

Implementation of the Right to Information Act: A Strategic Plan for Nepal

A World Bank Report

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Executive Summary

[To be added]

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I. Introduction

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

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

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

To assist in building capacity on this issue, in particular through the development of a strategic plan for implementation of the RTI Act, a World Bank team undertook a mission to Nepal from 7-19 July 2010. **[verify exact dates]** The team consisted of Vikram Chand, Senior Public Sector Management Specialist, World Bank, New Delhi, Toby Mendel, Executive Director, Centre for Law and Democracy, Canada, consultant to the World Bank, and Rajib Upadhyaya, Senior External Affairs Specialist, World Bank, Kathmandu.

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

The discussions during these meetings focused on issues relevant to implementation of the right to information such as the legal framework for the right, the role of different actors, activities undertaken so far, gaps and needs in implementation and possible future activities by different actors. Over the course of

the mission, the team was able to gain a good idea of the range of perspectives held by different local actors about the overall framework for the right to information in Nepal, what has been done so far, and future needs.

The main content of this Report is a strategic plan for Nepal to implement its Right to Information Act. This is in two parts: a detailed Work Plan for the NIC for the next two years; and a set of priority action ideas for other actors. The actual plan is preceded by two other sections, one describing the background and context in which the RTI Act is being implemented, and the other describing the main obligations imposed by the RTI Act, along with the activities that have been undertaken so far to implement them.

The material in this Report is drawn most importantly from information obtained during the World Bank mission in July 2010. Other information sources include official documents, including relevant legal documents and reports by the NIC, academic papers and other publications, for example by NGOs, media reports and supplementary information provided by email.

II. Background and Context

II.1 Wider Political and Developmental Context

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

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

Nepal also faces huge development challenges. The 2009 UNDP Human Development Report ranks Nepal 144th out of a total of 177 countries, with an average GDP per capita, in PPP terms, of just over USD1,000, an average life expectancy of just over 66 years and an adult literacy rate of just 56.5%. In its 2001 Report, the UNDP ranked Nepal 129th out of 162 countries, still thirteenth from the bottom, so there has been no relative progress.

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

Politically, Nepal remains a unitary state, although agreement has in principle been reached that it will be transformed into a federal state with the new constitution. Pursuant to the Local Self-Governance Act, 2055 (1999), considerable powers have been devolved to the 75 districts and over 4000 villages, each run by Development Committees (DDCs and VDCs). Despite considerable powers residing at these levels, the political situation has meant that it has not been possible to conduct local elections, leading to a power vacuum which has largely been occupied by political parties.

II.2 Regional Context

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

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

II.3 Formal Developments

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

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

The NIC was formally established a year later, in June 2008, and so has now been in operation for just over two years. Finally, the Right to Information Rule, 2065 B.S. (the Rules) was adopted in 2009. The adoption of the rules has facilitated implementation, clarifying issues such as the fees that may be charged for providing access to information, the way in which appeals are to be processed, the benefits allocated to members of the NIC, and the role of the secretary of the NIC.

II.4 Challenges

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

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

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

Few formal steps to implement the law appear to have been taken by public bodies, apart from appointing Information Officers. Part of the reason for this is that demand seems to be extremely low. Indeed, none of the public bodies we talked to had received more than a handful of requests. While this does not absolve them of their primary obligations under the law, it does at least render their weak performance understandable, given the lack of external interest and competing priorities.

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

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

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

It seems likely that the vast majority of NGOs are completely unaware of their obligations under the RTI Act. However, others, who are aware of them, expressed various concerns to us about these obligations. Some had a general concern that the Act could somehow be used as a political or perhaps social weapon against them, by their opponents and competitors. Others were concerned that opening themselves up might expose them to criminal activity, such as threats of extortion.

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

The structure of the NGO community in Nepal may also militate against right to information activism. Unlike in some countries, but similar to Bangladesh, NGOs in Nepal are mainly oriented towards delivering services, largely in parallel to government, instead of focusing more heavily on advocacy work. There are, of course, many exceptions, but this is an overall tendency. This means that NGOs are

not only in a similar position to government in relation to the law, but also in terms of the nature of their activities. So, while NGOs in many countries use the right to information to hold government accountable for service delivery, in Nepal the Act might logically be put to the same use vis-à-vis NGOs.

