

SEMINAR ON RTI AWARENESS

30-31 MAY 2012 - THIMPHU, BHUTAN

Summary of Proceedings



DAY ONE

WEDNESDAY, MAY 30, 2011

Welcome Address

Mr. Kinley T. Wangchuk, Director, DoIM, MoIC

Mr. Kinley T. Wangchuk welcomed all of the attendees to the seminar and expressed his gratitude for their participation. He noted that the Kingdom of Bhutan had traditionally believed there was no need for Right to Information (RTI) legislation because of Bhutan's Buddhist culture and the King's longstanding commitment to putting the needs of the Bhutanese people above all else. He also noted that because of the country's small size, the focus in recent years has been on development.

Yet while the right to information is guaranteed in the constitution, the government has come to believe, in part upon consideration of other countries' experience, that a discussion over RTI ought to commence and legislation should be considered, he continued. He added, however, that a hastily drafted law would be worse than none at all, and therefore this awareness seminar would play an important role in ensuring that the



Bhutanese government, media, civil society, and people could gain an understanding of RTI and have a candid discussion of whether it would promote good governance and overall happiness (GNH) in Bhutan. To further that aim, he concluded, the MoIC has been undertaking many initiatives, including seminars, training sessions with experts, and review of a draft RTI law.

Keynote Address

The Honorable Lyonpo Nandalal Rai, Minister for Information and Communications

The Honorable Lyonpo Nandalal Rai welcomed all guests and thanked them for their willingness to assist Bhutan as it considers passing RTI legislation. He noted that the DoIM has been actively researching and planning for RTI for more than three years in order to ensure proper preparation. Highlighting the importance of effective implementation beside strong legislation, he noted that RTI would have no meaning if it was not properly put into action. He added that the Bhutanese people are trusting of each other and depend on one another, and noted that RTI activism may not be immediately

applicable. He concluded by stating his personal belief that RTI would promote better governance and transparency in Bhutan and that he looked forward to the seminar's proceedings.



Opening Address

Mr. Wajahat Habibullah, Chairman, National Commission on Minorities, India

Mr. Wajahat Habibullah opened by expressing his gratitude to the seminar's organizers for asking him to speak at the event. He noted that the will to enact RTI legislation in Bhutan must come from within and suit the country's system. He recounted that Gandhi used to advocate the principle of "swaraj" to resist authority when power was abused, and that India's RTI act has sought to enshrine this philosophy in law—democracy itself, he explained, requires an informed citizenry in order to fight corruption and hold government accountable. But accountability is itself only a means to an end, he noted—the end is transparency and a citizenry empowered with knowledge. RTI in India, he stated, has been a means to ensure public participation in governance, and it has the potential to do the same for Bhutan.

Mr. Habibullah recalled that the concept of the citizens' right to information first came about in Sweden in 1766, the United States in 1966, Norway in the 1970s, and many other nations since then, such that the total number of states with such legislation is now nearly 90. The essential concept in RTI, he stated, is that transparency must be promoted in everything the government does, and in all branches of government—legislative, executive, and judicial. In India, this has meant that any organization benefiting from public funds becomes accountable to the public, as the people have a right to know how their money is being spent.

One of the key components of RTI, Mr. Habibullah noted, is the principle of proactive disclosure, or *suo motu*. In India, the government has posted much of the information it holds on the web. This has made recordkeeping far more efficient than it had previously been, and he advised that it will be an important idea for Bhutan to consider as keeping records will become more difficult as the country continues as a democracy and the amount of information the government holds proliferates. Proactive disclosure will also eliminate the need for people to come knocking on doors to seek information as it will already be accessible; therefore, he said, proactive disclosure also has the potential to reduce costs.

Mr. Habibullah also emphasized the importance of responsibility. Just as the government has a duty to facilitate access to information, he said, the media and citizenry have a duty to act in accord with the meaning of the law, uphold justice, and call attention to corruption. He noted that the media in India has played a crucial role in both the development and application of RTI, and has utilized the legislation to research a wide variety of subjects in the public interest. He emphasized the importance of exemptions from the law for those government agencies dealing with national security or military matters, unless the information deals with matters of corruption. But, he continued, access is universal, meaning there is no section of the Indian population that can be denied this right. RTI legislation, he summarized, must extend to the whole country.

