with the Commission, the Ministry of Finance and the Ministry of Information and Communications it appears that the issue of staffing is stuck up in bureaucratic red tape with one ministry not permitting expansion of staff under the pretext that no budgetary sanction has been provided. This is clearly a case of disregard for the independence of the Commission which is guaranteed under section 11 of the Act.²⁶

²⁴ Rule 10 stipulates a salary of Rupees 24,300 for the Chief Information Commissioner and Rupees 23,800 for the Information Commissioners: http://nic.gov.np/rti_act_and_regulation_english.pdf accessed on 04 May 2009. According to civil society advocates this salary corresponds to the pay grade of secretaries of Ministries and hence amounts to lowering the dignity and prestige of the Commission. The salaries originally fixed before the notification of the Rules were equal to that of a judge of the Supreme Court. However the Rule related to remuneration will be applicable only to the next batch of Commissioners. This has caused a considerable amount of consternation within civil society and is being interpreted as an attempt by the government to clip the wings of the Commission.

²⁵ It is advisable incorporate this change in the principal Act itself instead of the Rules. This will ensure that no government may vary the status of the Commission to the disadvantage of its members without parliamentary approval.

²⁶ The Act requires the setting up of an 'independent' Information Commission. According to international RTI best practice standards independence includes operational, financial, and staffing

Further, postings to bodies such as the Information Commission are not sought after by many bureaucrats as opportunities for career growth within the bureaucracy get limited. As a result poorly performing or surplus staff are passed on to service the Information Commission. This practice is visible in some of the states in neighbouring India. It is advisable to avoid such a tendency in Nepal. The job of the Information Commission is highly specialised and complex in nature. The Commission requires senior and competent staff well versed in administrative procedure and thoroughly knowledgeable of the law in general. In countries like the UK the office of the Information Commissioner advertises its vacancies and invites applications from interested candidates. Qualified members of the public as well as serving bureaucrats apply for these jobs and selected on the basis of merit, competence and experience. Such a process ensures that candidates of high merit are recruited to undertake the specialist work of the Commission. It is advisable for the Government of Nepal to provide the Information Commission qualified staff with fixed tenure and also make provisions for the Commission to select meritorious candidates from the private sector.

Activities till date: The Information Commission has recently moved out of the Singha Durbar complex into an independent premises that is not encumbered with excessive levels of security. This is laudable considering the fact that private individuals who are parties to information access disputes should have easy access to the Commission.²⁷ The Commission has created useful resources for citizens on the RTI Act including a website that contains materials in English and Nepali.²⁸ It has uploaded the text of the RTI Act and the Rules and lists of Information Officers appointed at the secretariat, regional and district levels. The Commission has also published *Thāha Pāune Adhikār* - a pocket book on the RTI Act for citizens' use. The Commission has drafted a practice manual for Information Officers and translated into Nepali a guidebook on implementing the RTI Act both of which are yet to be published.²⁹ The Commission has also prepared a pamphlet explaining the procedures for accessing information in simple language which remains to be published.

The Commission has received and disposed eight information access disputes. The text of some of these decisions has been uploaded on the website.³⁰ It is advisable for the Commission to upload all of its decisions in chronological order accessible through an active link on its website. It is also advisable for the Commission to provide a key word search facility for its decisions database. This will be of immense value to researchers and advocates working on RTI-related issues.³¹ The Commission has also issued directions to public

autonomy. See *Open Sesame, Looking for the Right to Information in the Commonwealth*, CHRI, 2003, New Delhi, p.43:
http://www.humanrightsinitiative.org/publications/chogm/chogm_2003/chogm%202003%20report.pdf, accessed on 04 May 2009.

²⁷ This comment is based on the Indian experience where in some states Information Commissions function from the government secretariat complex situated deep inside high security zones. Often appellants miss their opportunity to attend the hearing as they are unable to get the necessary security clearance to enter the office complex. Such restrictions could be avoided altogether in Nepal in future.

²⁸ <http://nic.gov.np/> accessed on 04 May 2009.

²⁹ The implementation guidebook containing general guidelines has been published by CHRI in 2008. See : *Implementing Access to Information: A Practical Guide for Operationalising Freedom of Information Laws*: http://www.humanrightsinitiative.org/publications/rti/implementing_ati.pdf accessed on 04 May 2009.

