

# **THE RIGHT TO INFORMATION BILL IN MALDIVES**

**A PRELIMINARY ANALYSIS OF THE BILL**

**AND**

**RECOMMENDATIONS FOR IMPROVEMENT**

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## **AN ANALYSIS OF THE BILL AND RECOMMENDATIONS FOR IMPROVEMENT**

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# **THE RIGHT TO INFORMATION BILL IN MALDIVES**

## **AN ANALYSIS OF THE BILL AND RECOMMENDATIONS FOR IMPROVEMENT**

### **Introduction**

In 2007 the Government of Maldives led by the then President Mamoon Abdul Gayoom tabled the Freedom of Information Law in the People's Majlis (Parliament) to provide for an information access regime in the country. However the Bill failed to acquire the approval of the people's Majlis's as it fell short of one vote. Later in May 2008 the Government instituted the Right to Information Regulations by executive order making it mandatory for government departments to provide people access to information about their working. The Government gave itself a lead time of eight months to prepare for the implementation of these Regulations which were to come into force in January 2009.

However in October 2008 the country witnessed the first multi-party Presidential election that placed President Mohamed Nasheed at the country's helm of affairs. Upon completing 100 days in office President Nasheed declared two points of action taken for promoting transparency in his government in the document entitled "First Hundred Days of Democratic Government"<sup>1</sup> He also caused the creation of a right to information (RTI) section within the Ministry of Home Affairs. This section has conducted several training programmes for government officials to implement the transparency regulations.

The Maldives Government demonstrated its commitment to promoting the people's right to information once again when it introduced the Right to Information Bill (RTI Bill) in the People's Majlis on November 2009. The RTI Bill is currently placed before the Social Affairs Committee for detailed deliberation.

CHRI congratulates the Government of Maldives for its steadfast support to the fundamental human right to information for the people of Maldives. If this Bill is enacted Maldives will become the fifth country in South Asia to adopt a transparency regime.

As the text of the RTI Bill is in Dhivehi, CHRI has worked with Transparency Maldives to develop an unofficial English translation of its contents. Working from this unofficial translation of the authentic Dhivehi text uploaded on the website of the Majlis CHRI has analysed the provisions of the Bill, drawing on international best practice standards<sup>2</sup>, and

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<sup>1</sup> Amongst other things the section on good governance in this document mentioned the following achievements:

✓ *Information Officers at government offices has been trained (sic). They were trained on how to acquire and impart information in a more transparent way.*

✓ *An information session for Ministers and other senior government officials on how the government's policy on acquiring and imparting of information was held."*

See: <http://www.presidencymaldives.gov.mv/downloads/100-days-en.pdf> : accessed on 7 June, 2010

<sup>2</sup> For a comparative perspective of the RTI laws adopted in various Commonwealth countries please visit CHRI's website at:

[http://www.humanrightsinitiative.org/programs/ai/rti/international/comparative\\_table\\_cth\\_rti\\_legislati\\_on\\_international\\_law.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/comparative_table_cth_rti_legislati_on_international_law.pdf) For a comparative perspective of the institution of independent appellate authorities under RTI laws adopted by various Commonwealth countries please see, available at this URL:

[http://www.humanrightsinitiative.org/programs/ai/rti/articles/comparative\\_picture\\_of\\_independent\\_appellate\\_mechanisms\\_available\\_across\\_cw.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/articles/comparative_picture_of_independent_appellate_mechanisms_available_across_cw.pdf) ; accessed on 7 June 2010.

good legislative models from the Commonwealth, in particular from South Asia.<sup>3</sup> This submission contains preliminary recommendations for improving the effectiveness of the access law. CHRI hopes that the Government of Maldives will take these recommendations into consideration and incorporate the necessary changes in the RTI Bill.

## **General Comments**

In order for the access to information regime to work effectively in Maldives – for officials of public authorities to be clear about their duties and for the people to be clear about their rights – a single law should establish the framework for all information held by various organs of the State, pertaining to all subject matter. CHRI has information that more than 150 Bills are currently pending before the Majlis seeking to reform the entire legal regime in Maldives on various counts. This is the appropriate time for the Government to launch an intensive exercise of reviewing all the pending Bills as well as the existing laws, rules and regulations in order to harmonise them with the provisions of the RTI Bill. Such an exercise will go a long way in creating a uniform information access regime and avoid any inconsistencies.

CHRI appreciates the inclusion of several positive provisions in the RTI Bill:

1. The draft Bill guarantees every person the right to information. This is a positive step as it recognises every person's right to access information as a fundamental human right irrespective of citizenship status. Such a step will also enable representatives of institutions and body corporates to legitimately seek information under this law. This position is in tune with international best practice standards. However as will be argued below the term 'person' itself needs to be defined in the Interpretation clause.<sup>4</sup>
2. The RTI Bill establishes the principle of presumption of openness and lists out the grounds on which access may be denied. All such exemptions to disclosure are subject to "harm" and or "public interest test". This ensures that access to information is not denied in an arbitrary manner but is based on reasons which themselves afford protection for important public interests.
3. The RTI Bill provides for an independent review of refusals of requests through the office of the Information Commissioner to be established after its enactment. This is also in tune with international best practices where adjudication of information access disputes is vested in a quasi-judicial authority. Multi-member Information Commissions have been set up in India, Nepal and more recently in Bangladesh. This measure ensures that the dispute resolution mechanism is less burdensome and cumbersome for citizens as compared to the older practice of referring such matters to regular courts of law. However provisions relating to the Information Commissioner need to be strengthened further. These recommendations are given at para # 43.

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<sup>3</sup> This analysis and recommendations is true to the unofficial English translation of the RTI Bill. CHRI has made best efforts to obtain as close a translation as possible to the Dhivehi original. In case of doubt readers are requested to refer to the authentic Dhivehi version of the Bill published on the website of the Majlis:

[http://www.majlis.gov.mv/di/download/majleehah\\_husha\\_helhifaivaa\\_kantha/Mau%27loomaath%20hoadhaa%20libigathumuge%20Bill.pdf](http://www.majlis.gov.mv/di/download/majleehah_husha_helhifaivaa_kantha/Mau%27loomaath%20hoadhaa%20libigathumuge%20Bill.pdf) : accessed on 7 June 2010.

<sup>4</sup> See paras # 49 below.

CHRI would like to point out the following changes that are applicable at various places throughout the RTI Bill:

1. ***Gender sensitive language must be used:*** It is common practice in both developed and developing countries to use gender-sensitive language in the drafting of legislation. The Indian Right to Information Act provides such an example where gender-friendly language is used in the drafting of provisions.<sup>5</sup> **Consideration may be given to incorporating gender-sensitive language wherever applicable throughout the Bill.**
2. ***Replace 'records' with 'information':*** The RTI Bill purports to provide access to people to the 'records' held by public authorities. However as the title of the Bill suggests it is a law intending to provide for the right to access 'information' and not merely 'records' which is a sub-category of the former. In CHRI's experience, the use of the word 'record' is much more limiting than the use of the term 'information'. Providing access to "information" will mean that applicants will not be restricted to accessing only information that is already in the form of a hard copy record or document. The current formulation excludes access to materials such as scale models, samples of materials used in public works and information that may exist in disaggregate form in multiple records that may require compilation or collation. Replacing the term 'records' with the term 'information', unless otherwise required by the context, will ensure that such difficulties will not arise during implementation. **Consideration may be given to incorporating these changes wherever appropriate in the Bill.**
3. ***Ensure stricter harm tests in the exemption clauses:*** Several exemptions clauses listed in the Bill have a lower threshold of harm test than what is considered as international best practice. The term 'prejudice' is used to define the harm caused to a protected interest if information is disclosed under specific circumstances [For example S27(a), 28, 30]<sup>6</sup>. 'Prejudice' is a vague term and is amenable to varied interpretation. Instead the phrase 'serious harm' is a much better usage as it requires that sound arguments and logic be put forth to refuse disclosure. It also has the effect of laying down a stricter test to determine the effect of disclosure. **Consideration may be given to replacing the term 'prejudice' with the phrase 'serious harm' in the sections mentioned above.**
4. ***Public authorities must have a duty to confirm or deny possession of information:*** Most of the clauses stipulating the circumstances in which information is exempt from disclosure do not place a duty on public authorities to confirm or deny the existence of a record in their possession. For example, S23 relating to personal information, S24 relating to protection of professional privilege, S25 relating to business affairs and trade secrets, S26 relating to health and safety, S28 relating to law enforcement, S29 relating to defence and security, S30 relating to economic interest, S31 relating to administration and formulation of policy and S32 relating to a Cabinet document all empower a public authority to refuse to confirm or deny the existence of a record in its possession. This rider is characteristic of the second generation of access laws passed after World War II. The access laws of Canada, Australia passed in the 1980s and more recently the access law in UK contain such provisions. However several access laws belonging to the third generation, enacted

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<sup>5</sup> For the authentic text of India's *Right to Information Act, 2005* see: <http://rti.gov.in/rti-act.pdf>-accessed on 7 June, 2010.

<sup>6</sup> Henceforth in this analysis all reference to section numbers in different laws will be indicated as follows: Sxx(xx) etc.

during the 1990s and later place an obligation on public authorities to confirm or deny the existence of a record.

The change in international best practice is most welcome as the absence of an obligation to confirm or deny the existence of a record opens the path to commit a lot of mischief. Neither public administration, nor providing access to information by law should be allowed to become an art of obfuscation. Records have material or physical existence. Public records must be in the possession of some public authority or the other, unless they have been legitimately destroyed under the applicable rules for weeding out records. In a functional democracy, where all public authorities are accountable, and the law is superior to the whims and fancies of individuals, there should be no ambiguity regards the existence of a record. RTI laws are intended to establish certainty and the truth about the working of public authorities. The 'uncertainty principle' is best left to the domain of quantum physics. Consideration may be given to removing this ambiguity from all exemption clauses listed above and placing a duty on all public authorities to confirm or deny the existence of a record.

### **Specific Comments**

- 1. Enlarge the Scope of the Bill to cover all organs of the State:** The Introduction portion of the RTI Bill states that it would lay out the procedure for "individual people" to access information "held by the government". Current international best practice on RTI legislation is to cover not only the executive but also the legislative and judicial arms of the State. As these bodies are also funded by the tax-payer and are part of the democratic set up that Maldives wants to strengthen, people have the right to seek information relating to their functioning and they have the duty to furnish it unless one or more of the exemptions apply. **Consideration may be given to amending the Introduction portion of the RTI Bill to include references to the legislature and the judiciary as being covered by the access law.**<sup>7</sup>

#### **Recommendation**

**In para # 1(a) of the Introduction clause of the RTI Bill, the phrase, "held by the Government", may be replaced with the phrase, "the State and its agencies".**

- 2. Make a reference to public interest override in the objects clause:** S2(b) of the RTI Bill makes a reference to the exemptions that may be invoked to deny access to information. As a standalone statement of object this assertion runs contrary to S20 where even exempt information may be disclosed in the larger public interest test. In the absence of such an assertion the objects of the law are liable to be misinterpreted. The Indian RTI Act mentions the public interest that it seeks to promote and also those that it seeks to protect. It also contains an important principle as to how these interests are to be harmonized.<sup>8</sup> **Consideration may be given to amending the Objects clause of the RTI Bill in line with this good practice.**

<sup>7</sup> Also see related recommendation in the context of the definition of the term 'public authority' at para # 50.

<sup>8</sup> The Preamble of the Indian RTI Act lists out the public interests that it seeks to promote and protect and how the conflicting interests may be harmonized as follows:

*"WHEREAS the Constitution of India has established democratic Republic;*

**Recommendation:**

In S2 a new sub-section (bb) may be inserted below sub-section (b) as follows:

*“providing for the disclosure of even exempt information when the harm caused to the protected interests outweighs the public interest in disclosure.”*

- 3. Make a reference to the institution of the Information Commissioner in the objects clause:** As the RTI Bill purports to establish a new institution in the form of the Information Commissioner to adjudicate over information access disputes and also perform a series of functions under the law it is important that the objects clause make a reference to this body. We have also argued below that Maldives is better advised to set up a multi-member Information Commission instead of that of the single Information Commissioner.<sup>9</sup> **Consideration may be given to including a reference to the Information Commission in the objects clause.**

**Recommendation:**

In S2 a new sub-section (dd) may be inserted below sub-section (d) as follows:

*“providing for the constitution of an Information Commission to carry out functions under this Act”*

**Scope of Right to Information**

- 5. Legal status of the RTI Act vis-à-vis other laws:** S3(b) of the RTI Bill states as follows: “This Act shall not apply to any other law which restricts the access of, or stipulates certain policies under which a record held by public authority may be accessed”. In a similar vein S4(c) of the RTI Bill states as follows: “This Act shall not apply upon any law under which a right to access of a record held by a public authority or a private authority is restricted or limited. This Act shall be applied separately and outside the ambit of such law.” Both statements dilute the overriding goal of the legislation which is to establish the twin principles of a) presumption of disclosure and b) maximum disclosure. The RTI Bill purports to create a general regime of transparency characterised by the right to seek and obtain information held by public authorities. According to international best practice, in general, and in the S. Asian region in particular, it is commonplace to give primacy to the access legislation over other contradictory laws. The access legislation must not prevent the operation of provisions governing disclosure of information under other laws. It should also be the paramount legislation to determine whether information should be disclosed or not irrespective of what other laws may say. The reasons for not disclosing information under certain circumstances are contained in the exemptions clause of the RTI Bill. These provisions must reflect broadly the public interests that may be protected by non-disclosure. This is

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*AND WHEREAS democracy requires an Informed Citizenry and transparency of Information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

*AND WHEREAS revelation of Information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;*

*AND WHEREAS is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;”*

<sup>9</sup> See para #-43.

the very purpose of listing exemptions to disclosure in an access law. No other ground contained in any other law must be allowed to interfere with the operation of the RTI Act. Therefore the RTI Act must have an overriding effect over all other laws in force at the time of enacting this legislation. In the absence of such an overriding effect conflicting laws will create confusion and give rise to clearly avoidable litigation.

S8 of India's RTI Act lists out several circumstantial and a few class exemptions to disclosure. S22 provides this law with the power to override all other laws to the extent of inconsistency.<sup>10</sup> This provision ensures that no consideration extraneous to the RTI Act has an overbearing effect on the decision-making process related to information requests. S7 of Bangladesh's RTI Act contains both circumstantial and class exemptions to the general rule of disclosure. Nevertheless, even before dealing with these exemptions, the Act declares at S3 that its provisions shall not impede the operation of disclosure provisions in other laws.<sup>11</sup> It also states that the RTI Act supersedes the provisions in other laws that create an impediment in the process of disclosing information. These positive principles ensure that the vision of creating an overarching regime of transparency is not derailed by older laws that were enacted at a time when transparency was not a defining value of governance. **Consideration may be given to amending S3(a) and S4(c) in order to provide the RTI Act an overriding effect on all other laws to overcome any inconsistency regards application or interpretation.**

**Recommendations:**

1. In S3(a) the words: ***“shall not apply to any other law which restricts the access of, or stipulates certain policies under which a record held by a public authority may be accessed. And this Act”*** occurring after the words: ***“This Act”*** may be deleted.
2. S4(c) may be replaced with the following:  
***“The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”***

6. ***Creating a directory of public authorities covered by the RTI Act:*** S5 addresses the issue of providing access to information that was created by offices that no longer exist at the time of making a request. S5 provides that such public authorities entrusted with the responsibility of holding the information created by offices that have been abolished, must respond to such requests. According to this section where the functions of an abolished office have been assigned to two or more offices then documents may be sought from whichever office that may hold the document concerned.

<sup>10</sup> Sec 22 of India's RTI Act states as follows:

*“22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

<sup>11</sup> Sec 3 of Bangladesh's RTI Act states as follows:

*“3. Act to override.—Of any existing law—*

*(a) the provisions of providing information shall not be affected by the provisions of this Act; and*

*(b) the provisions of creating impediment in providing information shall be superseded by the provisions of this Act if they become conflicting with the provisions of this Act.”*

For the complete text of the RTI Act of Bangladesh see: [http://www.moi.gov.bd/RTI/RTI\\_English.pdf](http://www.moi.gov.bd/RTI/RTI_English.pdf)  
: accessed on 7 June 2010.



This is a reasonably worded provision and creates convenience for potential requestors.<sup>12</sup>

However it is important to record a word of caution here. An applicant seeking information under the RTI Act may not necessarily know the name and contact details of the correct public authority to whom the application must be sent when ministries and departments are restructured. Therefore it becomes the responsibility of the public authority that receives the information request first to transfer the application to the relevant public authority in the stipulated time provided in S9 of the RTI Bill. In order to create convenience not only for potential applicants but also for the Government itself, we recommend that the Ministry responsible for the RTI Act publish a comprehensive list of public authorities covered by the RTI Act and update it from time to time.