“The will to enact RTI legislation in Bhutan must come from within.”

Mr. Wajahat Habibullah
Former Chief Information
Commissioner of India

Concluding, Mr. Habibullah asked, “What does RTI mean?” It does not necessarily mean something hazardous as some people fear, he said. It merely means making a public record available, so that if the people ask why the government acted in a certain way, it will be on record. It is up to the people, he said, to then make the decision as to whether the reason on record is adequate.

Vote of Thanks

Ms. Monira A.Y. Tsewang, Chief Information and Media Officer, DoIM, MoIC

Ms. Monira A.Y. Tsewang expressed her thanks to the attendees and her appreciation to the panelists who would be delivering insightful presentations drawn from their deep experience with RTI. She noted that work on the draft legislation has been ongoing at the MoIC and she looked forward to public participation and discussion of adopting RTI in Bhutan.

Session I – RTI and the Indian Experience: Perspective of the Government and Information Commission

Mr. Wajahat Habibullah, Chairman, National Commission on Minorities, India

Mr. Satyananda Mishra, Chief Information Commissioner, India

Dasho Kinley Dorji, Secretary, Ministry of Information and Communications (*Moderator*)

Dasho Kinley Dorji began by thanking the conference’s guests, attendees, and organizers. He stated that in Bhutan, the government does not take half-measures and RTI would be no exception; the Ministry, he explained, has a skilled team working on the draft law and has consulted with prominent experts throughout the process and would continue to do so through the law’s passage and implementation, to ensure the success of RTI within Bhutan’s socio-political context.

In leaping from a benevolent monarchy to a vibrant democracy, and with the principles of GNH as a guide, Dasho Kinley continued, Bhutanese are learning how to become responsible citizens. In the past, he added, Bhutan has had a tendency to borrow laws wholesale from other countries—this has led to numerous problems, so it is essential that Bhutan understand, modify, and implement RTI within the local context.

Dasho Kinley noted that there seemed to be a common misunderstanding of RTI among both government officials and the media. One senior government official, he noted, feared that adoption of RTI would result in thousands of people outside the door making

“RTI requires the responsibility of every citizen in governance.”

Dasho Kinley Dorji
Secretary, Ministry of Information
and Communications

requests, leaving no time for the work his office requires. Journalists, on the other hand, had indicated that once RTI passes they can march into any government office and demand virtually any piece of information. Both were incorrect, Dasho Kinley explained, and this seminar was aimed at dispelling these misunderstandings through education. While intended to provide greater openness, RTI required above

all, he continued, responsibility of every citizen in governance, and the media still has the responsibility to undertake proper investigative reporting rather than expecting that, through RTI, the government would hand-feed them the information they sought.

Finally, he indicated that a draft RTI bill would likely go before parliament during the upcoming winter session, alongside a right to privacy bill.

Mr. Wajahat Habibullah explained the importance of having a negative list for agencies or bodies that are *exempt from* RTI rather than a positive list for bodies *subject to* RTI. This, he said, makes sharing information the default option, and is also the approach advocated by the World Bank.

India, he noted, has a wide sweep of information that cannot be publicly disclosed and which is exempt from RTI—information on economic interests, national security, or legal investigations, certain commercial information, trade secrets, information that might harm a third party, information obtained from a foreign government, cabinet papers of deliberations, and personal/private information. These exceptions are aimed at keeping the public interest—not the government interest—paramount.

Mr. Habibullah stated that India’s Official Secrets Act of 1923 was passed by the colonial government and is unfortunately aimed at protecting the government from the public. But in a democracy, he said, the government *is* the public. India’s RTI Act overrides the earlier legislation and bases disclosure on the question of whether the public interest outweighs the harm done by disclosure. He also noted that “information” has been given a wide-ranging definition in India, allowing citizens to take notes, copies, prints, video, or other means of records including documents, audio or video tapes, printouts, and electronic media like e-mail and hard drives.. He gave examples that citizens have been able to file a request seeking information on materials used to construct roads that get washed out by monsoons, and that women in slum areas have used RTI law to help combat corruption and improve infrastructure in their areas. He concluded by noting that corruption creates resentment among the public and the assumption that the government must be culpable in the corruption, which is often not the case; therefore, transparency achieved through RTI is ultimately good not just for the people, but for the government as well.