³⁰ The link to the decisions of the Commission does not work but some of the orders of the Commission are available at the link regards the Commission's releases.

³¹ For example, the decisions database of the Central Information Commission is linked to Google search engine. The key word search facility is very useful for researchers. Putting its decisions in the

agencies in the context of access to medicines and disclosure of power supply load shedding schedules.

The Nepal Information Commission has undertaken promotional and sensitisation activities. The Commission organised a *Sankalpa Goshthi* in October 2008 which was addressed by the Prime Minister and attended by Ministers and several top ranking government officers. A report of this workshop has been prepared but it does not appear to have been disseminated amongst participants. Later, the Commission is said to have organised sensitisation workshops in four regions of Nepal. Workshops for officers have been held in eight districts also where feedback regards implementation difficulties were documented. It is advisable for the Commission to circulate the reports of these workshops amongst all public agencies in government and invite the opinions of IOs for improving implementation of the Act.

Recommendations:

- *The Government may incorporate amendments to the RTI Act to ensure that the status of the members of the Nepal Information Commission is elevated beyond the existing level (to be at par at least with judges of the Supreme Court).*
- *The Government of Nepal may provide senior, experienced and competent staff to the Nepal Information Commission with fixed tenure. The Commission may also be granted the autonomy to select meritorious candidates from the private sector through an open competitive process. The modalities of this recruitment process could be worked out in consultation with the Ministry of Information and Communications.*
- *The Nepal Information Commission may upload all its decisions on its website and equip it with a search facility based on key words.*
- *The Nepal Information Commission may circulate the report of its sensitisation conferences and workshops amongst all public agencies of the State sector and invite suggestions from the IOs for improving the implementation of the RTI Act*

CHALLENGES BEFORE THE NEPAL INFORMATION COMMISSION

There are several challenges to the implementation of the RTI Act. Several of these have been discussed above. Some more systemic and functional issues are discussed below. In order to overcome all these challenges, the Nepal Information Commission is required to fully embrace its appointed role as the promoter and protector of the RTI Act. This calls for a proactive approach to activities such promoting awareness about the law, advising public agencies to set up appropriate systems for improving openness, developing procedures, formats and templates of registers relating to access and appeals procedures and developing internal regulations for the purpose of handling access-related disputes which reach the Commission. Several representatives of public agencies, civil society and media houses interviewed for this study voiced this expectation from the Nepal Information Commission. A set of specific recommendations for the Nepal Information Commission is given below to highlight its repertoire of functions and energise its performance.

Building working relationships with government: A frequent tendency noticed in developing countries that have enacted information access laws is visible in Nepal as well.

public domain ensures that few requests will be made for copies of these decisions. This can reduce the workload of the Commission's Information Officer.

Often the government of the day treats the enactment of an access law as an end in itself and takes very little initiative thereafter to give effect to its provisions unless prodded by some agency or public opinion. The Rules to implement the Act were notified a year after the Act had been gazetted. IOs have not been appointed in all public agencies. Unless the Commission assumes a more proactive role the software necessary for IOs to perform their duties is not going to be developed. For example, the Act requires that information requests be submitted in writing³² but no format has been prescribed. The only format prescribed in the Rules is for submitting appeals. It is advisable for the Commission to develop a simple format for making information requests and recommend that the Government make it applicable to all public agencies in the State sector. Prescribing simple formats has a two-fold advantage:

- a) requestors will have a clear idea of how to structure their applications seeking information and
- b) a high degree of uniformity can be ensured leaving little room for individual public agencies to develop complicated formats of their own.

However this is not to suggest that requests for information must be made only in pre-printed formats or templates. Citizens must be allowed to submit requests on plain paper also so long as they fill up all applicable fields of data mentioned in the printed format. Similarly formats for acknowledging receipt of requests, intimation of fees, rejection of requests, and registers for maintaining data about applications received and disposed may be developed by the Commission. The Government may be persuaded to notify these formats as being commonly applicable to all public agencies functioning at different levels of the administration.