It is also advisable for the administrative ministry responsible for implementing the RTI Act to create a citizen-friendly 'information service portal'. This could be the central platform for publishing information regards names of public authorities, names of the designated Information Officers along with their contact details. This information may be updated regularly. **Consideration may be given to uploading all information about public authorities and their information officers on an Internet Portal dedicated to RTI in Maldives.**

**Recommendation:**

**The administrative ministry vested with the responsibility of ensuring the implementation of the RTI Act in Maldives may take the responsibility of listing out all public authorities covered by the access law and publishing their names and contact details along with the particulars of their information officers for people's benefit.**

**Request for a Record**

**7. Demanding reasons from applicants for seeking information:** Section 6 (a)(iii) of the RTI Bill makes it compulsory for the applicant to mention the purpose behind making the information request. In other words a requestor has to justify why he or she wants the information. This provision is not in tune with international best practice. RTI is a universally recognized human right enshrined in the Universal Declaration of Human Rights<sup>13</sup> and it has become a binding duty on all State parties to the International Convention on Civil and Political Rights (ICCPR) to protect, promote and fulfill this right for all persons within their jurisdictions. Maldives acceded to the ICCPR in 2006 and has a duty to ensure the enjoyment of this right for all persons within its jurisdiction. Further, Article 29 of the Constitution of Maldives guarantees the fundamental right of every person to enjoy the freedom to acquire and impart knowledge, information and learning.

<sup>12</sup> The administrative reforms process is underway in Maldives and exercises for restructuring major ministries and departments have been undertaken. For instance the Maldives Water and Sanitation Authority and the Environment Research Centre have had all their activities transferred to the newly established Environmental Protection Agency (EPA). Following this change, the EPA is proposed to be linked to the Ministry of Housing, Transport and Environment. In another instance, the function of Ministry of Information and Legal reforms were brought under the Department of Information which functions under the Ministry of Tourism Arts and Culture. There have been other such instances where Ministries or department have merged together to form "mega ministries" for the sake of improving efficiency.

<sup>13</sup> Article 19, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". For the complete text of the UDHR please see: <http://udhr.org> : accessed on 7 June, 2010.

Exercising one's fundamental human right does not require any justification. The right is there for every person to exercise by virtue of the constitutional guarantee. If this provision is allowed to remain in the law officers steeped in the age-old mentality of maintaining secrecy in public affairs without sufficient justification are likely to harass requestors for reasons and delay the decision-making process unnecessarily.

Further, if the statement of reasons is made compulsory for exercising this right then an RTI Bill must contain the range of reasons that are considered acceptable under law in order to prevent the abuse of the power to reject a request for invalid reasons. Listing all possible valid reasons is a near impossible exercise. Then again an applicant may quote a legitimate reason but may use the information for some other purpose at a later date. Under such circumstances the public authority will have to launch its own investigation into the truthfulness of the reasons provided by an applicant or file a suit against the requestor for acquiring information through fraudulent means. In both instances the public authority ends up wasting its time and resources.

The consideration to be borne in mind regards an information request is not whether the applicant has a valid reason for seeking information or not. Instead the test should be whether any public interest protected by the exemption clauses will be violated by disclosing the information. If the harm to the public interest is likely to be greater than the benefits of disclosure, then such information must not be disclosed whatever be the applicant's reason for seeking it. If on the other hand none of the protected interests are likely to be compromised by disclosing the information then what the applicant does with the information need not be of any concern to the public authority.

In India the RTI Act explicitly states that no one may compel an applicant to disclose reasons for seeking information from a public authority.<sup>14</sup> Similarly in Bangladesh the RTI Act states that the public authority has a duty to give information to a citizen on demand.<sup>15</sup> There is no mention anywhere of the requirement of justifying why he or she wants the information. Similarly in Malta the *Freedom of Information Act, 2008* states that reasons will not be sought from the information requestor.<sup>16</sup> **Consideration may be given to deleting S6(a)(iii) of the RTI Bill and renumbering the entire section.**

**Recommendation:**

**In sub-section (a) of S6 clause (iii) may be deleted and the entire section may be renumbered.**

**8. Assisting unlettered applicants:** S6(b) contains a positive provision placing an obligation on the information officer to assist the unlettered and the physically disabled to file information requests. More convenience may be provided in the case of unlettered

<sup>14</sup> S6(2): "An applicant making a request shall not be required to give any reason for requesting the information or any other personal details except those that that may be necessary for contacting him."

<sup>15</sup> S4: "Subject to the provisions of this Act, every citizen shall have the Right to Information from the authority, and the authority shall, on demand from a citizen, be bound to provide him with information."

<sup>16</sup> Article 6. For the complete text of the law see: [http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL\\_16/chapt496.pdf](http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/chapt496.pdf) Also see CHRI's **Comparative Table of Key Provisions in Access to Information Laws in the Countries of the Commonwealth, 2009:** [http://www.vs4it.com/programs/ai/rti/international/comparative\\_table\\_cth\\_rti\\_legislation\\_international\\_law.pdf](http://www.vs4it.com/programs/ai/rti/international/comparative_table_cth_rti_legislation_international_law.pdf) accessed on 7 June, 2010.

applicants by requiring the officer to read out the information request in the presence of a literate witness to the satisfaction of the applicant and then get his/her thumb impression on the application. **Consideration may be given to amending this provision to include a requirement that the officer read back the application to the satisfaction of the applicant and then obtain his or her thumb impression on the application.**

**Recommendation:**

In S6(b) after the words: *“The officer then shall have to put down the request in writing,”* the words: *“read it back to the person making the request in the presence of a literate witness, obtain the thumb impression of the person making the request and the signature of the witness, if any,”* may be inserted.

**9. Application forms must not be compulsory:** S6(c) of the RTI Bill makes a reference to a specific application form that every public authority must prepare to enable an applicant to fill it up while making an information request. Although the same clause states that the intention behind the use of this form is not to cause any inconvenience or unreasonable delay, it is important to point out that if different public authorities are allowed to create different application forms it will lead to confusion and inconsistency. Best practice requires that access procedures should be as simple as possible and designed for the convenience of all persons seeking information. Allowing public authorities the liberty to create their own forms will result in the authorities insisting upon the applicants to fill in too many personal details such as father’s name or husband’s name (in the case of married women), their parental address, name of religion or some other identity marker which are absolutely unnecessary for the purpose of determining whether the information ought to be disclosed or not.

We have noticed that the application form attached to the erstwhile RTI Regulations is uncomplicated and easy to fill up for a literate person. The same form may be notified eventually under the Regulations to be passed under the RTI Act. However the Act or the Regulations must explain that it is not mandatory for people to use these forms. Even plain paper applications must be accepted by the public authorities. For example, the RTI Act of Bangladesh states that plain paper applications or requests sent by email or in electronic form will be accepted if the printed forms are not easily available.<sup>17</sup> In India the Union Government has not notified any form at all.<sup>18</sup> Applicants are free to submit requests on plain paper so long as they mention their name and contact details, as well as the contact details of the public authority and a clear description of the information required. If the use of application forms is made

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<sup>17</sup> S8(3): *“The request for Information under this section shall be made in a form printed by the authority, or as the case may be, in prescribed format:*

*provided that if the form is not printed or not easily available or of the format has not yet been prescribed, request may be made for information by inserting information mentioned in subsection (2) on a piece of white paper, or in the electronic format or through e-mail.”*

<sup>18</sup> *“Contents and Format of Application: An applicant making request for Information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. also, the Act or the Rules do not prescribe any format of application for seeking information. Therefore, the applicant should not be asked to give justification for seeking information or to give details of his job etc. or to submit application in any particular form.”* – Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training-Office Memorandum No 1/69/2007-IR dated 27<sup>th</sup> February 2008.

The Office Memorandum can be accessed at:

[http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1\\_69\\_2007\\_IR\(Eng\).pdf](http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_69_2007_IR(Eng).pdf).  
accessed on 7 June 2010.

compulsory, in the event of shortage of supply of stationery unscrupulous officers may refuse to accept plain paper applications. The exercise of the constitutionally guaranteed fundamental right to information should not be made contingent on the availability of stationery. Experience from other developing countries has shown that unscrupulous elements may print application forms and sell them at premium causing loss of revenue to the public exchequer and picking a hole in the pocket of requestors also. Such undesirable situations may be avoided when the use of printed forms are not made compulsory. **Consideration may be given to adding an explanation clause to S6(c) stating that plain paper applications will also be accepted by the information officer of the public authority.**

**Recommendation:**

In S6(c) after the words: *“Such an application form, however shall not be a cause for inconvenience or unreasonable delay in processing a request”* the following sentence may be inserted :

*“When a printed application form is not available, or if the public authority has not prescribed the application form yet, a person may make the request on plain paper or in electronic form or by email.”*

**10. Providing acknowledgement for applications received:** S6(d) of the RTI Bill requires the public authority to provide a receipt to the applicant once it receives a request. Providing a receipt immediately and informing the applicant about when the information may be collected are good practices that ensure that information requests are not lost in the maze of bureaucratic processes. However receipts are usually issued when cash transactions are conducted. When applications or communications are received it is common practice to issue an acknowledgement. **Consideration may be given to substituting the term ‘receipt’ with the term, ‘acknowledgement’ in S6(d).**

**Recommendation:**

In S6(d) the word: *“acknowledgement”* may be substituted for the word: *“receipt”*.

**11. Reducing the time limit for disposal of requests:** S7(a) of the RTI Bill stipulates a period of 30 days for disposing information requests under ordinary circumstances. While this is in tune with best practices in India and Bangladesh, the time limit is too liberal considering the size of Maldives in terms of geography and population. Public authorities must endeavour to dispose information requests within a shorter period. In Belize public authorities are required to dispose a request within a period of 14 days.<sup>19</sup> In Pakistan and Uganda the respective national RTI laws stipulate a deadline of 21 days for disposing off information requests.<sup>20</sup> **Consideration may be given to reducing the time limit for disposing off an information request from 30 days to 21 days.**

<sup>19</sup> S16, *“The Ministry or prescribed authority shall take all reasonable steps to enable the applicant to be notified of a decision on the request as soon as practicable but in any case not later than two weeks after the day on which the request is received by or on behalf of the Ministry or prescribed authority.”* For the complete text of the *Belize Freedom of Information Act, 1994* see: <http://infolac.ucol.mx/documentos/politicas/23.pdf> accessed on 7 June, 2010.

<sup>20</sup> S13, *“(1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within 21 one days of the receipt of the request, supply to the applicant the required information or, as the case may be, a copy of any public record.”* For the complete text of Pakistan’s *Freedom of Information Ordinance, 2002* see: <http://www.privacyinternational.org/countries/pakistan/pk-foia-1002.html>. and S16, *“The Information*

**Recommendation:**

In S7(a) the figure “21” may be substituted for the figure “21”.

**12. Limit the time-line extension provisions:** S7(c) grants the public authority an additional period of 30 days over and above the initial period of similar length if the request is for voluminous information. The provision is welcome as more time may be required to process requests for voluminous information. However keeping in view our recommendation at para #10 to reduce the initial time limit for disposal of requests from 30 days to 21 days, it is advisable to reduce the period of extension to similar length. This provision must specify that such an extension of time may be claimed only once for a request. The decision to extend the time limit must be subject to internal review by the appellate authority.<sup>21</sup>

**Recommendations:**

1. In S7(c) the figure: “21” may be substituted for the figure: “30” wherever mentioned.
2. At the end of S7(c) the following new sentences may be inserted:  
*“An authority may extend the 21 day period stipulated in sub-section (a) only once with regard to a request. Where an authority makes a decision of extension, the person making the request shall be informed in writing. The person making the request shall have the right to appeal against that decision before the appellate authority under section 40A.”* (also see para #42 below)

**13. Deletion of problematic sub-sections in Section 8 relating to incomplete and inaccurate requests:** S8(b) deals with applications that are improperly made. The RTI Bill requires that the office assist the applicant to direct the request to the proper office. Applicants are not always knowledgeable about the division of work between departments and public authorities. The best assistance that an authority can provide if it receives an application wholly or partially unrelated to its working, is to transfer the application wholly or just the relevant parts to the relevant public authority within a short period and inform the requestor of such transfer in writing. In view of the provision relating to transfer of a request from one office to another given in S9, S8(b) becomes redundant. **Consideration may be given to deleting S8(b).**

**Recommendation:**

**S8(b) may be deleted.**

**14. Ignoring requests that have no particular purpose:** S8(c) lists out three reasons based on which a public authority in its discretion ignore an information request. If the authority perceives that a request has no “particular purpose”, or if a “response has

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*officer to whom a request for access is made or transferred shall, subject to section 17, as soon as reasonably possible, be in any event, within twenty one days after the request is received-“* For the complete text of Uganda’s Access to Information Act, 2005 see: [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/uganda/uganda\\_ati\\_act\\_2005.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/uganda/uganda_ati_act_2005.pdf) ; accessed on 7 June 2010.

<sup>21</sup> The RTI Bill currently lacks a provision for an appeals mechanism that is internal to a public authority. At para #42 below we have argued for the insertion of new clauses that will facilitate internal review of the decisions of information officers before the matter is taken to the proposed Maldives Information Commission.



already been given to such a request” or “if there has been no change to the information since then”. The intention behind this sub-section appears to be to reduce the burden on authorities and allow them the time and space to carry out their other routine business. This intention is laudable but S8(c) in actual practice can create several problems for requestors. As we have already argued at para #7 above, it is against international best practice to compel requestors to give reasons for seeking information. Therefore empowering an authority to reject a request on the ground that it serves no purpose is pointless. If access to information has already been provided once then there is no reason why it should not be given a second time. In its current formulation this provision empowers the authority to reject a request for information made by, say, Mr. X on the ground that the same information had been disclosed to, say, Mr. Y earlier or that there is no change in the information since its last disclosure. In all such instances rather than reject a request it is advisable for the authority to proactively disclose the information on its website or notice board or make it available for free inspection at a publicly accessible place in the office. For example, the office of Canada’s federal Information Commissioner proactively discloses the travel and hospitality expenses of select government officials, contracts worth more than \$10,000, and contribution awards worth more than \$25,000 more because people seek such information repeatedly.<sup>22</sup> The Government of the National Capital Territory of Delhi also has placed a well indexed log of all information disclosed by various departments under the RTI Act.<sup>23</sup> **Consideration may be given to deleting S8(c) as it is pointless.**

**Recommendation:**

**S8(c) may be deleted.**

**15. Clarify where applications may be transferred:** S9 of the RTI Bill relates to transfer of a request from one office to another. It is advisable to substitute the term ‘office’ with the term ‘public authority’. The provision of transfer of a request is likely to be misused to shunt requests from one desk to another. This is not an uncommon practice in developing countries. As a result of mindless and routine transfer of requests the applicant’s right to obtain the information in a timely manner is violated. Under the Indian RTI Act a request may be transferred from one public authority to another and not from just one office to another.<sup>24</sup> A public authority may have multiple offices all of which need not necessarily be located in the same building or town. In such instances it is advisable to identify the geographically disparate offices as individual public authorities in their own right. Where multiple offices of a public authority are located in the same building or town, the RTI Act must require the information officer to requisition the information from the concerned offices in order to make a decision on the request. **Consideration may be given to substituting the term “office” with the term “authority” in S9.**

As S9 lists three possible circumstances under which transfer of a request may be effected. A superficial reading of the section can lead to the interpretation that all three circumstances must be satisfied before effecting the transfer. Clearly this is not the

<sup>22</sup> See: [http://www.infocom.gc.ca/eng/pd-dp\\_te-dv\\_default.aspx](http://www.infocom.gc.ca/eng/pd-dp_te-dv_default.aspx): accessed on 7 June 2010.

<sup>23</sup> [http://delhigovt.nic.in/rti/spio/search\\_ques.asp](http://delhigovt.nic.in/rti/spio/search_ques.asp): accessed on 7 June 2010.

<sup>24</sup> S6(3), “Where an application is made to a public authority requesting for an information-(i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application”.

intention of the RTI Bill. Consideration may be given to suffixing the word “or” at the end of clauses (i) and (ii) of sub-section (a) of S9.

**Recommendations:**

1. In S9 the word: “*authority*” may be substituted for the word: “*office*”, wherever occurring (including the marginal note).
2. In S9(a)(i) the word : “or” may be inserted at the end of the clause.
3. In S9(a)(ii) the word : “or” may be inserted at the end of the clause.