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

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

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

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

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

III. Obligations and Activities

III.1 The NIC

The RTI Act creates legal obligations and powers for a number of different actors. The Act creates the National Information Commission (section 11), and, along with the Rules, imposes the following obligations and bestows the following powers on it:

- To process appeals against decisions of the head of a public body refusing to provide information (section 9).
- To review the records held by public bodies (section 19).
- To order public bodies to maintain orderly lists of the information they hold (section 19).
- To order public bodies to release information and to take other actions to fulfil their obligations under the law (section 19).
- To make recommendations to government regarding the right to information (section 19).
- To issue appropriate orders regarding the protection, promotion and exercise of the right to information (section 19).
- To submit an Annual Report on its activities to the legislature (section 25).
- To maintain contact with the government through the MOIC (section 26).
- To decide appeals against classification of information by the classification committee (section 27(3)).
- To decide complaints regarding sanctions against whistleblowers (section 29(4) and (5)).
- To decide complaints about the misuse of information lodged by public bodies ((section 31).
- To fine Information Officers or the heads of public bodies for unlawfully withholding information and to request departmental action in appropriate cases (section 32(1)).
- To fine persons found to be misusing information (section 32(4)).
- To fine persons for failing to obey its orders (section 32(5)).
- To hear appeals for compensation for harm due to a failure to provide information (section 33).
- To adopt a procedure for deciding appeals (Rule 7).
- To adopt a code of conduct for Commissioners (Rule 16).
- To adopt the necessary directives to carry out its activities smoothly (Rule 25).

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

wrongly sanctioned, one was in relation to the wrongful classification of information, a number were for compensation and the rest were about refusals to provide access to information.

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

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

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

III.2 Government

The RTI Act also places obligations on the Government of Nepal, namely:

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

The government does maintain contact with the NIC through the Ministry of Information and Communications (MOIC), the official reporting body (section 26 of the Act states: “The Commission should maintain contact with the Government of Nepal through” MOIC). The government has also provided NIC with a budget and staff, as noted.

The government established the classification committee and adopted a set of rather general guidelines on classification of information, the bulk of which consists of a list of types of documents, broken down by public body, which will not be

disclosed. Also, as noted above, the Rules for implementation of the Act were adopted in 2009.

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

III.3 Public Bodies

The Act and Rules create a long list of obligations for public bodies, as follows:

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

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

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

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

the other hand, IOs were in many cases senior staff, with access to all or most of the information held by the public body.

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

Public bodies in Nepal provide a lot of information on a proactive basis, and this appears to be an area where important progress has been made in recent years. Some public bodies, such as the Ministries of Health and Education, have put in place Management Information Systems. For example, the Ministry of Education informed us that they hold a student census twice yearly to ensure updated information is available. At the same time, the general consensus seemed to be that, overall, record management was poor and that this was a serious challenge for Nepal.

Despite providing quite a lot of information on a proactive basis, it would seem that very few, if any, public bodies have undertaken specific measures to ensure that they are meeting the proactive disclosure obligations set out in section 5 of the RTI Act and Rule 3. Indeed, in most cases, senior officials did not seem to be aware of these obligations or were under the impression that their existing proactive dissemination efforts were sufficient.

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

III.4 Other Information Tools

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

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

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

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

IV. NIC Work Plan

The overall strategic plan for implementation of the Nepali RTI Act is in two parts. The first, in this section of the Report, is a detailed Work Plan for the NIC. The second, in the following section, is a list of priority actions for other stakeholders.

The Work Plan for the NIC relates primarily to its work over the next two years, but some longer-term ideas are also included. It is broken down into five primary sections – internal actions, supply side interventions, demand side/public education interventions, pilots and other activities. It is intended to guide, and to provide a template for the work of the NIC over the next two years.

Outline of NIC Work Plan

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

IV.1 Internal Actions

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

The NIC as a Public Body

The NIC is clearly a public body in terms of the RTI Act and, as such, is under certain obligations. Consistent with its role in overseeing and providing leadership on the right to information, the NIC aims to behave in an exemplary fashion in discharging its obligations under the Act.

The NIC will immediately appoint an **Information Officer**. This will be someone relatively senior. Training will be provided to this individual, as necessary to enable them to undertake their functions.