In the absence of a full-time Secretary one of the dilemmas faced by the Commission is how to conduct communications with government. While it is true that the Secretary performs the role of being the administrative chief of the Commission and hence liaises between the Commission and the Government, there is no reason why the Commission should not be able to continue communications even in the absence of a Secretary. The Chief Information Commissioner may assume this role upon himself or assign such a role to one of the Information Commissioners. Maintaining regular communications with nodal ministries is crucial for the effective implementation of the RTI Act.

Another issue that was raised during the interviews with the members of the Nepal Information Commission is regards the language and tone of communication that may be adopted by the Commission when corresponding with the Government. For example, members of the Commission wanted to know whether phrases such as, “we request you” or “we direct you” should be used while addressing a letter to any ministry. This dilemma is obvious given the absence of a public service background amongst the Information Commissioners and the non-existence of a senior government officer to service the Commission as its Secretary. Rather than recommend actual phraseology that may characterise the communications despatched by the Commission, the following principles and course of action is suggested:

- the Commission may use such phraseology that is appropriate to its dignity and prestige as a statutory body and necessary for ensuring compliance. For example, where decisions are announced in the context of information disputes they must be in the idiom that is common to judicial pronouncements. Where instructions are issued for ensuring compliance with the Act outside of an access dispute the language and tone should be such as to convey an adequate sense of authority. When communications relate to financial or administrative matters of the Commission there is no harm in using phrases such as ‘we request you’ as it is indicative of politeness, not subservience.

³² Section 7, RTI Act.

- The Commission may develop standard templates for use during correspondence with public agencies.

Building bridges with civil society and the media: The Nepal Information Commission requires friends in the civil society and media sectors in order to perform its functions effectively. Being based in Kathmandu the Commissioners would be far removed from the actual arena of the implementation of the RTI Act. CSOs and the media could be an invaluable source of feedback from the regions and the districts regards people's experiences of seeking and obtaining information. In order to collect this feedback in a systematic manner it is advisable for the Commission to form an advisory or consultative group comprising of RTI subject experts, civil society and advocacy groups engaged in spreading awareness and using the RTI Act to seek information from public agencies and media persons who regularly report on RTI stories. This group could meet regularly, perhaps every month during the next two years and at longer intervals thereafter, and give feedback to the Commission about compliance levels within public agencies and any difficulties that people may face in making information requests or obtaining information. In the absence of this kind of cooperation it will be very difficult for the Commission to gauge the grass root level performance of public agencies.

Developing and disseminating guidance notes: The IOs will require a lot of advice and guidance for interpreting the provisions of the Act and making decisions about providing or withholding access. Rather than wait for the nodal ministry to issue such guidelines and in the interest of maintaining uniformity in the interpretation it is advisable for the Commission to develop such guidance notes on its own and disseminate them amongst public agencies. For example, the practice annual drafted by the Chief Information Commissioner is itself a guidance note. Similarly guidance notes for invoking the exemptions and applying harm tests mentioned in them can be drawn up and disseminated amongst the IOs. The Commission may identify legal resources who are also experienced in administrative matters to assist the Commission in developing these guidance notes. Ideal candidates would be senior or retired legal counsels who have a deep understanding of the working of the government. The Commission may include this requirement in their staffing proposals submitted to the relevant ministries for approval.

Design a strategy for awareness building: The Nepal Information Commission is the promoter of the RTI Act and as such this role includes the responsibility of educating people about the Act. The Commission may design a strategy to massify awareness about the RTI Act in collaboration with CSOs and media houses. Radio Nepal and Nepal TV in addition to private radio and TV channels have shown a lot of interest to air programmes to spread awareness about RTI. An awareness raising campaign could be designed and appropriate material developed for this purpose with the support of donor agencies. The Commission may guide the campaign while CSOs and mass media channels may be involved in running the campaign at the grass roots level.