**Dealing with Requests**

**16. Clarify the identity of the officer required to deal with the request:** S11(a) lays down the broad procedure for dealing with an information request. The onus of dealing with the request has been vaguely placed with the ‘office’ receiving the request. This is unsatisfactory in the light of international best practice. An office may be a large or small entity with several officers of various ranks and grades manning it. A good access law must provide for the designation/appointment of an existing officer within each public authority at every office to receive and dispose information requests. For example, the Indian RTI Act states that a public authority may appoint its own officers or employees as public information officers in all units and administrative offices, for carrying out the responsibilities mentioned in the Act.<sup>25</sup> Such officers have the duty to receive information requests and make decisions regards disclosure.<sup>26</sup> Similarly in Bangladesh the RTI Act requires every authority covered by it to appoint a designated officer to carry out the assigned duties of receiving information requests and making decisions whether to disclose the information or not.<sup>27</sup> In Nepal the RTI Act requires every public authority to appoint an Information Officer for the purpose of disposing of information requests.<sup>28</sup> Appointing a specific officer as the person responsible for dealing with information requests ensures that such applications are not shunted around the office causing unreasonable delays. This is likely to happen when responsibilities of officers are not

<sup>25</sup> S5(2), “Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be.”.

<sup>26</sup> S7(1), “(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9.”.

<sup>27</sup> S10(1), “**Designated Officer.**(1) Within 60 (sixty) days after commencement of this Act, all authorities existing prior to such commencement shall appoint a designated officer for each of the units for providing information according to the provisions of this Act.”.

<sup>28</sup> S6, “Public Body will arrange for an Information Officer for the purpose of disseminating information held in its office. 2. For the purpose of disseminating information in accordance with Sub-Section (1), the Chief has to provide information held in the office regularly to the Information Officer. 3. Public Body shall set up an Information Section for the purpose of disseminating information as per necessity.” For the complete text of Nepal's Right to Information Act see: [http://www.nic.gov.np/download/rti\\_act\\_eng\\_official.pdf](http://www.nic.gov.np/download/rti_act_eng_official.pdf) ; accessed on 7 June 2010.

clearly demarcated. S 35 of the RTI Bill does mention the appointment of information officers for the purpose of providing access to information. Unless such officers are mentioned in S11(a) also, implementation of this section is likely to cause confusion as to who in an office should deal with information requests. **Consideration may be given to linking the information officers mentioned in S35 to perform these duties in every public authority.**

Similarly at S12 and S13 it must be clarified as to who in an authority shall deal with an information request. **Consideration may be given to amending S12 and S13 to delineate the role of the information officer in dealing with information requests.**

S11(b) is a repetition of S7(d). Both clauses deal with the subject of deemed refusal in a similar manner. S7(d) already states, where no response is received by the requestor on his or her application despite the lapsing of the stipulated deadline, it must be deemed that the request has been refused. S11(b) repeats this position thereby creating a redundancy. A good law should not contain any redundant clauses. **Consideration may be given to deleting S11(b).**

**Recommendations:**

1. In S11(a) the word : *“information officer”* may be substituted for the word : *“office”* wherever occurring.
2. S11(b) may be deleted.
3. In the opening line of S12 the words : *“the information officer designated under S35 must provide a response in writing to the person making the request”* may be substituted for the words : *“a response to that application must be made in writing”*.
4. In S 13(a) the word : *“information officer”* may be substituted for the word : *“office”* wherever occurring.

**17. Clarify how fees may be charged and make a reference to extension of time limit and deferred access in the procedural clause:** S12(a) states that an authority may inform the applicant whether access is to be given and if any charge is payable for the same. In view of our submission regards revising the fee-related provisions contained in S19 of the Bill, this subsection may be amended to mean that only such fees may be charged as is permissible under the Regulations formulated under S57. **Consideration may be given to amending S12(a) to this effect.**

S12 omits a crucial reference to another option that an information officer has while dealing with an information request. According to S7(c) of the RTI Bill an authority may seek an extension of a further period of 21 days if the request is for voluminous information and cannot be met with within the initial deadline. This possible course of action also deserves mention in S12. **Consideration may be given to inserting a new clause referring to extension of the deadline for making a decision on an information request.**

S12 also omits reference to another important option that an information officer has while dealing with an information request. According to S14 of the RTI Bill, a public authority may defer access to the information requested under specific circumstances. This procedure must also be mentioned in S12. **Consideration may be given to inserting a new clause in S12 referring to the possibility of deferring an information request (also see our analysis of S14 at para #19 below).**

**Recommendations:**

1. In S12(a) the word : *“fee”* may be substituted to the word : *“charge”*.



2. In S12(a) the words : *“in accordance with the principles and procedure specified in section 19”* may be inserted after the words : *“payable for dealing with the application”*.
3. In S12 a new clause (dA) may be inserted below clause (d) as follows:  
*“if the authority intends to extend the deadline beyond the original period of 21 days and if so the reasons for so extending.”*
4. In S12 a new clause (dB) may be inserted below the proposed clause (dA) as follows:  
*“if the authority intends to defer the granting of access to information under S14 and if so the grounds for such deferment.”*
5. In S12(c) the words : *“(dA)”* and *“(dB)”* may be inserted after the words : *“in sub-sections (b), (c) and (d)”*.

**18. Blanket provision for refusing access to information:** S13(a) of the RTI Bill states the procedure for refusing an information request. Clause (i) of this sub-section merely states that a request may be refused if it relates to records exempted by this Act. Unfortunately this provision does not take into account the possibility of applying the balancing test mentioned in S20. According to S20 even information protected by the exemptions listed under S22 – S32 may be disclosed if such disclosure is more favourable to the public interest than the protected interest. If the current formulation of S13(a) is enacted there is a danger of S20 becoming redundant. **Consideration may be given to amending S13(a) to recognize the possibility of disclosing even exempt information in the public interest.**

**Recommendation:**

In the opening line of S13(a) the words : *“and the public interest grounds for disclosure mentioned in S20 are not attracted”* may be inserted after the words : *“records exempted by this Act,”*

**19. Reduce the grounds for refusal of a request:** S13(a) introduces several grounds for refusal of an information request. Clause (i) is justified as it empowers the office to reject a request if the information sought is covered by one or more exemptions listed in the RTI Bill. However the remaining clauses (ii), (iii) and (iv) are not in tune with the intention and the spirit of the RTI Bill. The RTI Bill seeks to create a uniform regime of access to information and does not operate to the exclusion of other laws which may also require a public authority to disclose information publicly. Often, experience in developing countries has shown that due to low internet connectivity and lack of adequate library facilities information placed in the public domain by public authorities as part of their legal obligations under various laws, is not easily accessible to people. Therefore if an RTI law excludes all such information from its purview that would defeat its very purpose. It has also been noticed in developing countries like India, Nepal, Pakistan and Bangladesh that information may in principle be available to people on payment but in the absence of supervisory authorities and strict timelines, citizens are made to run from pillar to post for obtaining information. If under such circumstances people invoke the RTI law to obtain the same information it is highly improper to reject such requests. The purpose of the RTI law should be to facilitate as much access to information as is possible rather than restrict it. The person seeking the information should have the option of choosing between different legal provisions for seeking information according to one’s convenience. It must be remembered that the RTI law is

not a favour bestowed on people by the Government. Rather it is a means for Government in general and public authorities in particular to perform their duty of fulfilling and promoting people's fundamental human right to information. **Consideration may be given to deleting clauses (ii), (iii) and (iv). Consideration may also be given to substituting the term 'information officer' for the term 'office' in tune with our recommendation made at para #15 above.**

**Recommendations:**

1. In S13 the word: "*information officer*" may be substituted for the word: "*office*" wherever occurring.
2. In S13(a) clauses (ii), (iii) and (iv) may be deleted.

**20. Strengthen the deferment clause further:** S14 of the RTI Bill empowers the public authority to defer the decision to grant access to the requested information on three grounds. Although it is understandable that in some cases a public authority may genuinely need to defer access to information for legitimate reasons, the procedure of making the decision of deferment needs to be made more accountable. The information requestor must be informed of the decision and the grounds of deferment along with the period for which the decision has been deferred. Deferment must not be *ad infinitum*. **Consideration may be given to including a requirement on the information officer to send a written notice of the decision of the public authority to defer the granting of access and this decision must be subject to the appeals process (see our analysis of the appeals mechanism at paras #42 and 43 below).**

**Recommendation:**

In S14 new subsections (b), (c) and (d) may be inserted after subsection (a) as follows:

*"(b) Where a decision of deferment is made by the public authority, the information officer shall, in writing, inform the person making the request, about that decision along with the reasons for deferment and the number of days for which granting of access has been deferred.*

*"(c) A person in receipt of a decision of deferment may seek a review of that decision from the appellate authority appointed under S40A of this Act in that public authority.*

*"(d) A person in receipt of a decision of the appellate authority, in a matter relating to deferment of granting access to information, has the right to lodge a complaint against such decision with the Maldives Information Commission under S48."*

**21. Increasing the forms of access to information:** S15 of the RTI Bill permits several forms of granting access to the information requested by any person. This is very welcome. International best practice in the region recognises more forms of access such as certified copies of records and documents, certified samples of materials used in a public office or public works and in electronic form such as diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. **Consideration may be given to including these forms of access in the RTI Bill. Similarly consideration may be given to deleting clause (iv) in subsection 15(a) as it is a repetition of clause (ii).**

**Recommendations:**

1. In S15(a) three new clauses (vi), (vii) and (viii) may be added below clause (v) as

follows:

*“(vi) giving a certified copy of the record, or*

*(vii) if the information is available in electronic form giving a copy on diskettes, floppies, compact disks, tapes, video cassettes, or printouts, or*

*(viii) subject to subsection (c), giving certified samples of materials used in public works or in a public authority”*

2. In S15(a) clause (iv) may be deleted.

**22. Ensure ease of access to differently-abled people:** It is increasingly becoming common practice in RTI laws to provide for the rights of the differently-abled people to access information from public authorities in a manner similar to other people. The Indian RTI Act places an obligation on the public information officer to provide reasonable assistance to the sensorily disabled people to access information.<sup>29</sup> The Bangladesh RTI Act also places an obligation on the information officer to provide reasonable assistance to such people.<sup>30</sup> **Consideration may be given to including a subsection in S15 to require the information officer to provide assistance to differently-abled persons making information requests.**

**Recommendation:**

In S15 a new subsection (f) may be inserted below subsection (e) as follows:

*“If the person making the request is sensorily disabled the information officer shall provide reasonable assistance to such person to access the information if it is fit to be disclosed”*

**23. Benchmarking charges payable for accessing information:** S15(d) provides for the possibility of collecting charges if access to information is granted in a form other than that sought by the person making the request. While this is a harmless provision it must be linked to S19 which relates to collection of fees and charges (subject to our analysis and recommendations made at para # 24 below). In the absence of such a linkage a wrong message is likely to go to information officers that they do not have to abide by the fee structure and rates that will be prescribed in the Rules. This can lead to charges to be collected in an arbitrary manner. **Consideration may be given to including a requirement in S15(d) that even under such circumstances charges will be collected at the prescribed rates.**

**Recommendation:**

In clause (d) of S15 after the words: *“and it involves an increase in the applicable charge”* the following words may be inserted : *“to be calculated in accordance with the fees prescribed under section 19”*.

<sup>29</sup> S7(4) *“Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.”*

<sup>30</sup> S9(10). *“Where access to the record or a part thereof is required to be provided to a perceptual handicapped, the officer-in-charge shall provide assistance to him to enable him to access such information and such assistance shall deem to include any assistance which is required for such inspection.”*

## Charging Fees

**24. Standardise the regime of fee payment for obtaining information:** S19 of the RTI Bill provides for the collection of fees and charges for providing information to the requestor. Ideally, fees or charges ought not to be imposed on a requestor for providing information as he or she exercises the fundamental right to seek and obtain information. Ordinarily the fulfillment of a fundamental right should not be made contingent upon the payment of fees. However in reality due to the limited availability of funds, all public authorities may not be able to provide free access to information requested by all persons without causing a drain on their resources. Therefore it is important that the fee structure be laid down and in accordance with some reasonable principles so that seeking information does not seem like a financial burden to the requestor.

Internationally it has been recognised that the law must make it clear as to what is being collected. S19 uses the terms ‘fees’ and ‘charges’ interchangeably. This creates the impression that both fees and charges may be collected from the requestor. Such misinterpretation created confusion in India in 2009 and the matter was finally resolved by a full bench of the Central Information Commission.<sup>31</sup> It is important to standardise the terminology used in S19. It is advisable to use the term ‘fee’ uniformly throughout this section. **Consideration may be given to using the term ‘fee’ in a uniform manner throughout the section.**

It is also important to institute a uniform fee structure across all public authorities covered by the access law in Maldives. If public authorities are allowed to prescribe their own fee rates it will only result in chaos. Ordinarily the cost of obtaining information of the size of, say, 10 pages must be the same across all public authorities and islands in Maldives. No scope must be allowed for any arbitrariness in the collection of fees. Therefore the administrative Ministry responsible for the implementation of the access law must be empowered to make fee-related Regulations in consultation with the proposed Information Commission (see para #43 below). **Consideration may be given to amending the relevant provisions of the RTI Bill to provide for the institution of a uniform fee regime across all public authorities.**

It is international best practice not to charge fees that is more than the actual cost of reproduction of the information from the original source. It is also international best practice in developing countries not to pass on the burden of the costs incurred by the public authority on searching, compiling or collating the record. The costs incurred on searching, compiling and collating the information are all paid for by the taxpayer through the annual budget approved by the People’s Majlis. There is no reason why the taxpayer must be burdened twice. The RTI regime in India allows for the collection of a nominal application fee initially and additional fees at prescribed rates at the time of providing the information. These rates are reasonable and cover the cost of reproduction of the information from the original source. The public information officer is required the applicant with provide details of how the final fee amount was calculated. Similarly the Bangladesh RTI Act also states that the fees charged for providing information must be reasonable.<sup>32</sup> **Consideration may be given to laying down the principle that the fees**

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<sup>31</sup> See: [http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email\\_alerts/interpreting\\_the\\_scope\\_of\\_section\\_7\(3\)\\_of\\_rti\\_act\\_what\\_happened\\_at\\_the\\_cic\\_hearing\\_sep\\_24\\_2009.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email_alerts/interpreting_the_scope_of_section_7(3)_of_rti_act_what_happened_at_the_cic_hearing_sep_24_2009.pdf) ; accessed on 7 June 2010.

<sup>32</sup> S8(4), “In the case of obtaining information under sub-section (1), the person making the request shall pay reasonable fees as may be prescribed by the officer-in-charge for such information.” S8(5). “The Government may, in consultation with the Information Commission, fix the fees for having any information by notification in the official Gazette, and, if necessary, may fix the price of

**charged for providing information shall be reasonable and not exceed the cost of reproducing the information from the original source.**

In both developed and developing countries it is common practice to waive the requirement of payment of fees for requestors of meagre means. It is also common practice for countries to waive fees for disclosing information that it is of relevance to large segments of the public. For example, in Australia payment of fees may be waived on grounds of financial hardship or where it is in the public interest to do so.<sup>33</sup> In Malta fees may be waived for an applicant on similar grounds.<sup>34</sup> The Indian RTI Act does not require citizens living below the official poverty line to pay any fees for seeking information.<sup>35</sup> In Antigua and Barbuda the *Freedom of Information Act* provides for the waiver of fees in the public interest.<sup>36</sup> **Consideration may be given to including these principles in the RTI Bill.**

Further, it is also international best practice to provide the information free of cost if it is disclosed after the stipulated time limit. For example in India the RTI Act states that information must be provided free of cost if it is given after the lapsing of the 30-day deadline.<sup>37</sup> In Trinidad and Tobago also a similar practice applies. Further if the fees have been collected but the public authority fails to provide the information within the deadline the fee must be refunded.<sup>38</sup> Similarly in Malta it is possible to obtain the

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*information, or as the case may be, may exempt an individual or a class of individuals or any other class from paying such price."*

<sup>33</sup> S29(5), "Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account: (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public." For the complete text of Australia's *Freedom of Information Act, 1982* see: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/foia1982222/](http://www.austlii.edu.au/au/legis/cth/consol_act/foia1982222/) ; accessed on 25 May 2010.

<sup>34</sup> Article 9(5)(b), "payment of the fee would cause financial hardship to the applicant, bearing in mind the applicant's means and circumstances;" or 9(5) (c), "disclosure of the information requested is in the public interest." For a complete text of Malta's access to information law see: [http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL\\_16/chapt496.pdf](http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/chapt496.pdf) ;accessed on 7 June 2010.

<sup>35</sup> S 7(5). "Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government."

<sup>36</sup> S20(2). "Payment of a fee shall not be required for requests for personal information, and requests in the public interest." For the complete text of the access law in Antigua and Barbuda please see: [http://www.vs4it.com/programs/ai/rti/international/laws\\_papers/antigua/antigua\\_foi\\_act.pdf](http://www.vs4it.com/programs/ai/rti/international/laws_papers/antigua/antigua_foi_act.pdf) accessed on 7 June 2010.

<sup>37</sup> S7(6). "Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1)."