Mr. Satyananda Mishra noted that the idea of secrecy is not as deeply embedded in the minds of Bhutanese civil servants as it is in India. He noted certain common concerns about RTI—that it would reduce the status of civil servants, that government would be overwhelmed by requests, that the media would abuse the law.

Though he said that it is difficult to compare Bhutan and India because of the vast differences in population and media culture, some of the principles in India’s RTI Act may be helpful for Bhutan. For example, in India, he said, citizens do not have to provide any reason as to why an RTI request is being made. Proactive disclosure is a useful concept, but we must be careful not to think of it only as publishing information on government websites when much of the population has not internet access. Important information must be read out in villages, emulating ancient traditions ranging from India to Greece. The simplicity and clarity of India’s system is an asset, he said—every department has an information officer, and it is easy and inexpensive (10 rupees) to file a request. If no response is given within 30 days, there is an appeal mechanism and after that the Central/State Information Commission—a very simple three-tiered system.

Though it was not articulated in legislation until recently, he said, the fundamental right to information and expression is enshrined in Article 19 of India’s constitution. He also noted that apprehension in India about RTI is fading as the younger generation, which does not have a natural resistance to sharing information, begins to assume positions in the government and throughout society.

Session II – RTI and the Indian Experience: Perspective of the Government and Information Commission

Mr. Shekhar Singh, Founder, National Campaign for Right to Information

Mr. Vikram Chand, Senior Public Sector Management Specialist, World Bank

Dasho Kunlay Tshering, Chairman – Legislative Committee, National Council (*Moderator*)

Mr. Shekhar Singh explained, in response to an earlier question, that India did not adopt RTI until 2005 because of a lack of political will; however, he said, he and other activists filed cases as early as 1984 and advocated for RTI until it was finally passed. Mr. Singh noted that there is typically a short of time to pass RTI before political will passes, so Bhutan must be cognizant of this window of opportunity.

Mr. Singh cited a study indicating that in 50% of cases, the mere act of filing an RTI request was sufficient to resolve the issue, as in the case of an elderly Indian woman whose passport application had been delayed; the very act of filing an RTI request triggers a process of movement. RTI in India has also had the effect of empowering the people and inviting them to participate in the process of governance, which is essential in a democracy, he added. He noted that in surveys, nearly 65% of randomly-selected respondents answered that access to information would help solve basic problems; in poor or rural areas, where education levels are lower, the need for RTI is even more acute.

Mr Singh gave several noteworthy examples of RTI’s effectiveness in resolving problems: to obtain information that should have been provided (in the case of school seats in Delhi or available beds in a local hospital); to have grievances addressed; to ensure that pledged work is completed (roads in Delhi slums and bridges in rural villages); and to prevent the misuse of power and influence. RTI has helped not just the people but the government too—over 20% of the rural and 45% of urban Public Information Officers (PIOs) asserted that improvements had been made in the functioning of their offices because of RTI. As for difficulties faced by PIOs in response to RTI requests, 65% cited the heavy volume of information (which Mr. Singh noted can be addressed via proactive disclosure), 55% cited the non-existence of the information requested, and 40% responded that applications were incomplete. Mr. Singh recommended these problems be addressed through better training and public education. In conclusion, Mr. Singh stated that RTI’s gains are many and the challenges are few, and that he expected that Bhutan would have several advantages over India in pursuing RTI.

“The gains of RTI are many and the challenges are few.”

Mr. Shekhar Singh
Founder of the National
Campaign for Right to
Information, India

Mr. Vikram Chand presented the ways the World Bank has reformed to meet the challenge of transparency. He began by noting that RTI was very much in line with His

Majesty's vision for Bhutan and with the principles of GNH in that it would further build networks of trust between the people and the government. RTI, he noted, would also serve as a check on foreign investment as Bhutan develops, to ensure that the country is benefitting as it should from greater international involvement.

Mr. Chand noted that while there were obvious differences between the World Bank's experience as an international organization and Bhutan's as a state, lessons could be learned from the Bank's new access to information policy, which is designed to enhance the development process, increase transparency and accountability, encourage public ownership of Bank operations, and share the global knowledge of the Bank. He noted the progress in the Bank's shift from a positive list of information that could be shared to a negative list of information that constituted exceptions to what could be shared. As a result, the magnitude of information made available by the Bank has surged in recent years due to declassification of documents from years past—in FY2011, more than twice as much information was disclosed as in FY2009, largely because of the Bank's embrace of *suo motu*.