Recommendations:

- *The Nepal Information Commission may assume a more proactive role in implementing the RTI Act.*
- *The Commission may develop regular channels of communication with Government especially the Ministry of Information and Communications and other regulatory ministries in charge of law and finance.*

- *The Commission may develop formats and templates necessary for every procedure under the Act and persuade the Government to notify them for use in all public agencies across the State sector.*
- *The Commission may assign to one of the Information Commissioners the role of continuing communications with the Government in the absence of the Secretary.*
- *The Commission may develop standard templates for use while communicating with public agencies that contains language and tone which is commensurate with its dignity and prestige.*
- *The Commission may constitute an advisory/consultative group of CSOs and media persons working on RTI issues to aid and advise the Commission to monitor implementation of the Act. This group could meet every month to provide feedback to the Commission regards the state of compliance in public agencies in different parts of Nepal.*
- *The Commission may develop and disseminate detailed manuals of procedure, practice/guidance notes to assist IOs in interpreting the provisions of the RTI Act. The Commission may hire the services of senior or retired legal counsels experienced for this purpose with the approval of government.*
- *The Commission may design a strategy for conducting a nation-wide awareness campaign in collaboration with CSOs and the mass media sector.*

CONCLUDING NOTE

The implementation of the RTI Act of Nepal presents all stakeholders a unique opportunity for improving the quality of governance manifold. Corruption is a problem that threatens to become endemic although, according to civil society organisations, it has not become as deep rooted as is the case with neighbouring countries of India, Pakistan and Bangladesh. The effective implementation of the RTI can act as a check on corruption and mal-administration as it equips citizens with the tools to identify such instances and seek appropriate remedies. It is important therefore for all stakeholders to come together to plan the implementation of the RTI Act. The proposed national conference on implementing the RTI Act therefore assumes considerable importance for this reason. The conference could be a platform where implementation issues are discussed threadbare and participants go back with a clear idea of their role in entrenching the transparency regime. The following themes are being proposed for the national conference:

- 1) Strengthening the supply-side
 - Identifying practical solutions to overcome the systemic and functional bottlenecks
 - Reviewing the restrictive provisions contained in the Rules
 - Developing minimum contents for proactive disclosure
 - Narrowing down the list of documents covered by the exemptions
 - Developing formats for various procedures
- 2) Increasing Awareness about the RTI Act
 - Developing a public education campaign
 - Special measures to reach out to areas of difficult terrain
 - Targeting disadvantaged groups like women, dalits and ethnic groups for RTI awareness building
- 3) Role of the Information Commission
- 4) Designing and Developing Training programmes for IOs and appellate authorities
- 5) Developing systems for monitoring and evaluating compliance in public agencies
- 6) Ensuring compliance in the social sector (NGOs) and political sector (political parties)

SUGGESTED TIME LINE FOR IMPLEMENTING THE RECOMMENDATIONS³³

NO.	RECOMMENDATION	TIMELINE
1.	<p>Setting up systems, increasing awareness among IOs and other officials, removing confusion regards other Acts:</p> <p>1.1 The Government may incorporate amendments to the RTI Act to ensure that the status of the members of the Nepal Information Commission is elevated beyond the existing level (to be at par at least with judges of the Supreme Court).</p> <p>1.2 All Ministries and Departments are advised to issue circulars to all offices under their jurisdiction at the secretariat, regional, district and line agency level, outlining the various tasks that need to be undertaken for ensuring effective implementation of the Act.</p> <p>1.3 The Ministry of Information and Communications may immediately despatch a copy of the RTI Act and the Rules to all IOs at all levels of the administration.</p> <p>1.4 The respective roles of the IOs appointed under the RTI Act and the Spokespersons and nodal officers appointed under other laws and official instructions may be clearly delineated and a guidance note on the same may be disseminated amongst all public agencies in the State sector.</p> <p>1.5 As a short term measure, the provisions of the GG Act and RTI Act and all other laws containing information disclosure provisions may be harmonised in a policy guidance note and disseminated for the benefit of IOs and all heads of public agencies in the State sector.</p> <p>1.6 The oath of secrecy may be substituted with an oath of transparency which every public servant may be required to take before entering service.</p> <p>1.7 More IOs may be appointed when the RTI workload increases in any office due to greater levels of awareness amongst people.</p>	<p>1.1 To be completed by 15th October 2009</p> <p>1.2 To be completed by 30th October 2009</p> <p>1.3 To be completed by 30th October 2009</p> <p>1.4 To be completed by 30th October 2009</p> <p>1.5 To be completed by 30th October 2009</p> <p>1.6 To be completed by 31st December 2009</p> <p>1.7 Ongoing process</p>
2.	<p>Appointment, continuity and publicity regards Information Officers:</p> <p>2.1 All Ministries and departments may ensure security of tenure for the individuals appointed as IOs.</p> <p>2.2 All offices of public agencies may be required to display the name, designation and contact details of the relevant IO and authority designated to receive complaints under section 9 of the Act. The contact details of the Nepal Information Commission may also be displayed in a similar manner.</p>	<p>2.1 Relevant policy change to be effected through notification by 30th October 2009</p> <p>2.2 to be completed by 30th October 2009</p>