<sup>38</sup> S17(1). "No fee shall be charged by a public authority for the making of a request for access to an official document." S17 (4) " Notwithstanding subsection (2), where a public authority fails, to give an applicant access to an official document within seven working days of the payment of the relevant fee pursuant to section 16(1)[c], the applicant shall, in addition to access to the official document requested, be entitled to a refund of the fee paid." For the complete text of Trinidad and Tobago's *Freedom of Information Act, 1999* see: [http://www.nalis.gov.tt/Socio\\_economic/THE-FREEDOM-OF-INFORMATION-ACT1999.htm](http://www.nalis.gov.tt/Socio_economic/THE-FREEDOM-OF-INFORMATION-ACT1999.htm) accessed on 7 June 2010.

information free of cost past the stipulated deadline.<sup>39</sup> Consideration may be given to including in the RTI Bill these progressive principles for determining fees.

**Recommendation:**

1. Section 19 may be replaced in its entirety as follows:

***“Fees payable for obtaining information:***

19. (1) (a) ***An authority may charge a fee for granting access to information in accordance with the rates prescribed in the Regulations. Any fee payable under this Act shall be reasonable and shall not exceed the actual cost of reproducing the information from the source. No fee shall be charged for searching, compiling or collating the information requested under this Act.***

(b) ***No fee may be charged from the class of requestors identified in the Regulations.***

(c) ***No fee shall be charged where the requested information relates to the applicant’s personal affairs or where the disclosure of information is in the larger public interest.***

(d) ***Where the public authority fails to provide the information within the time limits stipulated under this Act, the person making the request has the right to obtain the information free of cost.***

(2) (a) ***If the information officer intends to disclose the information requested, he or she, as the case may be, shall as expeditiously as possible inform the person making the request, in writing, of the fee payable for obtaining the information. The information officer shall inform the applicant, of the calculations made to arrive at the amount of fee payable, in accordance with the rates prescribed in the Regulations. The period intervening between the intimation of the fee payable and the actual payment of fee shall not be taken into consideration for the purpose of calculating the time limits specified under this Act.***

(b) ***The information officer shall inform the applicant of his right to seek a review of the specified fee before the appellate authority appointed under S40A of this Act in the same public authority.***

2. In S57 a new subsection (f) may be inserted below subsection (e) as follows:

***“(e) the rates at which fees may be charged for providing information and the class of requestors for whom payment of fee may be waived for obtaining information.”***

**Exempt Circumstances**

This part of the RTI Bill contains important principles about the kinds of information that may not be disclosed or the circumstances under which disclosure of information may be exempted. However according to the RTI Bill even such exempt information may be disclosed in the public interest. It also states what kinds of issues may not be considered to be legitimate while balancing competing interests prior to making a decision regards disclosure. All these principles are closely inspired by international best practice legislation. It is common for progressive access laws around the globe to specify very narrowly a limited

<sup>39</sup> Article 9(6). *“Where a public authority fails to meet the time limit set by article 10 or, if applicable, article 11, it shall not charge any fee for access to a document.”* For the complete text of Malta’s Freedom of Information Act see: [http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL\\_16/chapt496.pdf](http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_16/chapt496.pdf) ;

number of circumstances in which access to information may be denied. Class exemptions also known as blanket exemptions i.e., insulation of entire categories of information from disclosure merely because of their nature, are frowned upon by courts in several countries including India. The test to be applied before refusing to disclose information is whether any serious harm to any public interest will be caused by disclosure and not because the information has a certain labeling or because it belongs to a special category. Given below is our analysis of the exemption clauses and our recommendations for avoiding redundancies, over protection and time bound disclosure of even exempt information.

**25. Remove redundancies in the part dealing with exemptions in the Bill:** S21 of the RTI Bill is a repetition of S13(b). S13(b) provides for the severing of exempt portions from a record and disclosing the non-exempt parts to an applicant. No purpose is served by repeating it in S21. Similarly S29(b) permits the denial of access to a part of a record in the interests of protecting national security. The severability clause in S13(b) is adequate to take care of this matter also. **Consideration may be given to deleting S21 and renumbering the remaining sections of the RTI Bill. Consideration may be given to deleting S29(b).**

**Recommendation:**

1. S21 may be deleted and the remaining sections of the RTI Bill may be renumbered.
2. S29(b) may be deleted.

**26. Place on public authorities the duty to confirm or deny the existence of information in their possession:** S23, S24, S25, S26, S28, S29, S30, S31 and S32 containing a range of grounds for exempting information from disclosure do not place a duty on the public authority to confirm or deny the existence of a record in their possession. The fallacy of this position has already been discussed under the **General Comments** section above.<sup>40</sup> Similarly we have argued above for the inclusion of stricter harm tests in the exemption clauses.<sup>41</sup> **Consideration may be given to amending the relevant clauses to remove this ambiguity and introduce stricter harm tests.**

**Recommendations:**

1. S 23(a) may be substituted in its entirety with the following words:  
*“An authority has the discretion to deny access to information where the information concerns the personal affairs of a third person.”*
2. S24(a) may be substituted in its entirety with the following words:  
*“An authority has the discretion to deny access to information where the information is in respect of a claim to legal professional privileges could be maintained in a court of law or an investigation. However compliance with this section does not arise where such claim has been abandoned.”*
3. The opening lines of S25 may be substituted in their entirety with the following line:  
*“An authority may deny access to information where;”*
4. The opening lines of S26 (a) may be substituted in their entirety with the following words:  
*“An authority has the discretion to deny access to information where the*

<sup>40</sup> See pages 5-6 above.

<sup>41</sup> See page 5 above.

*disclosure of that information would endanger the life, health or safety of any individual.”*

5. The opening lines of S28 may be substituted in their entirety with the following lines:

*“An authority has the discretion to deny access to information where the disclosure of that information would cause serious harm to;”*

6. S29(a) may be substituted in its entirety with the following words:

*“An authority has the discretion to deny access to information where the disclosure of information would cause serious harm to the national defense or security.”*

7. The opening lines of S30 may be substituted in their entirety with the following lines:

*“An authority has the discretion to deny access to information where the disclosure of that information would cause serious harm to;”*

8. The opening lines of S31(a) may be substituted in their entirety with the following words:

*“An authority has the discretion to deny access to information where;”*

9. The opening lines of S32(a) may be substituted in their entirety with the following words:

*“An authority has the discretion to deny access to information where the information relates to;”*

**27. Remove the exemption given for loan-related information:** S24(d) excludes information relating to loans or grants given under specific laws and through a budget approved by the People’s Majlis from disclosure under the RTI Act. Instead it allows for the disclosure of such information under the specific laws made by the People’s Majlis relating to such loans and grants. RTI laws based on international best practices do not ordinarily interfere with the operation of other laws that require disclosure of information to people. However where such laws are inconsistent with the provisions of the RTI Act then it is becoming common to give the RTI Act an overriding effect.<sup>42</sup> Further, where loans and grants are in the nature of private transactions between an individual or entity and the financial institution providing the loan, such information may be exempted from disclosure unless the public interest demands otherwise. Protection for such information is already provided in the RTI Bill under S23 relating to personal information and S25 relating to business affairs and trade secrets. Loans and grants given from the budget approved by the People’s Majlis must be treated as a different category of financial transactions. Such loans and grants would have been provided to certain entities by the People’s Majlis with a specific public purpose in mind. Therefore they cannot be treated as transactions entitled to protection in the interests of privacy or business. People must have the right to know all details of such transactions and the RTI law should provide for access to such information. The Indian RTI Act treats entities substantially financed by funds provided directly or indirectly by the government as public authorities in their own right.<sup>43</sup> Such bodies have a direct obligation to be as transparent as any other

<sup>42</sup> The RTI laws of India and Bangladesh contain such provisions. Please see para # 5 above for a discussion on this issue.

<sup>43</sup> S2(h)(i). "public authority" means any authority or body or institution of self- government established or constituted—



government department or office. **Consideration may be given to deleting the exemption provided to loans and grants approved by the People’s Majlis during the budgetary process.**

**Recommendation:**

**S24(d) may be deleted.**

**28. Undue protection for contractual requirements of maintaining secrecy of transactions:**

S25 relates to exemptions to disclosure for the protection of the legitimate business interests and trade secrets. While these are legitimate interests to protect, the amplitude of protection provided by S25(a) is unreasonably wide and leaves a lot of scope for misuse. For example, sub-clause (a) of S25 provides for the exemption of information where a prior contract regards maintenance of its secrecy exists and where a third party may institute legal proceedings on the ground that the contract has been breached by the disclosure of information. This clause is so broadly worded that it may become a device for any and all public authorities and third parties to first draw up contracts containing secrecy clauses and then deny access to information for all time to come. This is not in tune with international best practice. Secrecy may be maintained only for a specific purpose. Clauses (b), (c), (d) and (e) of S25 provide adequate protection for legitimate business and third party interests including trade secrets. Unlike clause (a) these provisions are context-specific. It goes without saying that where the confidentiality of a contract is breached the aggrieved party may cause the institution of legal proceedings. That right will be protected under Maldives existing laws relating to contracts. There is no need to have an unnecessarily broad provision to deny access to information when other clauses protect legitimate interests of third parties. **Consideration may be given to deleting clause (a) of S25 and renumbering the remaining clauses.**

**Recommendation:**

**S25(a) may be deleted and the remaining clauses may be renumbered accordingly.**

**29. Denial of access to information on grounds of lack of ownership:**

S26(b) empowers a public authority to deny access to any information held by it on the grounds that the requestor is not the owner of information or is requesting the information without the permission of the owner. This clause opens up several opportunities for abuse. While information relating to private individuals or private entities may be said to be owned by them in certain cases, the question of ownership of information created, collected, compiled or collated by public authorities is a more complex issue. Public authorities collect, hold and use vast amounts of information in the course of their activities. In a democratic set up they are merely custodians of the information; the ultimate owners are the people. Public authorities ought not to use the ownership argument to deny access to information that they have created or collected. S26(b) leaves scope for public authorities to make such ownership claims to refuse access to information.

Information which is subject to private ownership deserves protection under specific contexts. S23 and S25 provide several grounds for refusal of such information if the

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and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”.

public interest is not served by disclosure. These are adequate grounds to take care of ownership concerns. We have provided below a recommendation providing details of the procedure that must be followed while making a decision on information relating to third parties. Along with this recommended procedure S23 and S25 provide adequate protection for information owned privately. **Consideration may be given to deleting clause (b) in S26.**

**Recommendation:**

**S26(b) may be deleted.**

**30. Tighten exemptions relating to disclosure of information held by law enforcement agencies:** S27 lists the circumstances under which access to information may be denied if it negatively impacts upon the process of law enforcement. It is common for RTI laws around the world to provide for such exemptions as this is a legitimate public interest to protect. However the wording of S27 is weak and must be tightened to ensure that the exemption is subject to strong harm tests.

First and foremost, in keeping with our **General Comments** the term ‘document’ used throughout the sub-clauses may be replaced with the term ‘information’.

Second the opening line of S27(a) states that documents listed in that section are exempt from the applicability of the Act. This construction has the unfortunate effect of removing the possibility of disclosing them if the larger public interest is served better as per the principles given in S20. Insulating entire categories of documents from disclosure in this manner is against international best practice on RTI.

Third, the harm test proposed to be applied in the sub-clauses is weak. They need to be substituted with stricter harm tests as is the case in the RTI laws of India and Bangladesh.

Fourth, redundant clauses may be deleted of the same interest is protected in another provision. **Consideration may be given to substituting the term ‘information’ for the term ‘document’ wherever applicable in S27. Consideration may also be given to ensure that law enforcement-related information is not exempted permanently from disclosure. Consideration may also be given to eliminating redundant clauses and to supplying stricter harm tests for claiming exemptions.**

**Recommendations:**

1. In S27 the word: *“information”* may be substituted for the word : *“document”* wherever occurring and appropriate.
2. In S27(a), the opening line may be substituted with the following:  
*“An authority has the discretion to deny access to information–”*
3. In S27(a), clause (i) may be substituted as follows:  
*“if the disclosure will impede an ongoing investigation of an alleged breach of law; or”*
4. In S27(a), clause (ii) may be substituted as follows:  
*“if the disclosure will expose the identify of a confidential source of information; or”*
5. In S27(a), clause (iii) may be substituted as follows:  
*“if the disclosure will expose information required to be kept confidential in the enforcement or administration of a specific law; or”*

6. In S27(a), clause (iv) may be substituted as follows:  
*“If disclosure will endanger a person’s life of physical safety; or”*
7. In S27(a), clause (v) may be substituted as follows:  
*“if the disclosure will impede a person’s right to a fair trial”*
8. In S27(a), clause (vi) may be substituted as follows:  
*“if the disclosure will seriously harm the effectiveness of a lawful method or procedure for preventing, detecting, investigating, or dealing with acts constituting breach of law; or”*
9. In S27(a), clause (vii) may be deleted as clause (vi) adequately protects the public interest of maintaining the effectiveness of the procedures of law enforcement.
10. In S27(a), clause (viii) may be substituted as follows:  
*“if the disclosure will endanger the security of a building, structure or vehicle; or”*
11. In S27(a), clause (ix) may be deleted as clauses (vi), (vii) and (viii) provide adequate protection for the situations envisaged in it.
12. In S27(a), clause (x) may be substituted as follows:  
*“if the disclosure will impede the apprehension of offenders or facilitate a person’s escape from lawful custody”*
13. The opening line of clause (b) may be substituted as follows:  
*“The following grounds shall not be deemed valid for denying access to information under this section–*
14. In S27(b), clause (i) may be substituted as follows:  
*“that the disclosure may reveal that the scope of a law enforcement investigation has exceeded limits imposed by law; or”*
15. In S27(b), clause (ii) may be substituted as follows:  
*“that the disclosure will reveal a set of general principles adhered to by a law enforcement agency in dealing with alleged breaches of law; or”*
16. In S27(b), clause (iii) may be substituted as follows:  
*“that the disclosure will reveal the degree of success achieved in a programme for dealing with alleged breaches of law; or”*
17. In S27(b), clause (iv) may be substituted as follows:  
*“that the disclosure is about information generally made known to the person under investigation; or”*
18. In S27(b), clause (ii) is redundant and may be deleted because it repeats the public interest disclosure principles provided for already in S20.

**31. Tightening exemptions related to law enforcement processes:** S28 provides more grounds to deny access to information in the context of law enforcement. Some of these grounds are new but others like clause (a) and (b) are redundant in view of similar protection provided for in S27. **Consideration may be given to deleting the redundant clauses and tightening this exemption with a stricter harm test.**

**Recommendations:**

1. The opening line of S28 may be substituted in accordance with the suggestion

contained in Recommendation #4 made at para #26 above.

2. Clauses (a) and (b) may be deleted as they are redundant in light of Recommendations #3, 5, 8 and 12 made at para #30 above.

**32. Tighten the exemption relating to defence and security:** S29 provides for exemptions to disclosure on grounds of defence and security of Maldives. This is also a common exemption in all RTI laws in both developing and developed countries. However in view of our general recommendation regarding rewording the opening lines of all exemption clauses (contained in para #30 above), the same principle may be applied here. Clause (b) allows for severing exempt portions of a record before disclosing the non-exempt portions. We have already recommended its deletion (at para #26 above) in view of the same principle being covered in S13(b) earlier in the RTI Bill.

**Recommendations:**

1. S29(a) may be substituted in its entirety with the following words:  
*“An authority has the discretion to deny access to information where the disclosure of information would cause serious harm to the national defense or security.”*
2. S 29(b) may be deleted as it is redundant in view of S13(b).

**33. Tighten the exemption relating to economic interests:** S30 of the RTI Bill protects a range of economic interests. We have already recommended above that the opening line of this exemption clause must be reformulated (see para #30 above). The legitimate economic interests of private individuals and private entities are already adequately protected in S23 and S25 respectively. There is no need to duplicate the protection. **Consideration may be given to rewording the opening lines of S30 and deleting the redundant clauses.**

**Recommendations:**

1. The opening lines of S30 may be substituted in their entirety with the following lines:  
*“An authority has the discretion to deny access to information where the disclosure of that information would cause serious harm to;”*
2. Clause 30(c) may be deleted as it is redundant.