Despite some initial worries, Mr. Chand continued, RTI has not disrupted the Bank's operations and on the contrary has made the Bank more effective. An innovative partnership with Microsoft and Google allows applicants to search data in customized ways on the Bank website. As a result, he explained, it is now easier to get information on the implementation phase of projects including supervision reports, implementation status, add results and audit reports. Records are only restricted to respect the confidentiality of clients, shareholders, employees and other parties; ensure frank exchange of ideas and views, and protects against harm to specific parties or interests. The Bank has implemented a right to appeal disclosure decisions and uses the harm vs. public interest test as an ultimate guide, policies Bhutan may wish to consider as part of its own RTI structure, he concluded.



Session III – RTI Experience in Other Countries

Mr. Shamsul Bari, Chairman, Research Initiatives Bangladesh

Ms. Ann Florini, Director, Centre on Asia and Globalisation at the National University of Singapore

Dasho Ugyen Dorji, Chairman – Labour and Employment Committee and Member of ICT & Media Committee, National Assembly (*Moderator*)

Ms. Ann Florini thanked the seminar’s organizers and noted that the world has been undergoing a transparency transformation in recent years. There is no such thing as a single best practice, she said, but rather broad principles of what the right to information should mean—it is up to the Bhutanese people to choose how their own RTI law functions. She noted that RTI is especially useful for the government to organize its own recordkeeping and that the media, often misperceived as the greatest users of RTI, often instead find the law somewhat unhelpful.



Ms. Florini stated that Bhutan may be able to draw lessons from the experiences of RTI legislation in several international cases. China has enacted regulations (rather than a law) promoting open government, but excludes the judiciary, parliament, and the CCP from the requirement to disclose. Exemptions are guided by Article 8, which states, “Government information disclosed by administrative agencies may not endanger

state security, public security, economic security and social stability.” Ms. Florini noted that this language was exceptionally broad and could encompass an extremely wide range of information. China has adopted the rules largely as a result of the need to deal with growing public discontent over corruption, the aim of greater economic efficiency, and as a requirement of joining international organizations like the WTO. China typically experiments with policies at the local level before adopting them on a national basis, she noted. However, implementation has been a challenge because of the lack of a fundamental principle of citizens’ right to information undergirding the regulations and the absence of a strong transparency-focused civil society. Other limitations include the lack of definition for “state secrets,” no truly independent judicial review, and unresolved conflicts with other laws. In South Africa, meanwhile, the greatest problems have been with implementation, as citizens, media, and activists alike complain that many agencies simply do not respond to RTI requests, and many civil servants appear unaware of the Act’s existence, she explained.

Summing up, Ms. Florini noted the shifting international context of RTI—over 90 nations now have passed legislation, and many more have laws being debated or tried out at local levels. Importantly, many new democracies—like Bhutan—have come to view RTI as an essential democratizing force, rather than as a law to come after democracy is established.

Mr. Shamsul Bari thanked the seminar participants and noted that he is not as excited about RTI today as he was when it first came into force in Bangladesh in 2009, but that he

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Mr. Shamsul Bari
Chairman, Research
Initiatives Bangladesh

has not given up hope of slow, patient progress over time. He noted that in order for RTI to be successful, there must be ownership of the law and that this comes through the participation of the people. In India, such ownership is there and the result is an effective law used by the public; in Bangladesh and Nepal, he explained in contrast, RTI laws have limped along without much effectiveness. Also important, he noted, is the idea that people in local communities are important in the implementation process as “animators” who raise awareness of RTI and help people file requests. This is especially important for the poor, uneducated, and people without access to technology who must have the ability to utilize RTI provisions in the same way as other citizens.

Mr. Bari noted that in three years since the law was passed in Bangladesh, only about 7,800 RTI requests have been filed and only 44 complaints submitted to the Information Commission in a population of nearly 160 million. Of those complaints, about 70% are assisted by NGOs like Research Initiatives Bangladesh.

Learning from the lessons of Bangladesh will be important for Bhutan, Mr. Bari said. Adopting the law is relatively easy; it is implementing it effectively that is the truly difficult part. An effective RTI regime includes a mechanism to audit whether the system is working or whether there are areas where major improvements are needed. But on the whole, RTI brings people closer to the government and enables them to participate more fully in the governance of their country.