³³ In order to ensure logical planning and thematic continuity some of the recommendations have been regrouped.

3.	<p>Identifying exempt records:</p> <p>3.1 The list of exemptions may be reviewed by the Nepal Information Commission against the criteria mentioned in the Act in consultation with all stakeholders. All entries that cannot be justified under the Act may be struck off the list.</p> <p>3.2 The revised list may be circulated to all IOs to serve as a ready-reckoner.</p>	<p>3.1 Stakeholder meetings by 31st December 2009</p> <p>3.2 Revised list notified by 31st January 2010</p>
4.	<p>Proactive disclosure:</p> <p>4.1 The Nepal Information Commission may in consultation with select public agencies develop and circulate schemes containing minimum content and templates for the purpose of proactive disclosure required under the Act and the Rules.</p> <p>4.2 Every public agency may be required to follow these schemes/templates and put the populated contents in the public domain through websites and other forms of mass media and also through government funded public libraries and district level information centres. Where resources pose constraints, such documents may be made available for free inspection at a publicly accessible place within the office. Copies may be made available on demand at nominal cost prescribed in the Rules.</p> <p>4.3 Every public agency may endeavour to proactively disclose more and more information so that people's need for submitting formal requests is reduced.</p>	<p>4.1 Stakeholder meetings by 31st December 2009 Template to be circulated by 31st January 2010</p> <p>4.2 To be completed by 31st March 2010</p> <p>4.3 Ongoing process</p>
5.	<p>Poor levels of awareness about the Act and the Rules:</p> <p>The Ministry of Information and Communications may develop simple guidelines about the steps that need to be taken by every public agency to implement the RTI Act. These guidelines may be similar to the office memoranda issued by the Ministry of Personnel in the Government of India to public authorities regards implementation and interpretative aspects of the Act and the Rules.³⁴</p>	<p>5. To begin by 1st November 2009 and issue guidelines from time to time.</p>
6.	<p>Confusion between RTI Act and other laws:</p> <p>In the long term, the Ministry of Law may undertake a comprehensive exercise to review all existing laws that are in conflict with the transparency provisions contained in the RTI Act and amend them to bring about uniformity in the access to information regime in Nepal.</p>	<p>6. To be completed along with the Constitution-drafting exercise- by 31st December 2010?</p>
7.	<p>Weak internal communications mechanisms:</p> <p>7.1 Immediate steps may be taken for improving internal communications mechanisms in public agencies in the State sector.</p> <p>7.2 Modern information-communications technology (ICT) may be</p>	<p>7.1 Relevant circulars to be issued by 30th October 2009</p> <p>7.2 1-2 year long</p>

³⁴ For example see Office Memoranda dated 25 April, 2008 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India regards the obligations of public authorities under the RTI Act, 2005:

[http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_4_2008_IR\(Eng\).pdf](http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_4_2008_IR(Eng).pdf)
accessed on 04 May 2009.