The NIC will study section 5 of the Act to assess what information relating to it is subject to **proactive publication**, and it will take steps to publish this information. In some cases, this may require it to create new records (for example, in relation to section 5(3)(a), information on its “structure and nature”). Once its website is up and running, this information will be made available on the website. In the interim, the information will be made available for inspection at the NIC office.

The NIC will also prepare itself to **process requests for information** directed to it. To this end, it will develop written procedures setting out how it will process such requests. These procedures will, for example, identify how a request may be made, along with an email address, and the specific internal steps that will be taken to process that request. It will also discuss what types of information it might not be able to disclose, on the basis of the exceptions listed in section 3 of the Act, although consideration of whether or not to release a specific document will always be made at the time of a request (thus, for example, when dealing with private information, the NIC will always contact the individual concerned to ascertain whether or not they consent to the release of the information).

Doing Business

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

The NIC will also adopt a number of other written guidelines and procedures to assist it in its work. The NIC does not have formal **mediation** powers, and yet

informal mediation has proved very effective in other countries in resolving information disputes where there is no need for a formal investigation or hearing. The NIC will explore the idea of conducting mediation, and prepare guidelines on this. These will, for example, address questions such as when mediation is appropriate/likely to be effective, what steps will be taken when mediation is being attempted, and when an attempt at mediation will be considered to have been successful or, alternatively, to have failed.

Rule 7 requires the NIC to adopt written **procedures for handling of appeals**. It is not clear whether this is primarily directed at appeals against refusals to provide information, or it also covers the other types of appeals the NIC is empowered to decide, namely appeals against classification of information, about sanctions imposed on whistleblowers, for compensation or about misuse of information. Regardless, in line with good practice, the NIC will develop a set of written procedures for all of these appeals. These may be the same for all appeals or vary depending on the type of appeal.

The procedures will also include rules relating to the hearing of appeals by Commissioners. This section of the document will make it clear that appeals may be heard by one or more Commissioners, and that the NIC may establish a **mobile bench**, with Commissioners travelling to different parts of the country to hear appeals. This will, among other things, help ensure that the appeals procedure is accessible to all citizens.

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

Capacity Issues

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

There is a particular need to provide capacity-building support to the **legal officer** of the NIC, as currently it relies heavily on external expertise in this area. Another

specific area of need is in relation to **advocacy capacity**, so that NIC officers can effectively promote proper implementation of the Act.

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

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

Others

The NIC is required to produce an **annual report** each year. It produced its first annual report in October 2009. It will continue to do this, producing an annual report each October/November. As a resource for its staff, and for the general public, the NIC will establish a dedicated **library** with materials on the right to information at its offices. This will include both local and international materials, such as relevant legal documents, books, official reports and NGO publications.

Cost Implications

- internal staff resources
- cost of starting up and running website
- cost of publishing and purchasing material (e.g. for proactive publication, internal guidelines/procedures, annual report, library)
- consultancy expertise
- travel (e.g. for mobile bench)
- training and exchange visits (e.g. travel, venues, trainers)
- extra salary costs for incentives

IV.2 Supply Side Interventions

The RTI Act places a number of obligations on public bodies, as outlined above. In almost all cases, public bodies are struggling to meet these obligations due to the lack of capacity of their staff, as well as the need to develop the necessary systems

and tools. There are obvious efficiency gains in having a central body play a leadership role in this area, not to mention advantages in terms of promoting consistency across public bodies. The NIC is an obvious candidate for this, given its role as the locus of expertise on this issue within the public sector.

Training

Central **training for officials** is provided in Nepal largely through the Nepal Administrative Staff College (NASC). All officials should be provided with some sort of basic training on the right to information. For new officers, this can be provided as part of the basic training they receive on entering the service. For existing staff, this training could be built into ongoing training and professional upgrading activities.

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

There is also a need for more focused and dedicated **training for information officers**, given their special responsibilities in helping public bodies meet their obligations under the Act. These courses should cover the issues in the general training for all officials, but in greater detail and with a specific focus on the special role of information officers in implementing RTI systems.

The NIC will help with both of these training efforts (i.e. for ordinary civil service staff and for information officials) in two ways. First, it will provide **training of trainer courses** to NASC staff and others, with a view to building sustainable capacity into the system to continue these courses. Second, it will develop two **training manuals**, one aimed at ordinary staff and one aimed at information officers, to be used in these courses. The training of trainer courses will be organised around the training manuals, and essentially equip trainers to deliver the courses in the manuals.