**34. RTI cannot be a hindrance to freedom of expression:** We have already recommended above that the opening line of the exemption clause must be reformulated (see para #30 above). Clause (iii) of S31(a) states that it would be legitimate for a public authority to deny access to information on the grounds that it would hinder or restrict the government’s policy of freedom of expression. This is a strange limitation on the RTI unparalleled in other developing or developed countries with RTI laws. If anything at all, RTI will only serve to strengthen the freedom of expression which is a fundamental right of all people in Maldives guaranteed by the Constitution. Therefore such an excuse must not be included in the Bill for denying information. **Consideration may be given to rewording S31(a) and deleting clause (iii).**

**Recommendations:**

1. The opening lines of S31(a) may be substituted in their entirety with the following words:

***“An authority has the discretion to deny access to information where;”***

**2. Clause (iii) may be deleted.**

**35. Limit the scope of the exemption for Cabinet documents:** S32 of the RTI Bill exempts Cabinet documents from disclosure. Although it is very common to include exemptions for Cabinet documents in RTI laws in other countries, in a contemporary context where governments are committing themselves to more openness it is unjustified for information to warrant non-disclosure merely because it is contained in a Cabinet document. One of the primary objectives of an RTI law is to open up government so that the public can see how decisions are made and make sure that they are made right! The public has the right to know what advice and information the Cabinet bases its decisions on and how this august body reaches its conclusions. Secrecy of procedure may be required prior to the Cabinet making a decision on any matter to ensure that premature disclosure may not cause any harm to the public interest. There is no reason why Cabinet papers must remain a secret after the decision has been taken and the matter is complete and over. In India the RTI Act exempts Cabinet papers from disclosure until a decision has been reached by the Cabinet.<sup>44</sup> After the decision has been taken and the matter is complete or over, the Cabinet decision, reasons for taking such a decision and the material basis of the same must be disclosed. In Bangladesh the RTI Act requires the reasons and the basis for the decisions taken by the Cabinet to be disclosed to people after the Cabinet has made its decision.<sup>45</sup> **Consideration may be given to rewording the opening lines of S36 (see para #30 above) and restricting the scope of the exemption to Cabinet papers.**

***Recommendations:***

**1. The opening lines of S32(a) may be substituted in their entirety with the following words:**

***“An authority has the discretion to deny access to information where the information relates to;”***

**2. In S32(b) clause (ii) may be substituted as follows:**

***“where the Cabinet has taken the decision and the matter is complete over”***

**36. Subject the exemptions to shorter time limits:** S24 relating to legal professional privilege, S27 and S28 relating to law enforcement, S30 relating to economic interests and S32 relating to Cabinet papers are valid only for 30 years. The principle of subjecting exemptions to time limits (also known as sunset clauses) is welcome and in tune with international best practice standards. However, there are other exemptions which deserve to be subjected to a time-limit as well. For example, S22 relating to information received in confidence, S26 relating to health and safety and most importantly S29 relating to defense and security are not linked to a sunset clause. The sensitivity of such categories of information also diminishes with the passage of time and public interest

<sup>44</sup> S8(1)(i). *“cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:”*

<sup>45</sup> S7(t). *“any document including summaries to be placed before the Cabinet or, as the case may be, before the Council of Advisers and information relating to discussions and decisions of such meetings :*

*Provided that after taking any decision by the Cabinet or, as the case may be, by the Council of Advisers, the reasons of taking such decisions and the basis upon which the decisions are taken may be disclosed.”*

may not be harmed in any way by disclosing such information after a considerable period of time has lapsed. The time limit of 30 years is too long for the information to be of any interest to people. An entire generation would have passed since the time of the creation of the information and its disclosure. This is not in accordance with the principle of establishing accountability through transparency. It is advisable to have shorter deadlines. In India the sunset clause is set at 20 years from the date of creation of the information.<sup>46</sup> **Consideration may be given to including S22, S26 and S29 under S33. Consideration may also be given to reducing the time limit from 30 to 20 years. Consideration may be given to deleting the separate time limits mentioned in S24 and S32.**

**Recommendations:**

1. In S24, clause (c) may be deleted.
2. In S32(c), clause (i) may be deleted.
3. S33 may be substituted in its entirety as follows:  
*“Policies set out in sections 22, 26, 27, 28, 29 and 30, shall not be applied to information that is 20 years old or more.”*

**37. Procedures for dealing with requests for information about third party:** The RTI Bill provides for the protection of confidential and sensitive information relating to third parties but does not provide for a procedure for dealing with such requests. Sensitive information about third parties that may be in the custody of a public authority must not be disclosed without the consent of such third party. However the protection provided for a third party should not be misused by a public authority to try and bring a large number of requests under such provisions and deny access to information to requestors. Therefore it is important to have a robust procedure for dealing with requests for information relating to third party in the Act itself rather than leave it for the Regulations to put in place. The Indian RTI Act itself provides a detailed procedure for dealing with such requests.<sup>47</sup> **Consideration may be given to inserting a new section**

<sup>46</sup> S8(3). *“Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section”.*

<sup>47</sup> S11. *“(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:  
Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.  
(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.  
(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request*

below S33 to provide for procedures to be adopted for protecting third party interests. Similarly it is important to define the term 'third party' in the Interpretation section of the RTI Bill (see para #51 below).

**Recommendations:**

1. Insert a new section 33A below S33 as follows (or alternately the remainder of the sections in the Bill may be renumbered following this insertion):

*“Procedure related to third party information (marginal note)*

**33. (a) Where a request for information relating to a third party, exempted from disclosure under sections 23, 24, 25 or 26, is received and the information officer intends to disclose the information, he shall within five days of the receipt of the request, issue a notice, in writing, to such third party, inviting objections to the disclosure, if any.**

**(b) Upon receipt of a notice under subsection (a), the third party may within seven days submit, orally or in writing, to the information officer, objections if any, against the disclosure.**

**(c) The information officer shall take into consideration the third party's submissions, if any, while making a decision on the information request.**

**(d) Where the information officer decides to disclose the information, despite the objections of the third party, he or she shall give to that third party, a notice of his or her decision, in writing, and such notice shall include a statement of the right of third party to seek a review of the decision under section 40A of this Act. The information officer shall provide the third party the contact details of the relevant appellate authority. The information officer must not disclose the information until the matter is finally decided in favour of disclosure under this Act.”**

2. In S60 consideration may be given to including a definition of the term 'third party' as follows:

*““third party” means any person whose interests are protected under sections 23, 24, 25 or 26 of this Act. For the purpose of an information request, the person making that request, or, a ‘public authority’, shall not be treated as a third party.”* (see para #51 below)

**Dissemination of Information on the Act**

- 38. Clarify the role of the information officer:** S35(a) of the RTI Bill provides for the appointment of an information officer in every government office. This officer has specific duties under this section for ensuring the proper implementation of the RTI Act. However by restricting this appointment only to government offices, the RTI Bill ignores other public authorities falling under the coverage of this law but do not qualify to be described as 'government offices.' In order to bring all public authorities under the ambit of this provision it is better that an appropriate reference be made. Further, the RTI Bill presumes that only one information officer is required in a public authority for performing the obligations under the RTI Act. Experience from the Union and State Governments in

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under section 6, if the *third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.*

*(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”*

India has shown that the burden of dealing with information requests is easy to shoulder when shared amongst several public information officers placed in different sections and divisions of government departments. So public authorities must have the flexibility to appoint as many information officers as may be necessary based upon the workload at any point of time. These officers will perform RTI-related duties in addition to their routine obligations under other laws. **Consideration may be given to replacing the term 'government office' to public authority' in this clause. Consideration may also be given to amending this clause to allow flexibility for public authorities to decide upon the number of information officers required to be appointed under the Act.**

We have recommended above (at para #16) that the information officer must be the point person for receiving information requests and making decisions regarding access in the first instance. Under S35 the information officer is expected to play an important role in ensuring the proper implementation of the RTI Act within his or her office. In addition to these duties he or she will also have to make a range of decisions regarding information requests. The current formulation of clause (ii) of S35(b) does not take into account all the tasks that an information officer is expected to perform. **Consideration may be given to amending this clause to reflect all the statutory duties required to be performed by the information officer.**

Clause (ii) of S35(b) states that the information officer shall also be responsible for dealing with complaints from people relating to access to records (information). This is against the principles of natural justice. As the information officer will be responsible for making decisions on information requests received from people, an officer higher in rank to the information officer must be tasked with the job of looking into people's complaints regarding access to information. This should ideally be the task of an appellate authority internal to the public authority concerned (see recommendations at para #42 below) **Consideration may be given to deleting the complaints handling portion of clause (ii) of S35(b).**

Clause (i) of S35(b) places an obligation on the information officer to determine policies and guidelines for providing access to information and records maintenance and management. Similarly at clause (c) of S38 the RTI Bill provides that the Information Commissioner develop guidelines on these topics which the public authority is duty bound to follow. In order to avoid a clash of roles it is important that the guidelines be developed through a consultative process. **Consideration may be given to amending clause (i) of S35(b) to require the information officer to consult the Information Commission while formulating guidelines.** (See arguments in favour of replacing the Information Commissioner with a multi-member Information Commission at para #43 below)

**Recommendations:**

1. S35(a) may be substituted in its entirety as follows:

*“Every public authority shall appoint in all of its offices and administrative units, as many information officers as may be necessary, for the purpose of giving effect to the provisions of this Act,. A public authority shall give wide publicity to the name, designation and contact details of its information officers.”*

2. In clause (i) of S35(b) the words : *“In consultation with the Information Commission”* may be inserted before the words : *“Determine policies and guidelines...etc.”*

3. Clause (ii) of S35(b) may be substituted in its entirety as follows:

*“Take the main responsibility of providing access to the requested information, provide assistance to persons making the request and make any decision on*



**39. Duty to provide assistance to the information officer must be clearly spelt**

**out:** There is no provision in the RTI Bill that empowers an information officer to seek the assistance of other officers in his or her office and expect that such assistance will be provided on pain of penalty. A trend in some developed countries during the 1990s was to make the highest ranking officer in a public authority responsible for making decisions on information requests. Owing to the prestige and powers of this high office, obtaining access to information and records from any division, section or unit was not a difficulty. However such officers also have other responsibilities which take away a lot of their time delaying the disposal of information requests beyond the time limits stipulated in the Act. When the senior-most officer in an office is appointed as information officer, then internal review of a decision regards non-disclosure cannot be made within the same public authority as taking the matter back to the same person would violate an important principle of natural justice (*nemo iudex in causa sua*).

It is common for progressive RTI laws to allow for the filing of one internal appeal seeking a review of the decision of the information officer. So countries like India and Bangladesh have adopted a different model of designating information officers. The RTI laws in both countries provide for the appointment of any officer as the public information officer provided he or she is not the senior-most in the hierarchy. An officer senior in rank to the public information officer in the same public authority is appointed the appellate authority to deal with appeals from applicants aggrieved by a decision of the information officer. The public information officers have the authority to seek the assistance of any other officer in the public authority while dealing with an information request. Such officers whose assistance has been sought are duty bound to give assistance. If they fail to do so, as a result of which the rights of the applicant are violated then they may be penalised.<sup>48</sup> This ensures that the information officer is not made a scapegoat during the decision-making process. It is not uncommon for bureaucrats to look upon RTI as the headache solely of the person appointed as the information officer. **Consideration may be given to empower the information officer to seek assistance from any other officer in a public authority while dealing with an information request.**

***Recommendation:***

**In S35 two new subsections (c) and (d) may be inserted below subsection (b) as follows:**

***“(c) An information officer may seek the assistance of any other officer within the public authority, for the purpose of giving effect to the provisions of this Act.***

***(d) Any officer whose assistance has been sought under subsection (c) shall render all reasonable assistance to the information officer and for the purpose of determining whether a contravention of the provisions of this Act has occurred, such officer shall also be deemed to be the information officer in that***

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<sup>48</sup> S 5(4), “The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.” And S 5(5), “Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.”

**40. Widen the scope of topics required to be disclosed proactively:** S36 of the RTI Bill deals with proactive disclosure and lists out the documents that the public authority should publish “annually or within the shorter period of time”. This is very welcome as the objective of an RTI law must be to encourage public authorities to put as much information as possible in the public domain voluntarily so that people’s need to make formal applications for information is reduced. This section lists out a range of information and documents that must be made available to people proactively. However the list is much shorter compared to best practice in the region. In India<sup>49</sup> and Mexico<sup>50</sup>

<sup>49</sup> In India S4(1)(b) of the RTI Act lists out the kind of information that a public authority must publish proactively. The disclosure of this information is aimed at acquainting citizens with the organisation, structure, functioning and finances of a public authority. Every public authority is required to voluntarily disclose a wealth of information about itself such as: details of its organization, functions and duties, norms used for discharging its duties, the budget allocated to each of its agency and their expenditure reports, the monthly remuneration received by each of its officers and employees, the powers and duties of its officers and employees, the procedure followed in decision making, including channels of supervision and accountability, a statement of the categories of documents that are held by it or under its control, the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof, the names, designations and other particulars of the Public Information Officers, etc.

<sup>50</sup> Article 7, “With the exception of classified or confidential information as stipulated in this Law, the subjects compelled by the Law must, under the terms of the Regulations and guidelines that the Institute or an equivalent instance as specified in Article 61 produces, put at the public’s disposition and keep up to date the following information:

- I. Their constitutional structure;
- II. The powers of each administrative unit;
- III. A directory of their public servants, from the level of the head of the department or his equivalent and below;
- IV. The monthly remuneration received for each position, including the system of compensation as established in the corresponding dispositions;
- V. The address of the liaison section, as well as the electronic address where requests for information can be received;
- VI. The aims and objectives of the administrative units according to their operational schemes;
- VI. The aims and objectives of the administrative units according to their operational schemes;
- VII. The services they offer;
- VIII. Their procedures, requisites and forms. When these are inscribed in the Federal Register of Procedures and Services or in the Register established by the Secretariat of the Treasury and Public Credit for tax purposes, they must be published exactly as they are registered;
- IX. Information concerning the budget assigned to each agency, as well as reports about its disbursement, in the terms established by the Budget for the Federation’s Expenses. In the case of the Executive Branch, this information will be made available for each agency and entity by the Secretariat of the Treasury and Public Credit, which will also inform the public about the economic situation, public finance and the public debt in the terms established by the budget;
- X. The results of the audit of any subject compelled by the Law completed, as appropriate, by the Secretariat of the Comptroller and Administrative Development, internal comptrollers or the Federation’s Superior Auditor, and, in such cases, the corresponding explanations;
- XI. The design and execution of subsidy programs as well as the amounts allocated to them and criteria for access to them.
- XII. All concessions, permits or authorizations granted, with their recipients specified.
- XIII. All contracts granted under the terms of the applicable legislation detailing for each contract:
  - a) The public works, goods acquired or rented, and the contracted service; in the case of studies or research the specific subject must be indicated;
  - b) The amount;

the RTI laws provide for a wide variety of information to be furnished to people voluntarily in hard copy freely or through sales or through freely accessible Internet websites. Proactive disclosure may be done in a similarly comprehensive manner in public authorities in Maldives.

Certain categories of information that are deemed fit to be disclosed in other jurisdictions are missing from the list of topics covered by S36. It is common practice for RTI laws in the developed and developing world to require public authorities to furnish reasons to any person affected by an administrative or quasi-judicial decisions made by it. While this is requirement under administrative law, it is common practice to include specific provisions to this effect in RTI laws.<sup>51</sup> **Consideration may be given to including more topics requiring proactive disclosure based on the Indian and Mexican model.**

As the government machinery in Maldives is undergoing a restructuring exercise it is advisable for the public authorities to update the name, designation and contact details of information officers every six months instead of the standard annual updating required under the RTI Bill. **Consideration may be given to requiring all public authorities to update particulars about their information officers every six months.**

**Recommendations:**

1. In S36, subsection (a) may be substituted in its entirety as follows:  
*“the particulars of its organisation, role, responsibilities and duties of the office”*
2. In subsection (g) of S36, the words: *“all manuals”* may be substituted for the words: *“a manual”*.
3. In S36 new subsections (j), (k), (l), (m) and (n) may be inserted below subsection (i) as follows:  
*“(j) the budget allocated to the office, indicating the particulars of all plans, proposed expenditures and reports of disbursements made.*  
*(k) the monthly remuneration received by each of the officers and employees of the office, including the system of compensation as provided in its regulations.*  
*(l) the norms set by the office for the discharge of its duties.*  
*(m) the procedure followed by the office in the decision-making process*

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c) *The name of the provider, contractor or the physical or moral person to whom the contract has been granted, and*

d) *The periods within which the contracts must be completed.*

XIV. *The norms applicable to each subject compelled by the Law.*

XV. *The reports that each subject must generate, according to the law.*

XVI. *Mechanisms for citizen participation in cases where they exist, and*

XVII. *Any other information that may be useful or considered relevant, in addition to information based on statistical surveys that is responsive to the public’s most frequently asked questions.*

*The information to which this article refers must be made public in such a form as to facilitate its use and comprehension by individuals, and ensure its quality, veracity, timeliness and trustworthiness. The agencies and entities must refer to the recommendations made by the Institute in this regard.”* For the complete text of the Mexico’s Federal Transparency and Access to Public Government Information Law, see: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB68/laweng.pdf> ; accessed on 31 May 2010.

<sup>51</sup>For example S4(d) of the Indian RTI act states “provide reasons for its administrative or quasi-judicial decisions to affected persons”. In Bangladesh S 6(4) of the RTI act states, “If the authority frames any policy or takes any important decision, it shall publish all such policies and decisions and shall, if necessary, explain the reasons and causes in support of such policies and decisions.”.