	<i>harnessed for improving connectivity between offices of public agencies.</i>	<i>phased action plan to be designed by 31st March 2010</i>
8.	<p>State of records management:</p> <p>8.1 <i>Improve records management practices in order to facilitate quicker access to information (details are given in the main report)</i></p> <p>8.2 <i>Pilot projects for improving records management may be initiated in the Ministry of Education and the Kathmandu Metropolitan City Office.</i></p>	<p>8.1 Complete a needs assessment study by 31st March 2010</p> <p>8.2 Launch 1-year long pilot project by 1st June 2010</p>
9.	<p>Tackling the embedded culture of secrecy in the bureaucracy:</p> <p>9.1 <i>Sensitisation and in-depth training programmes may be designed and conducted in order to overcome the bureaucratic attitude of resistance to information-giving.</i></p> <p>9.2 <i>The sensitisation programmes may focus on ministers and the senior-most officials in every ministry/department while the in-depth training programmes may target IOs and other junior level functionaries.</i></p> <p>9.3 <i>The Nepal Administrative Staff College may be designated as the nodal agency to develop and conduct training programmes at the national level. Training agencies of other ministries may also be roped in to conduct training programmes for officers at the regional and district level.</i></p> <p>9.4 <i>IOs may be required to hold sensitisation sessions on the RTI Act for their juniors and contemporary colleagues in order to ensure knowledge transfer while the senior officers may be trained by the Nepal Administrative Staff College.</i></p> <p>9.5 <i>Basic orientation on RTI Act may be made part of the in-service training for officer level staff of the Government of Nepal so that all the newly recruited officers have basic understanding of the requirements of the pro-transparency law at the time of entering service.</i></p>	<p><i>Designation of Nepal Administrative Staff College as nodal agency for training to be completed by 30th September 2009</i></p> <p><i>Designing of training programmes to be completed by 31st October 2009</i></p> <p><i>Launch of trainings in November 2009.</i></p> <p><i>IOs must be trained not only for implementing the RTI Act but also to sensitise their own colleagues. So some TOT sessions must also be developed simultaneously.</i></p>
10.	<p>Demand-side Challenges:</p> <p>10.1 <i>The Government of Nepal may consider allocating adequate budgetary support for conducting promotional programmes on RTI throughout the country using mass media channels.</i></p> <p>10.2 <i>Public service announcements, talk shows and infotainment programmes on RTI may be developed and broadcast over the large radio network to reach out to people in mofussil and far flung rural areas. (see 11.9 below)</i></p>	<p>10.1 Budgetary sanction for promotional activities may be obtained in the revised estimates for the fiscal year 2009-2010. Thereafter adequate allocation may be made in the regular budget every year.</p> <p>10.2 Development of programme content for radio and television channels may be completed by 31st November 2009. Actual broadcast may</p>

	<p>10.3 <i>The civil society campaign on RTI may be expanded and the capacity of its members built up to undertake, promotional and monitoring activities.</i></p> <p>10.4 <i>Donor support is essential for CSOs involved in promotional and capacity building activities as there is no statutory obligation on the Government to fund CSOs to promote RTI.</i></p>	<p><i>begin from 1st December 2009.</i></p> <p>10.3 Training programmes may be designed by 30th November 2009.</p> <p><i>Launch of training programmes in a phased manner from 15th December 2009.</i></p> <p>10.4 Secure donor support for promotional activities by 30th September 2009.</p>
11.	<p>Nepal Information Commission</p> <p>11.1 <i>The Commission may assume a more proactive role in implementing the RTI Act. The Commission may constitute an advisory/consultative group of CSOs and media persons working on RTI issues to aid and advise the Commission to monitor implementation of the Act. This group could meet every month to provide feedback to the Commission regards the state of compliance in public agencies in different parts of Nepal.</i></p> <p>11.2 <i>The Commission may assign to one of the Information Commissioners the role of continuing communications with the Government in the absence of the Secretary.</i></p> <p>11.3 <i>The Commission may develop standard templates for use while communicating with public agencies that contains language and tone which is commensurate with its dignity and prestige.</i></p> <p>11.4 <i>The Commission may develop regular channels of communication with Government especially the Ministry of Information and Communications and other regulatory ministries in charge of law and finance.</i></p> <p>11.5 <i>The Nepal Information Commission may circulate the report of its sensitisation conferences and workshops amongst all public agencies of the State sector and invite suggestions from the IOs for improving the implementation of the RTI Act.</i></p> <p>11.6 <i>The Government of Nepal may provide senior, experienced and competent staff to the Nepal Information Commission with fixed tenure. The Commission may also be granted the autonomy to select meritorious candidates from the private sector through an open competitive process. The modalities of this recruitment process could be worked out in consultation with the Ministry of Information and Communications.</i></p>	<p>11.1 Advisory group to be constituted by 31st August 2009</p> <p>11.2 Role assignment to be completed by 31st August 2009</p> <p>11.3 To be completed by 31st August 2009</p> <p>11.4 Ongoing process</p> <p>11.5 To be completed by 15th September 2009</p> <p>11.6 To begin immediately and ongoing process</p>