Systems and Knowledge Tools

Training is essential to ensuring that the rules under the RTI Act are implemented, but it is not enough. Public bodies need to put in place a number of systems – including for processing requests, for meeting their proactive publication obligations and for managing their records effectively. They also need specific guidance on certain issues, in particular how to apply exceptions.

Like the NIC itself, each public body needs to adopt a set of **procedures for processing requests** for information. The NIC will assist them in doing this by developing a model set of procedures which each individual public body can then

adapt to its particular needs and structure. The model procedures will be based closely on the NIC's own requesting procedures, described above.

Similarly, tools will be developed to assist public bodies in meeting their **proactive publication obligations**. This will consist of guidance as to the specific types of documents required to be published to meet the obligations in section 5(3) of the Act and Rule 3. Once again, this will be based in part on the internal assessment by the NIC of its own proactive publication obligations, although this will need to be adapted so as to be relevant to the 'average' public body. In due course, tailored guidance tools on this will be developed for different types of public bodies (central ministries/departments, DDCs and VDCs, State owned enterprises, NGOs and so on).

To support this, the NIC will develop a simple off-the-shelf website page design for public bodies to use to disseminate this information. This will include blank sections for the different types of information, along with appropriate internal and external links (for example, links on the main page could link to details about the information officer and the different main categories of information required to be published proactively). The website will also include an interactive tool, whereby members of the public may comment and make suggestions for future improvement. It will be designed so that it is relatively simple to integrate it into or add it onto existing websites (which may each have their own particular architecture).

The NIC will also work with other expert bodies, including the Nepal National Archives, to develop a set of minimum standards for public bodies regarding **record management** to facilitate the provision of information to the public (and also to facilitate the general functioning of public bodies). For now, these should be understood as guidance to public bodies, although over time, they might, by regulation, be given a more authoritative and binding status.

Achieving the proper balance between making information available and protecting legitimate confidentiality interests is probably the greatest challenge for public bodies seeking to apply right to information rules. Decision-making around **exceptions** is at the heart of the right to information, since this is how the lines between openness and secrecy are drawn. Furthermore, very often requests for information raise new and sometimes difficult openness versus secrecy issues.

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

Another area where guidance from the NIC is very important is in relation to NGOs. As noted, NGOs are, to the extent that they receive funding from the Government of

Nepal or foreign governments, under the same obligations as public bodies to disclose information. However, many NGOs do not understand what these obligations are, or how to go about meeting them. The NIC will produce a dedicated **guidance note for NGOs**, addressing such issues as proactive publication, processing requests and also basic record management issues.

Cost Implications

- internal staff resources
- training costs (e.g. venue, trainers, training manuals)
- publications (e.g. request processing procedures, record management standards, guidance notes)
- development of model website
- consultancy expertise

IV.3 Demand Side/Public Education Interventions

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

General Interventions

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

The NIC will employ a number of other tools to reach out to the wider public with messages about the right to information. It will publish and disseminate **brochures** in different national languages describing the nature of the right, why it is important (using appropriate local examples), and how to exercise it. It will produce a **documentary** on the right to information aimed at the general public, with the same sort of messages that are contained in the brochures.

28 September is **International Right to Know Day**, celebrated in countries around the world. The NIC will conduct a number of activities on that day, and possibly also at other times, to raise the profile of the right to information, and to enhance public

engagement on this issue, including by attracting media coverage. Examples of these activities include awarding prizes to public bodies which have performed well in terms of implementation of the RTI Act (and possibly also negative prizes or brickbats for poor performers). It will run essay writing and debating competitions, to get students and others to think more seriously about the right. It will also award right to information scholarships to try to promote the idea of more in-depth study of this issue.

Targeted Interventions

Over the longer term, the most effective and universal system for raising awareness about any issue in society remains the education system. In some countries, the right to information law requires this issue to be **taught in schools** and at higher educational institutions. This is not the case in Nepal, but the NIC will hold discussions with the Ministry of Education with a view to having this issue added to the school curriculum, ideally for children in the 13-16 year old range.