*including channels of supervision and accountability.”*

4. A new section 36A may be inserted below section 36 as follows:

***Duty to furnish reasons and facts: (marginal note)***

***“A public authority shall furnish reasons for its administrative or quasi-judicial decisions to the affected persons.”***

**41. Enable any person to seek amendment of records related personal affairs:**

S38(b) of the RTI Bill states that any member of the community make seek, from a public authority, amendments of records concerning that person’s personal affairs. The phrase ‘member of the community’ limits the right to seek amendment only to Maldivians. This is however not the intention of S16 of the RTI Bill which explicitly recognizes the right of any applicant to seek amendment of personal records. The right to seek amendments must be available to any person whose personal records are held by a public authority. **Consideration may be given to amending S38(a) suitably to reflect the position maintained in S16.**

***Recommendation:***

**In S38(a) the words : “an applicant” may be substituted for the words : “a member of the community”.**

**42. Provide for an internal mechanism for reviewing decisions:** The RTI Bill does not provide for any remedial measures within the public authority if the applicant is aggrieved by a decision of the information officer. International best practice requires that the first stage of appeal against any decision of the information officer be heard by a senior officer within the public authority. The second appeal may lie with an independent authority like the Information Commission. The RTI Bill provides for an Information Commissioner but is silent on the mechanism for internal review. The advantage of having an internal review procedure is to provide the seniors in the public authority to apply correctives if the information officer has interpreted the Act wrongly and has caused a violation of the rights of the applicant. This procedure is quicker as the senior officers do not have to follow the time-consuming procedures of a court to summon records while reviewing the case. They can facilitate quick disposal of grievances relating to information access. They can also save their public authority from embarrassment caused by any strictures that may be issued against it in the course of adjudication before the independent appellate authority. An internal appeals procedure helps in reducing the workload of the independent appellate authority which can use the spare time to focus on other compliance issues in public authorities.

The RTI laws in several developed and developing countries provide for a two-stage appeals process where the first appeal is heard within the public authority. For example, In the UK the first appeal against the decision on the information request lies within the public authority.<sup>52</sup> In South Africa every public authority is required to identify an authority that is competent to hear internal appeals against the decisions made on the information request.<sup>53</sup> In India the appeal against the decision of the public information officer is

<sup>52</sup> S45(2)(e), “the provision by public authorities of procedures for dealing with complaints about the handling by them of requests for information.” for the complete text of the UK FOI Act see: [http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000036\\_en\\_5#pt3-l1g45](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_5#pt3-l1g45) ; accessed on 7 June 2010.

<sup>53</sup> S75(1) “An internal appeal—

required to be heard by an officer who is senior in rank within the same public authority.<sup>54</sup> In Bangladesh the head of the authority is competent to review the decision of the information officer.<sup>55</sup> In Nepal any person aggrieved by the decision of the Information Officer may make a complaint to the Chief of the public authority before seeking redress at the Nepal Information Commission.<sup>56</sup> In all such instances the internal appellate authority is required to give his or her decisions within specific time limits. Where the requested information relates to third parties and may not be disclosed without their consent, such third parties have a right to be heard before the appellate authority.<sup>57</sup> **Consideration may be given to including a new provision to allow for an internal appeals mechanism in every public authority for quick disposal of grievances of people relating to access to information.**

**Recommendation:**

A new section 40A may be inserted below S40 as follows (alternately, the sections may be renumbered from this point onwards:

*“Internal appeal (marginal note)*

**40A. (a) A public authority must appoint an officer or a committee of officers, senior in rank to the information officer, for the purpose of hearing internal appeals.**

**(b) Any person aggrieved by any decision or omission of the information officer under the provisions of this Act, may within thirty working days from the date of receiving the decision or upon the expiry of the period within which the decision should have been made, as the case may be, prefer an appeal to the appellate authority appointed under subsection (a).**

**(c) The appellate authority may admit the appeal even after the expiry of the period of thirty working days if it is shown that the appellant was prevented by reasonable cause from filing the appeal in a timely manner.**

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(b) must be delivered or sent to the information officer of the public body 35 concerned at his or her address, fax number or electronic mail address;” For the complete text of the South Africa’s Promotion of Access to Information Act, 2000 see: <http://www.info.gov.za/view/DownloadFileAction?id=68186> ; accessed on 7 June 2010.

<sup>54</sup> S19(1), “Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:”

<sup>55</sup> S24(1), “(1) If Any person fails to receive information within the time specified in sub-section (1), (2) and (4) of section 9 or is aggrieved by a decision of the officer-in-charge may, within 30 (thirty) days from the expiry of such period or, as the case may be, from the receipt of such a decision, prefer an appeal to the appellate authority.”

<sup>56</sup> S9, Right to Information Act, 2064 (B.S.), “(1) If Information Officer do not provide information, deny to provide information, partially provides information, provides wrong information or does not provide information by stating that the applicant is not stakeholder, the concerned person shall make a complaint to Chief within (7) days from the date of information denied or partial information received.”

<sup>57</sup> S19(2), “Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.”

- (d) *In every internal appeal proceeding, where the request for information relates to the interests of a third party protected under this Act, such third party shall have the right to be heard.*
- (e) *An appellate authority must decide every appeal in accordance with the principles of natural justice within a period of thirty working days. The appellate authority may extend the time limit for an additional period of 15 working days for reasons to be recorded in writing.*
- (f) *All parties to a proceeding under this section are entitled to receive a copy of the decision of the appellate authority free of charge in the first instance.”*

### **The Office and the Responsibilities of the Information Commissioner**

**43. The institution of the Information Commissioner may be restructured:** The RTI Bill provides for the establishment of the office of an Information Commissioner. This office is tasked with a range of responsibilities from providing guidance on implementing various provisions; to monitoring compliance to inquiring into complaints from persons aggrieved by any action or omission of duty holders under the RTI law. The creation of a specialist body for the purpose of ensuring compliance the RTI Act is in tune with international best practice. Three other countries in the region, namely Bangladesh, India and Nepal have similar specialist institutions while in Pakistan the appellate jurisdiction is shared by the Federal Ombudsman and the Federal Tax Ombudsman.<sup>58</sup>

**Make it a multi-member body:** It is advisable for Maldives to establish a multi-member Information Commission instead of appointing a single individual as the Information Commissioner. Considering the terrain of Maldives with people living in atolls spread out in a vast area it is advisable to have branches of the independent appellate authority established in at least the major atolls. This will ensure speedy disposal of cases and the appellate body will not be seen as being too distant from the people. If such a body is unable to provide quick justice, people will lose faith in RTI quickly. In India Information Commissions are established at the level of the Union and in the States. With the exception of a couple of State Information Commissions, all others including the Central Information Commission are multi-member bodies. In the State of Maharashtra, the State Information Commission has its offices in the capital and in major cities like Pune, Nagpur, Aurangabad and Amaraoti located in different parts of the State.<sup>59</sup> In Nepal and Bangladesh the respective Information Commissions have three members each. In Bangladesh the law requires that at least one member of the Commission be a woman.<sup>60</sup>

<sup>58</sup> For a comparative study of the specialist and independent appellate mechanisms under RTI laws in the Commonwealth, please see, Venkatesh Nayak, “Access to Information: A Comparative Picture of Independent Appellate Mechanisms Across the Commonwealth”, revised version of the paper presented at the Civil Society Meeting organised by the Open Society Justice Initiative, as a follow-up of the Fourth International Conference of Information Commissioners held in Manchester, CHRI, 2006:

[http://www.humanrightsinitiative.org/programs/ai/rti/articles/comparative\\_picture\\_of\\_independent\\_appellate\\_mechanisms\\_available\\_across\\_cw.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/articles/comparative_picture_of_independent_appellate_mechanisms_available_across_cw.pdf): accessed on 25 May 2010.

<sup>59</sup> See website of the Maharashtra State Information Commission: <http://sic.maharashtra.gov.in/> accessed on 25 May, 2010.

<sup>60</sup> S12(1), “The Commission shall consist of the Chief Information Commissioner and 2(two) other Commissioners, at least 1 (one) of whom shall be a woman.”

**Consideration may be given to establishing a multi-member body called the Information Commission instead of the Information Commissioner's office in Maldives. The Commission may have three members of which at least one member must be a woman.**

***Make the appointments free from bias:*** Internationally speaking, the Information Commission is not merely seen as another government office or quasi-judicial body added to the existing apparatus of the State. The Commission is understood to be a champion of openness and transparency in public authorities. Opening up government and enabling people to access information easily and in a timely manner are its prime mandate. In a sense it may be said as is the case in Mexico, that the Information Commission must be biased in favour of transparency. Therefore it is important that the independence of the Commission be ensured from the very beginning i.e., from the selection process. This means that the procedure for appointing members of the Information Commission must not be dominated by the Government of the day. For example, in Bangladesh, the members of the Commission are appointed by the President but the committee that selects candidates includes members of civil society and the media.<sup>61</sup> In Nepal the Commissioners are handpicked by a committee which is not dominated by the government of the day.<sup>62</sup> The appointing authority must not be given the power to remove the members from service. Instead the power of removal must be vested in another body preferably with the legislature and the judiciary must have a role in it. For example, in India the Commissioners may be removed only on certain grounds specified in the RTI Act and the decision of removal must be based on the findings of a prior reference made to the Supreme Court.<sup>63</sup> **Consideration may be given to including a provision on the RTI Bill to provide for a selection committee that will shortlist the candidates for appointment to be sent to the President. Consideration may also be given to including in the RTI Bill an independent process for the removal of the members of the Commission on specific grounds.**

***Specify some qualifications for appointment:*** It is positive that the RTI Bill states grounds of ineligibility for appointment to the office of the Information Commissioner. Similarly the RTI Bill must also specify the eligibility criteria for appointment. For example, in India prospective candidates must be eminent citizens with specialization

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<sup>61</sup> S14(1), "(1) A selection committee shall consist of the following 5 (five) members with a view to providing recommendation for the appointment of the Chief Information Commissioner and Information Commissioners, namely : (a) a judge of the Appellate Division, nominated by the Chief Justice, who shall also be its Chairman; (b) the Cabinet Secretary of the Government of the People's Republic of Bangladesh; (c) one member from the ruling party and one from the opposition, nominated by the Speaker while the Parliament is in session; (d) one representative nominated by the Government from among the persons involved in the profession of journalism holding a post equivalent to the editor or a prominent member of the society related to mass communication."

<sup>62</sup> S11(3), "In order to appoint Chief Information Commissioner and Information Commissioners, there will be a committee comprised as follows: a. The Speaker – Chairperson b. Minister or State Minister for Information and Communication – Member c. President, Federation of Nepalese Journalists – Member"

<sup>63</sup> S14 (1), "Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed".



in one or more fields such as law, governance, science, technology, social service, management, journalism and mass media.<sup>64</sup> In Bangladesh the fields of education and information are added to a similar list.<sup>65</sup> **Consideration may be given to including specific eligibility criteria that must be taken into consideration for appointment as members of the Information Commission.**

**Specify term of office and the procedure for removal:** The RTI Bill is silent on the term of office of the Information Commissioner and the procedure for removal. This is not advisable as the law would then allow the first incumbent to remain in office till death. For example, the Indian RTI Act provides a term of five years to the members of the Information Commissions.<sup>66</sup> The Chief Information Commissioner is not eligible for reappointment to the same post. In Bangladesh none of the members of the Information Commission are eligible for reappointment to the same post after completing a tenure of five years.<sup>67</sup> The RTI Act of Nepal also places similar limits on the tenure and reappointment of members of the Nepal Information Commission.<sup>68</sup> The members of the Maldives Commission must also be required to swear an oath of office prior to entering office (also see para #53 below). **Consideration may be given to stipulating limits of age and tenure for appointment as members of the Maldives Information Commission and also for them to be administered an oath of office.**

The RTI Bill also must provide for a credible and non-arbitrary procedure for removal of the members of the Commission. In India the members of the Information Commissions may be removed by the appointing authority based on the findings of the Supreme Court on a reference made to it about their misbehavior or incapacity.<sup>69</sup>

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<sup>64</sup> S12(5) *“The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance”* and S15(5), *“The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.”*

<sup>65</sup> S15(5), *“Subject to the provisions of this section, the Chief Information Commissioner and the Information Commissioners Shall be appointed from amongst the persons with broad knowledge and experience in law, Justice, Journalism, education, science, technology, information, social service, management, or public administration.”*

<sup>66</sup> S13(1), *“The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment.”*

<sup>67</sup> S15(4), *“The Chief Information Commissioner or other Information Commissioners shall not be eligible for reappointment for the same post, but an Information Commissioner shall not be ineligible for appointment to the post of Chief Information Commissioner.”*

<sup>68</sup> S14(1), *“The term of office of the Chief Information Commissioner and the Information Commissioners will be for 5 years and s/he shall not be re-appointed in the same Post.”*

<sup>69</sup> S14, *“Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed”* and S14 (3), *“Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—*

*a)is adjudged an insolvent; or (b)has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or (c)engages during his term of office in any paid employment*



In Nepal the members of the Commission may be removed by majority vote in the Parliament based on the recommendations of a committee of parliamentarians, on grounds of proven misbehavior, incompetence or dishonesty.<sup>70</sup> **Consideration may be given to including in the RTI Bill provisions stipulating the tenure of and the procedure for removal of the members of the Information Commission.**

**Recommendations:**

**1. S41, S42 and S43 may be substituted in their entirety as follows:**

***“The Maldives Information Commission- Constitution and Functioning (Heading of this part)***

***Constitution and Appointment (marginal note)***

**41. (a) The Government of Maldives shall, by notification in the Gazette, constitute a body to be known as the Maldives Information Commission to exercise the powers conferred on and to perform the functions assigned to it under this Act.**

**(b) The Maldives Information Commission shall consist of–**

- (i) The Chief Information Commissioner; and**
- (ii) Two Information Commissioners.**

**At least one member of the Commission shall be a woman.**

**(c) The Maldives Information Commission shall be an independent body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and shall by its own name sue and be sued.**

**(d) The Chief Information Commissioner and the Information Commissioners shall be appointed by the President upon the recommendations of a selection committee. The selection committee shall comprise of:**

- (i) The Speaker of Parliament;**
- (ii) A serving judge of the Supreme Court next in seniority to the Chief Justice; and**
- (iii) The Minister responsible for the implementation of this Act.**

**(e) The Speaker shall be the Chairperson of the selection committee which shall recommend to the President at least two names against each existing or likely vacancy in the Maldives Information Commission.**

**(f) The Minister responsible for the implementation of this Act shall be the**

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*outside the duties of his office; or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.”*

<sup>70</sup> S16, “If the meeting of the Legislature-Parliament endorse the recommendation of the information and communication related committee of the Legislature-Parliament, with the two third majority of meeting presented by at least two third members out of total members, for removing Chief Information Commissioner or Information Commissioner by the reason that s/he is not fit to hold office for the reason of incompetence or misbehavior or not carrying out the duties honestly, such Chief Information Commissioner or Information Commissioner will be removed from his/her office.”