	<p>11.7 <i>The Commission may develop formats and templates necessary for every procedure under the Act and persuade the Government to notify them for use in all public agencies across the State sector.</i></p> <p>11.8 <i>The Commission may develop and disseminate detailed manuals of procedure, practice/guidance notes to assist IOs in interpreting the provisions of the RTI Act. The Commission may hire the services of senior or retired legal counsels experienced for this purpose with the approval of government.</i></p> <p>11.9 <i>The Commission may design a strategy for conducting a nation-wide awareness campaign in collaboration with CSOs and the mass media sector.</i></p> <p>11.10 <i>The Commission may upload all its decisions on its website and equip it with a search facility based on key words</i></p>	<p>11.7 To be developed by 31st October September 2009</p> <p>11.8 To be completed by 31st October 2009</p> <p>11.9 To be completed by 31st October 2009</p> <p>11.10 Ongoing process</p>
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Implementing the RTI Act in Nepal

Needs Assessment Questionnaire

Date:..... Time:.....

1. Name of the Agency:.....

2. Name/Designation of the Representative/s:.....

.....

.....

3. Public Agency: Y N 4. IO appointed: Y [#.....] N

5. Copy of Act available: Y N 6. Copy of Rules available: Y N

7. Budget allocation for RTI: 7A. Has been made- Y N

7B. Has been sought- Y N 7C. Is being prepared- Y N

8. Proactive disclosure prepared: Y N In the works

9. Mode(s) of dissemination:.....

10A. Website: Y N 10B. URL:.....

11. Number of RTI applications: Received Denied

12A. Training: IO- Y N 12B. Other officers: Y N

13A. Citizens Charter prepared: Y N 13B. Displayed: Y N

14. Mode(s) of dissemination:.....

15. Office procedure manual exists: Y N

16A. Records Room exists: Y N 16B. Records Officer/s exist/s: Y N

16C. Records Management (RM) categorisation scheme exists: Y N

16D. Name of RM rule/regulation:.....

17. Record retention schedule(s) exists: Y N

18. Types: General Subject Specific Financial Other

19. State of RM:.....
.....
.....

20. Constraints and challenges to implementation:.....
.....
.....
.....

21. Fears and concerns:.....
.....
.....
.....

22. Initiatives undertaken for implementation:.....
.....
.....
.....

22. Special mention:.....
.....
.....

LIST OF PEOPLE INTERVIEWED FOR THE STUDY

Government:

Secretariat Level

Ministry of Education, Mr. Deependra Bickram Thapa, Secretary, Kaiser Mahal, Kathmandu; Tel: 4411599; Fax: 4414887; Email: Email: deependra.thapa@moe.gov.np

Ministry of Home Affairs, Mr. Navin Kumar Ghimire, Joint Secretary, Singha Durbar, Kathmandu; Tel: 4211205; Fax: 4211286; Email: Email: ghimire_newnepal@hotmail.com

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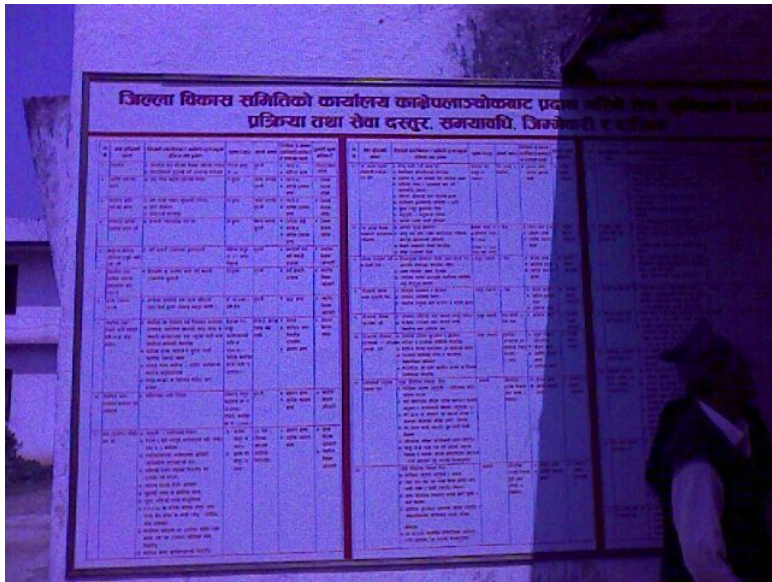
PHOTOGRAPHS