DAY TWO
THURSDAY, MAY 31, 2011

Session IV – RTI Questions and Issues for Bhutan

Mr. Shamsul Bari, Chairman, Research Initiatives Bangladesh

Ms. Ann Florini, Director, Centre on Asia and Globalisation at the National University of Singapore

Mr. Shekhar Singh, Founder, National Campaign for Right to Information

Dasho Ugyen Wandri, Chairman – Legislative Committee, National Assembly (*Moderator*)



Mr. Shekhar Singh noted, in response to questions about timing, that a lack of political will can delay adoption of RTI, and that the best time to pass the law was when there was relatively little political baggage. He added that practically speaking, it is typically the common citizens and the poor who benefit most from RTI, but hardworking civil servants stand much to gain from the law too; it is only corrupt officials and

businesspeople who do not. Mr. Singh added that the people who often need RTI the most often don't have access to technology and so efforts must be made to provide the same services for them; in India, for example, there is a push to provide information via mobile phones. In Bhutan, the people and the government must select the elements that are appropriate for the country—the choice should not be presented as a trap between either having the Indian RTI law or no RTI law at all.

Ms. Ann Florini, in response to a comment from the audience, noted that while it is true that many nations still have not adopted RTI, the majority of those nations are typically not regarded as models of good governance and are unlikely to be the systems to which Bhutan looks to emulate. She cited the example of James Madison in the United States, who wrote, “Knowledge will forever govern ignorance,” and explained that this—creating an informed citizenry—is the fundamental reason for having RTI.

Mr. Shamsul Bari noted that RTI has resulted in new willingness by citizens to approach the government when they see corruption or mismanagement. This demand side is essential in RTI's success. He continued that there is some confusion over the term information itself. In Bangladesh, the Ministry of Information is the main body to approach for information, while in India RTI has been placed under the department of personnel. Properly structuring the authorities of RTI will be important for Bhutan.

Session V – RTI Questions and Issues

Mr. Wajahat Habibullah, Chairman, National Commission on Minorities, India

Mr. Satyananda Mishra, Chief Information Commissioner, India

Mr. Vikram Chand, Senior Public Sector Management Specialist, World Bank

Dasho Kinley Dorji, Secretary, Ministry of Information and Communications (*Moderator*)

Mr. Vikram Chand highlighted the fact that though there are costs associated with setting up an infrastructure to service RTI requests, adoption of RTI can actually save a nation money, as the waste eliminated from lowered corruption brought about by RTI revelations can exceed the cost of implementation. He also noted that for all the recommendations of the panelists, it would ultimately be up to the Bhutanese people to decide whether RTI is a good fit for the country.

Research on International RTI Experience

Ms. Rebecca Chao, Researcher, Columbia University

Mr. Ethan Wagner, Researcher, Columbia University

Ms. Rebecca Chao described the experience with FOIA in the United States and noted that the concept was debated for nearly 11 years in Congress before it was adopted. She also noted that the media typically accounts for only about 10% of requests and that it is average citizens and private business that make most use of the law. She added that while the United States and Sweden are regarded as having relatively weak laws on paper, both countries have made expansive efforts to facilitate access to information and are thus regarded as models for effective implementation.

Mr. Ethan Wagner thanked the conference organizers for their hospitality and warmth and the attendees for their deep interest in the subject. He noted that the presence of an RTI law was strongly associated with low levels of corruption and high levels of citizens' self-reported happiness in international indices. He added that RTI should not be thought of only as a right to information but also as "responsibility through information" and that these two concepts together—rights and responsibilities—are what makes good RTI legislation so effective in improving society. He noted that Bhutan's status as a monarchy requires certain considerations and that the examining how other countries, like Thailand and Japan, have made accommodations in RTI laws to ensure respect for the royal family. Thailand, he explained, has subordinated its Official Information Act to its lese-majeste laws, which provide for harsh punishments for those who "jeopardize the royal institution." Japan, he noted, has taken a more balanced approach and directs requests to the Imperial Household Agency, which weighs requests on a case-by-case basis to determine whether they seek information germane to the public interest or whether they relate to private activities of the imperial family.

Closing Remarks

Dasho Kinley Dorji, Secretary, Ministry of Information and Communications