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

Cost Implications

- internal staff resources
- media slots
- publications (e.g. brochures)
- documentary
- International Right to Know Day activities
- training costs
- consultancy expertise

IV.4 Pilots

Pilots have proven to be a very effective means of advancing the right to information in different countries. They allow for experience to be gained with this right, and yet do so in way that is minimally threatening to public bodies which may have concerns about the implications of opening up. There are different ways of conducting pilots but the NIC will focus on a comprehensive programme of support to approximately ten **“RTI Friends”**. These will be public bodies at different levels of government – regional bodies, DDCs, municipalities – which demonstrate a positive attitude towards openness and which are ready to work with the NIC to become role models of openness.

The approach will be to provide **comprehensive** counselling to the RTI Friends in all areas of openness – record management, appointing and training information officers and other officials, putting in place good systems for processing requests for

information, ensuring active proactive publication of information and so on – so that these bodies are exemplary models of openness. The NIC will provide support in terms of training and advice, as well as making sure that these bodies have access to all available tools to facilitate openness. Provision of advice will be ongoing, so as to help these bodies overcome problems they encounter along the way (for example, regarding the interpretation of exceptions or deciding whether certain information is subject to proactive disclosure).

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

Cost Implications

- internal staff resources
- travel costs
- costs of publicising this work
- consultancy expertise

IV.5 Other Activities

The NIC will conduct a number of other activities to promote the right to information. There is some lack of clarity in the legal framework regarding the relationship between the RTI Act and other laws which provide for secrecy. Formally, the RTI Act only recognises the confidentiality interests it provides for (specifically, in sections 3(3) and 28). However, the Constitution protects the right to information only insofar as information is not rendered secret by another law.

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

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

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

Pursuant to section 19 of the RTI Act, the NIC has a responsibility to review the information held by public bodies and to order the public release of information, as appropriate. The NIC has an established practice of monitoring the performance of public bodies, particularly in relation to the proactive publication of information. It included a survey of the findings in its first annual report. The following year, it monitored at least 35 public bodies and it will again include the results in its annual report.

The NIC will continue to **monitor the performance of public bodies** in terms of meeting their obligations under the RTI Act. This will include assessing whether or not they have appointed IOs, the extent of their proactive publication efforts, their information management efforts, and their handling of requests for information. A particular effort will be made to generate more information through the tracking of requests, with a view to ensuring that request processing is proceeding in accordance with the Act.

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

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

Cost Implications

- internal staff resources
- travel costs
- publications (study on secrecy provisions)
- costs of monitoring
- consultancy expertise

V. Priority Ideas for Other Actors

A number of different stakeholders have an interest in the right to information, including members of the general public. In most countries, a few key stakeholders are responsible for the main activities in support of implementation. In addition to the oversight body, these include the government, parliament, public bodies, civil society and the international community.

This section of the Report outlines some of the priority actions that these different actors might consider in the context of Nepal. It is intended more as a source of inspiration and ideas than as a specific Work Plan to be implemented.

V.1 The Government

➤ Nodal Agency

Public bodies have a number of different obligations under the RTI Act, as outlined above. They are legally responsible for implementing these obligations, to the NIC and before the courts. However, these avenues of recourse are limited in scope and, at least in respect of the courts, are not accessible to most Nepalis.

Furthermore, achieving the right to information cannot be done simply by enforcing rules; it also requires encouragement, monitoring, policy/standard-setting and support. To some extent, the NIC should and does fulfil these roles. But there is also a need for a central nodal agency within government to undertake these tasks. Such an agency would send a signal that there is strong political will to implement the Act and would provide coherent internal leadership on this issue.

Concretely, a central nodal agency would set and enforce clear internal standards in various areas on the right to information, including in relation to proactive publication, information management, the processing of requests and the internal structures that are necessary to support them. The agency would monitor compliance with these standards, and would ideally have the power to address failures to meet them. It would also provide expertise and tools to help public bodies meet their obligations under the Act. Ideally, the nodal agency would work closely with the NIC as relevant on these activities.

➤ Training and Education

The role of NASC in terms of providing central training to officials has been noted. The NIC can provide some support to NASC, in particular in terms of capacity building and provision of expertise. But NASC also needs resources to provide additional training on the right to information, particularly dedicated training to IOs.