**convenor of the selection committee.**

**(g) The convenor of the selection committee shall be responsible for initiating the process of filling up a likely vacancy in the Maldives Information Commission, in accordance with the provisions of this Act, at least six months before such post falls vacant.**

**(h) Any vacancy that may arise in the Maldives Information Commission due to the resignation, death or removal of the Chief Information Commissioner or an Information Commissioner, shall be filled up as expeditiously as possible, and in any case no later than a period of two months from the date of the arising of such vacancy.**

**(i) Any appointment to the Maldives Information Commission may be declared invalid by the Supreme Court of Maldives if the following conditions have not been fulfilled–**

**(i) opportunity to apply for the post has been provided through public advertisement of the vacancy with reasonable advance notice;**

**(ii) the process adopted by the selection committee for recommending candidates has been transparent; and**

**(ii) names of the candidates recommended by the selection committee have been widely publicised at least one month prior to the actual appointment.**

**(j) No act or proceeding of the Maldives Information Commission shall be held to be invalid merely on the ground of existence of any vacancy in the Maldives Information Commission, or because of any defect in its constitution.**

**(k) During the absence of the Chief Information Commissioner, for any reason, the senior-most Information Commissioner shall perform the duties of that office.**

**(l) The headquarters of the Maldives Information Commission shall be at Male. The Maldives Information Commission may establish offices at other places in Maldives in consultation with the Government.**

**(m) The Chief Information Commissioner and the Information Commissioners may hear and decide upon matters specified in sections 48 and 49 individually or jointly as may be determined by the Chief Information Commissioner.” (see recommendations under para #45 below )**

**(n) The Chief Information Commissioner, assisted by the Information Commissioners, shall be responsible for the direction, management and the general superintendence of the affairs of the Maldives Information Commission.**

**(o) The Maldives Information Commission shall function autonomously without being subject to the directions of any authority.**

**(p) The Maldives Information Commission shall have the discretion to employ personnel and determine their remuneration in consultation with the Ministry of Finance and Treasury and other benefits, for the purpose of fulfilling its responsibilities.**

**“Eligibility for appointment (marginal note)**

**42. (a) Citizens of eminence in public life with wide knowledge and experience in the field of law, science, technology, social service, management, mass media, medicine, education, or administration and governance are eligible for the post of Chief Information Commissioner and Information Commissioner.**

**(b) The following persons are ineligible for appointment as the Chief Information**

**Commissioner or Information Commissioner–**

- (i) a member or employee of any political party; or**
- (ii) any person holding a public office or an office of profit in any of the organs or agencies of the State; or**
- (iii) any person convicted of an offence punishable with imprisonment for six months or more; or**
- (iv) any person facing investigation or trial in a criminal case that is at least six months old from the date of the public advertisement of the vacancy in the Maldives Information Commission.**

**Term of office conditions of service and removal** (marginal note)

**43. (a) The Chief Information Commissioner or an Information Commissioner, shall before he or she enters office subscribe before the President an oath or affirmation according to the form set out for the purpose in the Schedule of this Act.**

**(b) The Chief Information Commissioner shall hold office for a period of five years from the date on which he or she enters office and shall not be eligible for reappointment. No person shall hold office of the Chief Information Commissioner after he or she has attained the age of sixty seven years.**

**(c) An Information Commissioner shall hold office for a period of five years from the date on which he or she enters office and shall not be eligible for reappointment. No person shall hold office of the Information Commissioner after he or she has attained the age of sixty seven years.**

**(d) An Information Officer, upon vacating office, may be appointed to the post of the Chief Information Commissioner, subject to the provisions of this Act.**

**(e) The remuneration of the Chief Information Commissioner shall be equal to that of the Chairperson of the Human Rights Commission of Maldives. The remuneration of the Information Commissioner shall be equal to that of a Member of the Human Rights Commission of Maldives. The expenditure on accommodation, food and other official expenses must be provided for by the Government when the Chief Information Commissioner or an Information Commissioner are traveling on official duty.**

**(f) The remuneration and service conditions of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after appointment.**

**(g) The Chief Information Commissioner or the Information Commissioner may at any time, by writing under his or her hand addressed to the President, resign from office.**

**(h) The Chief Information Commissioner or the Information Commissioner, as the case may be, removed from office in the manner of and on like grounds as a judge of the Supreme Court of Maldives.**

**2. Section 44 may be deleted.** (This provision has been included in the new section 43 proposed above.)

**44. Change the reference from Commissioner to Maldives Information Commission:** S45 lays down several duties of a general nature that the Information

Commissioner is required to perform that are supportive of the process of implementation of the RTI law. **Consideration may be given to replacing the reference to the “Commissioner” with a reference to the “Maldives Information Commission” in keeping with our recommendation in the foregoing paragraphs.**

**Recommendation:**

**In the opening lines of S45 the words : “Maldives Information Commission may be substituted for the words : “the Commissioner”.**

**Enforcement by the Commissioner**

**45. Give greater powers to the proposed Maldives Information Commission:**

The RTI Bill does not provide adequate powers to the Information Commissioner for adjudicating disputes relating to access to information. The Bill provides for the filing of complaints under specific circumstances with the Information Commissioner. In line with our recommendations to create a two-stage appeals process (see para #42 above) the Maldives Information Commission must have the power to entertain second stage appeals. Complaints must be entertained where it is not possible to file appeals against the public authority. The RTI Bill does not provide any powers of sanction to the Commissioner to enforce his/her decisions. When the Commissioner finds that his/her decision has not been complied with in a public authority, the only recourse left is to ask the Prosecutor General to move a court of appropriate jurisdiction to enforce the decision. This is an unsatisfactory mechanism for ensuring compliance. These issues are discussed in detail below.

**Power to entertain appeals against the decisions made in the first appeals stage:**

S48 empowers any person who has been refused access to information with the right to lodge a complaint before the Commissioner. The RTI Bill does not provide for a clearly laid down mechanism for filing appeals within the public authority even though S49 (b)(ii) provides for such a possibility tangentially. There is no compulsion in the RTI Bill for the public authority to create an internal mechanism for hearing appeals first. Therefore we have suggested at para #42 above that the first appeal must be heard within the public authority. If this change is incorporated it becomes necessary to include a provision for hearing appeals of the second stage against the decision of the appellate authority within the public authority. The RTI laws of India and Nepal provide for the filing of second appeals before the respective Information Commissions.<sup>71</sup> **Consideration may be given to including a provision in the RTI Bill for the proposed Maldives Information Commission to entertain appeals against the decision of the proposed appellate authority.**

**Power to entertain complaints must be distinguished from the power to entertain**

**appeals:** There may be certain circumstances where the person making the request may be required to directly approach the proposed Maldives Information Commission

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<sup>71</sup> India's RTI Act, S19(3), “ A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.” Nepal's RTI Act: S9(1), “Individual who is aggrieved by the decision of the Chief made in accordance with Sub-Section (4) of Section 9 shall appeal before the Commission within Thirty Five (35) days of the notice of decision received.”

without having to go through the proposed two-stage appeals process. For example, if a person is unable to make a request because an information officer has not been appointed by the public authority; or if the information officer does not bother to send any response to the requestor within the stipulated time; or when a public authority has not complied with the provisions of voluntary disclosure under S36 of the RTI Bill there must be a means of approaching the Maldives Information Commission directly for redress. This does not duplicate the appeals procedure. Instead it reduces the burden of the proposed Information Commission from entertaining complaints on all grounds for which the proposed appellate authority is competent to entertain a first appeal. **Consideration may be given to clearly specifying the grounds on which a complaint may be made directly to the proposed Maldives Information Commission.**

**Power to take suo motu cognizance of cases of non-compliance:** The RTI Bill does not empower the Information Commissioner to act voluntarily against public authorities that do not comply with the provisions of the access law. The Commissioner can be moved only through a complaint. This is not adequate for the purpose of ensuring high levels of compliance in public authorities. The proposed Maldives Information Commission must have the power to take up *suo motu* any matter of non-compliance with the provisions of the RTI Act in any public authority. This is necessarily in keeping with the role of the proposed Maldives Information Commission as a champion of transparency. In Canada the Information Commissioner has the power to launch investigations of one's own accord into instances of non-compliance with the provisions of the access law in any public authority.<sup>72</sup>

**Power to enforce decisions must be stronger:** S50 of the RTI Bill leaves the office of the Information Commissioner relatively weak. If the public authority refuses to abide by a decision of the Information Commissioner the only option available with the Information Commissioner is to approach the Prosecutor General under section 53. While this is a necessary measure it must be reserved only for extreme cases of willful non-compliance by a public authority. It is also a time-consuming process and will not ensure quick justice for the persons seeking information. The Commissioner's office must also have the powers of sanction in order to secure compliance with its decisions. This is a key feature of international best practice legislation. In South Asia most of the RTI laws empower the independent appellate authorities to enforce their decisions through sanctions. In India the Information Commissions may impose monetary penalties on errant officials who violate the provisions of the RTI Act.<sup>73</sup> Repeated contraventions of

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<sup>72</sup> S30(3), "Where the Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, the Commissioner may initiate a complaint in respect thereof." For the complete text of the Canada's Access to Information Act see: <http://laws.justice.gc.ca/eng/A-1/page-4.html> ; accessed on 7 June 2010.

<sup>73</sup> S20(1). " Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving

the RTI Act will be dealt with through a recommendation to the concerned public authority for initiating disciplinary action against the erring officials.<sup>74</sup> If a requestor for information has suffered any financial loss or detriment, the Commissions may also order the public authority to compensate such person.<sup>75</sup> While the monetary fine is an individual liability of the public information officer, the public authority is liable to pay the compensation amount to the requestor. In Nepal the Information Commission may impose monetary fines for refusal of access or delay in furnishing the information without reasonable cause.<sup>76</sup> In Bangladesh the Information Commission is similarly empowered to impose penalties on erring officials and order the payment of compensation to the applicants.<sup>77</sup> The proposed Maldives Information Commission must also have the powers to enforce its decisions without having to approach the Prosecutor General. **Consideration may be given to providing the proposed Maldives Information Commission with powers of sanction to enforce its decisions.** (Also see recommendation regards imposition of penalties and treatment of offences at para #46 below)

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*that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”*

<sup>74</sup> S20(2), “Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”.

<sup>75</sup> S19(8), “In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

X X X

(b) require the public authority to compensate the complainant for any loss or other detriment suffered”.

<sup>76</sup> S32, “**Punishment:**

(1) If the Commission finds that Chief of public Body or Information Officer has held back information without any valid reason, refused to part with information, provided partial or wrong information or destroyed information; the Commission may impose a fin to such Chief or Information Officer from Rupees 1,000 to 25,000 and if such Chief or Information Officer is in a Post to be punished by Department, it may write to the concerned Body for departmental action.

(2) If the Chief of public Body or Information Officer delay to provide information which has to be provided on time without reason, they shall be punished with a fine Rupees 200 per day for the information is delayed to provide.

(3) If the Commission writes to the concerned Body for Departmental action in accordance with Sub-section (1), the Public Body will have to take Departmental action against that Chief or Information Officer within three months and notify the Commission thereon.

(4) The Commission may impose a fine between NRS 5000 to 25000 considering that seriousness of misuse of information if any person is found misusing the information acquired from public Body instead of using it for purpose it was obtained for.

(5) The Commission may impose a fine up to Rupees 10,000 to the concerned person in case its decision or order in accordance with this Act is not obeyed.”.

<sup>77</sup> S 11 (a)(vi), “At the time of taking decision under this section, the Information Commission shall have the following powers namely :

X X X

(vi) to give compensation for any loss or damage;”.

**Delegation of powers is essential:** The RTI Bill does not provide for the delegation of the powers of the Information Commissioner. It is not always possible for the incumbent of this office to launch an investigation into every case on his or her own. Therefore provision must be made for delegation of the powers to investigate and hold inquiries so that other officers may be of assistance and the second appeals/complaints proceedings may be completed without undue delay. However care must be taken not to delegate the powers to hold hearings and give decisions as these are the prerogatives of the proposed Maldives Information Commission. In India the RTI Act does not provide for the delegation of the powers. However the provision for delegating the powers of inquiry has been made in the subordinate legislation.<sup>78</sup> **Consideration may be given to including a provision in the RTI Bill for delegation of the powers of the proposed Maldives Information Commission.**

**Recommendations:**

**1. S48 may be substituted in its entirety as follows:**

*“Lodging second appeals with the Maldives Information Commission (marginal note)*

**48. (a) Any person aggrieved by a decision of the appellate authority under section 40A may within ninety working days from the date of receiving the decision or upon the expiry of the period within which the decision should have been made, as the case may be, prefer an appeal to the Maldives Information Commission.**

**(b) The Maldives Information Commission may admit the appeal even after the expiry of the period of ninety working days if it is shown that the appellant was prevented by reasonable cause from filing the appeal in a timely manner.”**

**2. S49 may be substituted in its entirety as follows:**

*“Lodging of complaints with the Maldives Information Commission (marginal note)*

**49. (a) Without prejudice to anything contained in section 48, a complaint may be lodged directly with the Maldives Information Commission under the following circumstances:**

**(i) where a person is unable to submit an information request because no information officer is available.**

**(ii) where an information officer refuses to receive an information request from any person without reasonable cause.**

**(iii) where an information officer fails to provide a proper receipt against an application for a request for obtaining information under this Act.**

**(iv) where a person making a request has not received any response from the information officer within the time limit specified in section 7.**

**(v) where an information officer or a public authority has not complied with a lawful order of the Maldives Information Commission.**

**(vi) any other matter relating to obtaining information under this Act.**

<sup>78</sup> Rule 5(iii), “In deciding the appeal the Commission may.-

X X X

(iii) inquire through authorized officer further details or facts.” For the complete text of the Central Information Commission (Appeal Procedure) Rules, 2005 see: <http://cic.gov.in/CIC-Notifications/CIC%20Appeal%20Rules.pdf> ; accessed on 6 June 2010.

**(b) The Maldives Information Commission may refuse to admit a complaint:**

**(i) if the complaint is groundless; or**

**(ii) if the complaint relates to a trivial matter; or**

**(ii) where it is found that an opportunity for redress of the complaint exists under section 40A and that the complainant has lodged the complaint without exhausting such opportunity.”** (see recommendations under para #42 above)

**“(d) Upon being satisfied that there are reasonable grounds to inquire into a complaint lodged under this section, the Maldives Information Commission shall initiate an inquiry on its own or through such other person as it deems fit.”**

**3. S50 may be substituted in its entirety as follows:**

**“Disposal of second appeals and complaints by the Maldives Information Commission** (marginal note)

**50. (a) In any appeal or complaint proceeding before the Maldives Information Commission, the burden of proving that–**

**(i) the denial of access to information was justified; or**

**(ii) that the public authority has complied with the provisions of this Act;**

**shall be on the public authority.**

**(b) The Maldives Information Commission must decide every appeal or complaint in accordance with the principles of natural justice within a period of thirty working days. The Maldives Information Commission may extend the time limit by an additional period of 15 working days for reasons to be recorded in writing.**

**(c) In any appeal or complaint proceeding before the Maldives Information Commission, where the request for information relates to the interests of a third party protected under this Act, such third party shall have the right to be heard.**

**(d) Subject to the provision under sub-section (e), all hearings in an appeal or a complaint proceeding shall be held in public.**

**(e) The Maldives Information Commission may examine in camera any record or document that is exempt from disclosure under this Act.**

**(f) The Maldives Information Commission must announce its decision in open proceedings.**

**(g) All parties to a proceeding under this section are entitled to receive a copy of the decision of the Maldives Information Commission free of charge in the first instance.**

**4. S51 may be substituted in its entirety as follows:**

**“Powers of the Maldives Information Commission** (marginal note)

**51. (a) The Maldives Information Commission shall have the following powers to inquire into an appeal or complaint submitted to it under this Act:**

**(i) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;**



- (ii) requiring the discovery and inspection of documents;*
- (iii) receiving evidence on affidavit;*
- (iv) requisitioning any public record or copies thereof from any court or office;*
- (v) issuing summons for examination of witnesses or documents;*
- (vi) entering the premises of any office of a public authority for the purpose of conducting search and seizure of any document or record;*
- (vii) searching and seizing any documents or records from the office of a public authority required in relation to any ongoing proceeding before the Maldives Information Commission and*
- (viii) any other power which may be provided for in the Regulations under section 57.*

*(b) In deciding any matter under this Act the Maldives Information Commission may:*

- (i) decide that the appeal or complaint is baseless.*
- (ii) appoint an information officer or reappoint or transfer the duties of the information officer to any other officer on grounds of incompetence or inability of the incumbent officer to carry out his or her duties in an effective manner.*
- (iii) order the public authority to disclose the information.*
- (iv) order the public authority to disclose the information, in the form sought by the person making the request, where feasible.*
- (v) uphold the decision of rejection of an information request.*
- (vi) order the public authority to publish a particular information or a category of information.*
- (vii) make recommendations to a public authority to improve its records maintenance and management practices or systems.*
- (viii) order the public authority to compensate the complainant for any loss or damage suffered in the course of any proceeding under this Act;*
- (ix) impose a monetary penalty on any officer or employee of a public authority for a contravention of the provisions of this Act;*
- (x) impose a monetary penalty on any officer or employee of a public authority for non-compliance with a lawful order of the Maldives Information Commission.*
- (xi) recommend to a public authority for launch of disciplinary proceedings against any officer for persistently violating the provisions of this Act.*
- (xii) recommend to the Prosecutor General for investigation of any instance of breach of law disclosed during any proceedings under this Act.*

*(c) The decision of the Maldives Information Commission shall be binding.*

5. S52 may be substituted in its entirety as follows:

***“Power to take suo motu cognizance of non-compliance (marginal note)***

**52. (a) The Maldives Information Commission may initiate of its own accord an inquiry, as may be appropriate, against any public authority into any matter relating to non-compliance with the provisions of this Act including but not restricted to any of the circumstances mentioned in sections 48 and 49.**

**(b) The Maldives Information Commission shall complete an inquiry initiated under sub-section (a) within such reasonable time as it may deem appropriate and shall exercise all such powers as are granted to it under section 51 in relation to such inquiry.**

**(c) During or upon completion of an inquiry initiated on of its own accord, if it appears to the Maldives Information Commission that the practice of a public authority does not conform with the requirements of this Act it may give a recommendation to such public authority specifying the steps which ought in its opinion to be taken for promoting such conformity.**

**(d) Upon completion of an inquiry, initiated under this section, the Maldives Information Commission shall submit to the concerned public authority and the Government a report of its findings along with any recommendations for ensuring better compliance with the provisions of this Act.**

**(e) Upon receipt of a report from the Maldives Information Commission under sub-section (d) the Government shall cause the report to be tabled before the People’s Majlis immediately, if it is in session and where such a report is received on a date when the People’s Majlis is not in session, the Government shall cause the report to be tabled on the first day of the next session.**