1. Public display of rates applicable for land registration



2. Display of citizens' charter at the entrance to the office of Radio Nepal



3. Display of citizens' charter at the office of the District Development Committee



4. Citizens' charter on display at the Ministry of General Administration.



5. State of records maintenance in one of the district level offices



6. Files and boxes stacked up behind an officer's desk in one of the Ministries



7. Files stacked along a poorly lit corridor in one of the offices in Kathmandu



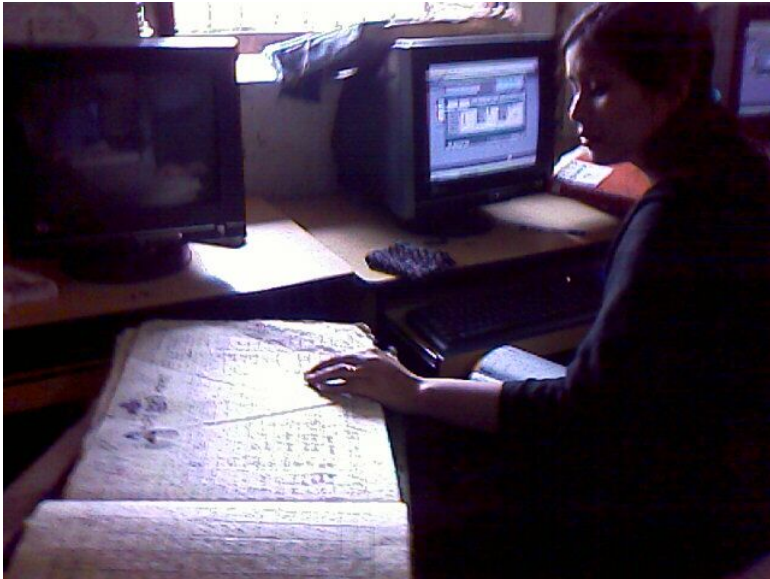
8. Old land records piled up on rack and hanging from rafters



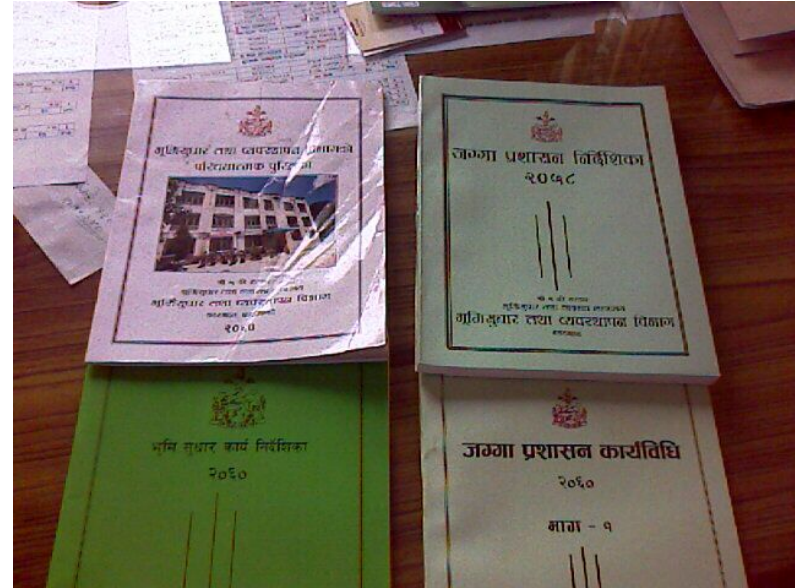
9. Old land records bundled up and hanging from rafters



10. Computerisation of land records in full swing



11. Computerisation of land records in full swing



12. Confidential manuals relating to land records registration and reform

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