As noted above, true socialisation of the right to information over time can best be done by incorporating it into the school curriculum. This implies that a module on

this issue be added to the existing curriculum, preferably for students in the 13-16 year old range. Teachers would need to be trained on how to deliver the module, although it could be developed in a largely self-explanatory manner.

➤ Support for IOs

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

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

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

➤ Enforcing NIC Decisions

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

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

There is also a need for feedback to be provided to the NIC regarding the actions public bodies have taken in response to an NIC decision, including where the NIC has imposed a fine on an official or information user, or made an order for compensation. In many countries, public bodies are required to report back to the oversight body within established timelines on their actions. Such an obligation could be created by regulation. A special fund could be set up in relation to the RTI Act. Fines and compensation could be paid into the fund, and then sent on to either the central budget or the intended recipient. The NIC could be kept informed of payments into and out of the fund.

➤ Central Tools

Central tools can facilitate the efficient implementation of the right to information in a number of ways, including by avoiding a situation where each individual public body has to develop its own tools and systems. A central web portal for proactive disclosure would greatly facilitate access to information disseminated in this way. It could link through to the individual websites of public bodies or operate as a free-standing information resource. It could be supplemented by rules standardising the websites of public bodies, either generally or specifically in relation to information required to be disclosed proactively. Over time, a central web portal could also be extended to allow for requests to be made centrally, and in electronic form. A central system, either through the web portal or separately, could also be used to collect overall tracking data on implementation of the right to information, including on requests.

There is also a need for a central strategic communications plan for the public on the right to information. Individual public bodies may wish to communicate key messages or with key constituencies, but overall awareness raising about the right needs to be done centrally to be effective. The NIC clearly has a role here, and it is undertaking and will continue to undertake a number of activities in this area. But there remains an important role for government in raising public awareness, as this task is too large for the NIC alone.

➤ Amending the Regulations

The Rules adopted just last year put in place various systems for implementing the RTI Act. They clarify certain procedures and systems well. At the same time, a number of other issues have come up that need to be addressed through regulation. It is common in many countries for a number of sets of regulations to be adopted over time, as implementation of the right to information law progresses.

Any exercise to adopt a new set of regulations should be consultative and gather ideas and suggestions from all interested stakeholders. At the same time, a few issues that could usefully be addressed by regulation may be noted:

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

- Consideration could be given to using regulations to create a career track for IOs.

V.2Parliament

Parliament is an important stakeholder and oversight body for implementation of the right to information. Parliament has an inherent responsibility to ensure that the legislation it passes is implemented properly and this is somehow built into the RTI Act, for example through the fact that the NIC presents its Annual Report to parliament. To discharge this function effectively and consistently, parliament needs to identify a committee, presumably from among existing committees, with dedicated responsibility for oversight of implementation of the RTI Act.

V.3Public Bodies

Public bodies are under a set of primary obligations under the RTI Act to promote the right to information. Their key tasks are to classify and manage information properly, to train their staff, to publish information proactively, to appoint IOs, to process requests for information, to put in place internal complaints systems for initial refusals to provide information, and to take action against officials who obstruct access to information.

It is beyond the scope of this Report to go into detail regarding the specific actions that public bodies must do to discharge these obligations, although many of the activities outlined for the NIC and government in the Report are designed to assist public bodies in this direction. However, these remain primary duties for public bodies, and they are formally required to discharge them.

In many countries, all public bodies are required to produce detailed annual reports on their activities to implement the right to information law, including detailed statistics on their processing of requests. Such information greatly facilitates formal oversight of implementation by the NIC, nodal agencies and parliament, as well as informal oversight by civil society. It also provides an important source of tracking information about progress on this key right over time. Above, it was suggested that any new regulations should place an obligation on public bodies to produce such reports. In the meantime, public bodies should consider collecting and presenting such information on a voluntary basis as part of their commitment to good governance and the right to information.

V.4Civil Society

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

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

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

There is an almost unlimited variety of ways in which civil society can create demand and build awareness. Local groups need to design programmes which fit with their capacities, human and financial, and other programmatic activities. However, a few general success factors may be identified:

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

V.5The International Community

The international community also has an important role to play in promoting the right to information in Nepal. Beyond the obvious act of providing financial support, the international community can also mobilise political will, build enthusiasm, and be a source of expertise and experience. To some extent, this Report represents all of these categories of support.

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