**6. S53 may be substituted in its entirety as follows:**

***“Delegation of Powers (marginal note)***

**53. (a) The Maldives Information Commission may delegate its powers of inquiry in relation to a proceeding under section 48, 49 or 52 to such other officer or qualified person as it may deem fit.**

**(b) The Maldives Information Commission shall not delegate, to any person, its powers of holding a hearing or giving a decision or making a recommendation in relation to any proceeding under this Act.**

**46. Imposing penalties and treatment of offences:** We have recommended above that the proposed Maldives Information Commission must have the powers of sanction to ensure compliance with its orders and for penalizing errant officers. S56 of the RTI Bill deals with offences but does not mention where such offences are triable. However it must also be recognised that certain acts of commission or omission may not actually amount to being an offence but will result in the violation of the individual’s right to access information. For actions such as delays, denials, lack of response without reasonable cause, demanding exorbitant fees etc., information officers must be made liable. At the same time taking up such matters in court will only result in delays in imposing sanctions. Instead the proposed Maldives Information Commission must have the powers to impose penalties on the erring officials directly (including deemed information officers in any case – see para #39 above). It must also have the power to recommend to the public authority for launch of disciplinary proceedings to tackle officials who persistently contravene the provisions of this law. (For more details of

penalty provisions in other countries see para #45 above). More grave actions such as falsification or destruction of records must be treated as offences triable in the appropriate court on the recommendation of the proposed Maldives Information Commission. Consequently the penalty must be higher and also include a jail term of one year.<sup>79</sup> **Consideration may be given to including a provision in the RTI Bill mentioning the grounds on which the proposed Maldives Information Commission may impose monetary fines on an information officer or recommend disciplinary action. Consideration may also be given to mentioning where offences identified under this law are triable.**

**Recommendation:**

**S56 may be substituted in its entirety as follows:**

***“Contraventions and Offences (marginal note)***

***56.(a) The Maldives Information Commission must impose a monetary fine not exceeding RF 5,000 (Rufiya Five Thousand) on an information officer for any or all of the following contraventions of this Act:***

- (i) refusing to receive an information request without reasonable cause.***
- (ii) not furnishing the requested information within the time limits stipulated in this Act without reasonable cause.***
- (iii) malafidely denying information.***
- (iv) knowingly providing false, misleading or incomplete information.***

***(b)The Maldives Information Commission must recommend to the head of the public authority for launching disciplinary proceedings against an information officer for repeated contraventions of this Act.***

***(c) The following are offences under this Act triable in a court of appropriate jurisdiction upon the recommendation of the Maldives Information Commission:***

- (i) obstructing a public authority or officer from the performance of a duty under this Act.***
- (ii) obstructing the Maldives Information Commission or any person authorised by it in the performance of a duty under this Act.***
- (iii) malafide destruction of information that is the subject of a request under this Act.***
- (iv) falsification of the records of a public authority.***

***(d) A person convicted of any offence mentioned in subsection (c) may be sentenced to prison up to a maximum of one year or with a fine not exceeding RF 25,000 (Rufiya twenty five thousand) or with both.***

**47. Strengthen the protection for whistleblowers:** S54 provides protection for action taken in good faith. It also protects whistleblowers within government who disclosed information about any breach of law relating to or for the protection of a person's health and safety. This is a very welcome provision. In RTI laws of other developed and developing countries protection to whistleblowers is provided for disclosing information

<sup>79</sup> However if the offences listed under the proposed S56 attract a higher prison term or monetary fine under the existing penal laws of Maldives then the figures may be substituted accordingly.

relating to breach of law in general and not merely relating to health and safety. **Consideration may be given to including a general bar on action taken against an officer who discloses in good faith information about the commission or intent to commit a breach of law by any person.**

**Recommendation:**

In S54 a new sub-section (e) may be inserted below sub-section (d) as follows:

***“(e) No personal liability shall lie in respect of any person who, under this Act, disclosed information about any offence or breach of law, corruption or maladministration or intent to commit such actions.”***

**48. Indicate where the appeals against the decisions of the Maldives Information shall lie:** The RTI Bill does not provide for a mechanism by which the decision of the Information Commissioner may be appealed against. It only provides for a method by which the Information Commissioner may ensure compliance with his or her orders. This is highly unsatisfactory. Ordinarily RTI laws specify the name of the court where appeals against the decision of the appellate authority under any law shall lie. In the context of RTI laws the Information Commissioner or Information Commissions act as specialist independent appellate bodies for the purpose of adjudicating over access disputes. So it is common for such laws to oust the jurisdiction of courts in relation to matters falling under the jurisdiction of such independent appellate bodies. For example, the Indian RTI Act ousts the jurisdiction of courts in relation to access disputes.<sup>80</sup> However more than six decades of constitutional jurisprudence has established the position that any decision of administrative and quasi-judicial bodies is amenable to judicial review before the High Courts and the Supreme Court even though a specific provision regards ouster may exist in any law. The writ jurisdiction of these courts provides the scope for launching such a challenge. The Bangladesh RTI Act also ousts the jurisdiction of courts but the power of judicial review brings all decisions of the Bangladesh Information Commission within the jurisdiction of the Supreme Court.<sup>81</sup> The ouster clause ensures that no court can interfere with any proceeding under the RTI Act by issuing a stay or injunction. **Consideration may be given to allow for the filing of an appeal against the decision of the proposed Maldives Information Commission before the Supreme Court of Maldives.**

**Recommendation:**

A new Section 55A may be inserted below section 55 as follows: (Alternatively the remainder of the sections in the Bill may be renumbered):

***“Appeals against the decision of the Maldives Information Commission (marginal note)***

***55A. (i) No court or tribunal shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.***

***(ii) An appeal against the decision of the Maldives Information Commission shall lie with the Supreme Court of Maldives within one hundred and eighty days of***

<sup>80</sup> S23, “No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.”

<sup>81</sup> S29, “Bar against filing suit: No person shall, except preferring an appeal before an appellate authority or, as the case may be, lodging a complaint before the Information Commission under this Act, raise any question before any court for anything done or deemed to be done, any action taken or the legality of any order passed or any instruction made under this Act.”

***the date of the decision or from the date on which the decision should have been made.”***

### **Interpretation Clause**

**49. Clarify the meaning and scope of the term ‘person’:** S60 does not contain a definition of the term ‘person’ who according to the RTI Bill is the bearer of the right of access. As a public law defining the rights of private persons vis-à-vis agencies of the State it is important that there is absolute clarity as to who is the rights bearer. In common parlance the term ‘person’ connotes a biological human being. However in the context of law a person is anybody or any entity that has a personality and is capable of suing or being sued. So in addition to biological beings the term ‘person’ includes artificial juridical entities such as societies, labor unions, partnerships associations, corporations, legal representatives of individuals or bodies, trusts and trustees and such other entities. Therefore it is important that a definition of the term ‘person’ may be taken from the law on interpretation of statutes operational in Maldives (for example, the *General Clauses Act, 1897* plays such a role in India) or from laws relating to taxes or corporations in force in Maldives for inclusion in the RTI Bill. **Consideration may be given to including a definition of the term ‘person’ in S60 of the RTI Bill.**

### **Recommendation**

**In S60, consideration may be given to including a definition of the term ‘person’ based on similar definitions that may be found in laws relating to interpretation of statutes or those governing taxes or corporations, in force in Maldives.**

**50. Enlarge the scope of the term ‘public authority’:** The definition of the term ‘public authority’ in S 60 is not entirely in tune with international best practice legislation on RTI. The term currently covers only the executive organ of the State. It explicitly excludes the people’s Majlis and judicial courts, tribunals even though it begins with the statement that the access law covers “all three powers of the State”. RTI laws adopted in various countries during the 1990s and during the first decade of the 21<sup>st</sup> century cover all three organs of the State. It is very crucial for Maldives as an emerging democracy to adopt an access law that enables its people to access information relating to the working of the executive, legislature and judicial bodies. Internationally it is common for access legislation not to leave out any arm of the State from its purview. For example, in the UK the Freedom of Information Act, 2000 covers not only the Government but also both Houses of Parliament, the legislatures of Northern Ireland and Wales.<sup>82</sup> In Sweden which passed the world’s first RTI law, the Riksdag (Parliament) has not been left out of its

82 S1(a)(i), “(1) In this Act “public authority” means—

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1, or” and Schedule 1, Part 1, “

1 Any government department.

2 The House of Commons.

3 The House of Lords.

4 The Northern Ireland Assembly.

5 The National Assembly for Wales.

6 The armed forces of the Crown, except—

(a) the special forces, and

(b) any unit or part of a unit which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in the exercise of its functions.” For the complete text of the UK Freedom of Information Act see:

[http://www.opsi.gov.uk/acts/acts2000/ukpga\\_20000036\\_en\\_10#sch1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000036_en_10#sch1) ; accessed on 6 June 2010.

purview.<sup>83</sup> Closer home, the RTI laws in Pakistan, India, Nepal and Bangladesh cover both the legislature and the judiciary.<sup>84</sup> There is no reason why Maldives should not take a similar step to include the People’s Majlis and its judiciary within the purview of the access law. **Consideration may be given to deleting the exception to the rule regards ‘public authority’ mentioned in S60.**

***Bring private bodies performing public functions or those receiving public or foreign funds within the purview of this law:*** The RTI Bill does not cover private bodies that may be performing public functions in Maldives. It also does not cover any body that receives support from public funds. It also does not cover bodies that received foreign funds. These are major lacunae. Private bodies that are mandated to perform public funds or those which are given taxpayer funds to perform certain functions or services serve the public interest as much as any government agency. They must also be covered by the RTI law. In Bangladesh the RTI Act covers any private body that receives funding from either government sources or foreign sources.<sup>85</sup> In India any non-governmental organisation that is substantially financed by the Government has a direct obligation to provide people with access to information about its working.<sup>86</sup> The RTI Act of Nepal includes all organisations receiving funding from government and foreign sources as also political parties within its purview.<sup>87</sup>

<sup>83</sup> Chapter 2. *On the public nature of Official documents.* Art. 5 “*The Riksdag and any local government assembly vested with decision making powers is equated with a public authority for the purposes of this Chapter.*” For the complete text of the Sweden’s Freedom of Press Act see: <http://portal.unesco.org/ci/en/files/26146/12047263333Sweden.doc/Sweden.doc> ; accessed on 7 June 2010.

<sup>84</sup> Pakistan’s FOI Ordinance, S 2(h), “*public body*” means;  
 (i) any Ministry, Division or attached department of the Federal Government;  
 (ii) Secretariat of Majlis-e-Shoora (Parliament)  
 (iii) any office of any Board, Commission, Council, or other body established by, or under, a Federal law;  
 (iv) courts and tribunals;” for the complete text of Pakistan’s FOI ordinance see: <http://www.privacyinternational.org/countries/pakistan/pk-foia-1002.html> . India’s RTI Act, S 2(h), “*public authority*” means any authority or body or institution of self- government established or constituted— (a) by or under the Constitution;” Nepal’s RTI Act, S2, “*Unless the subject or context otherwise requires, in this Act:*  
 (a) By “*Public Body*” means the body and institution according to the following list:  
 (1) A body under the constitution”. Bangladesh’s RTI Act, S 2(b), “*Authority*” means: (i) any organization constituted in accordance with the Constitution of the People’s Republic of Bangladesh;”

<sup>85</sup> S2(b) (iv), “ *Authority* means -- any private organisation or institution run by government financing or with aid in grant from the government fund;” For the complete text of Bangladesh’s RTI Act 2009 see: [http://www.moi.gov.bd/RTI/RTI\\_English.pdf](http://www.moi.gov.bd/RTI/RTI_English.pdf) ; accessed on 6 June 2010.

<sup>86</sup> S2(h)(ii), “*public authority*” means any authority or body or institution of self- government established or constituted—  
 X X X  
 (d) by notification issued or order made by the appropriate Government, and includes any—  
 X X X  
 (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;”

<sup>87</sup> S2(a), “*Unless the subject or context otherwise requires, in this Act:*  
 (a) By “*Public Body*” means the body and institution according to the following list:  
 X X X  
 (5) Political Party or organisation registered under the prevalent law.  
 X X X

**Recommendation:**

1. In S60, under the definition of the term 'public authority', the sentence: "*The judicial courts, tribunals formed under a law and the parliament shall be excluded*" may be deleted.
2. In S60 after the words :"*Or any authority that performs an official function or a function stipulated by any law*" the following words may be inserted:  
*"Or any body that performs public functions or receives funding from the Government or any of its agencies. Or any body that receives funding from foreign entities or international agencies."*

**51. Include a definition of the term 'third party':** Sections 23, 24, 25 and 26 of the RTI Bill have been designed to protect third party interests. However this term needs to be defined in the Interpretation clause of the Bill. It is important to clearly identify who is entitled to protection under the third party procedures that we have recommended for inclusion in this law. Experience from developing countries like India<sup>88</sup> has shown that public authorities take the advantage of vague definitions of this term and claim third party rights over the applicant. In fact the entire State apparatus must be treated as the second party to a request (the applicant being the first party). Third party status may be recognised for entities outside the State apparatus only under the relevant sections. **Consideration may be given to including a clear definition of the term 'third party' in the Interpretation section of the RTI Bill.**

**Recommendation:**

In S60 a definition of the term 'third party' may be included as follows:

*""third party" means any person whose interests are protected under sections 23, 24, 25 or 26 of this Act. For the purpose of an information request, the person making that request, or, a 'public authority', shall not be treated as third party."*

**52. Include definitions of special terms used in the law:** The RTI Bill uses terms such as 'information officer' for the first time without parallel in other laws. Similarly the foregoing paras include recommendations for establishing an 'appellate authority' and the 'Maldives Information Commission' and the office of the 'Chief Information Commissioner' and 'Information Commissioner' for the first time. It is prudent to include the definition of these terms for the sake of clarity in the Interpretations section of the RTI Bill. This tradition is common to the RTI laws of Bangladesh and India.<sup>89</sup> **Consideration may be given to including definitions of special terms used in the RTI Bill in the Interpretation section.**

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(8)Non-Governmental Organisation/Institutions operated by obtaining money directly or indirectly from the Government of Nepal or Foreign Government or International Organisations/Institutions,".

<sup>88</sup> S2(n), " "third party" means a person other than the citizen making a request for information and includes a public authority." .

<sup>89</sup> S2(e), "(e) "Information Commission" means the Information Commission established under section 11;" & S 2(j), ""officer-in-charge" means any officer appointed under section 10." and S2(b), " "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;" & S 2(c), " "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;"

**Recommendation:**

1. In S60 a definition of the following terms may be included as follows:

*“information officer” means the officer appointed under section 35 of this Act.*

*“appellate authority means the officer appointed under section 40A of this Act.*

*“Maldives Information Commission” means the Maldives Information Commission constituted under section 41 of this Act.*

*“Chief Information Commissioner” means the Chief Information Commissioner appointed under section 41 of this Act.*

*“Information Commissioner” means the Information Commissioner appointed under section 41 of this Act.”*

2. S60 may be reorganised alphabetically in view of the insertion of new terms and their definitions.

**53. Include an oath of office for the members of the Maldives Information Commission:** As the proposed Maldives Information Commission is designed to be a high office functioning independently it is important that the Chief Information Commissioner and the Information Commissioners subscribe to an oath before the President. For example, In India the members of the Central Information Commission are administered an oath of office by the President.<sup>90</sup> **Consideration may be given to including in the RTI Bill a requirement for the members of the Maldives Information Commission to be administered an oath of office by the President. The form of the oath may be provided for in the Schedule to the Act.**

**Recommendation:**

After S60 insert a Schedule containing the form of oath to be administered to members of the Maldives Information Commission as follows:

*“Schedule*

*[See section 43(a)]*

*“I, ...(name of person)..., do swear in the name of Almighty Allah that I will respect the religion of Islam, that I will uphold the Constitution of the Republic of Maldives, that I will bear true faith and allegiance to the Maldives, that I will uphold the fundamental rights of the Maldivian citizens and will discharge the duties and responsibilities of the Chief Information Commissioner/Information Commissioner and honestly and faithfully in accordance with the Constitution and laws of the Republic of Maldives including the Right to Information Act.”*

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<sup>90</sup> S13(3), “The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.”.



## Annexure 1: Best Practice Legislative Principles

In CHRI's 2003 Report, *Open Sesame: Looking for the Right to Information in the Commonwealth* (see enclosed), the RTI team captured the key principles which should underpin any effective right to information law, drawing on international and regional standards, evolving State practice, and the general principles of law recognised by the community of nations. Article 19, an NGO which specifically works on right to information, has also developed "Principles on Freedom of Information Legislation" which were endorsed by the United Nations Special Rapporteur in 2000.<sup>91</sup> The Organisation of American States<sup>92</sup> and the Commonwealth<sup>93</sup> - both of which Grenada is a member - have also endorsed minimum standards on the right to information. These generic standards have been summarised into the five principles below, which I would encourage you to consider when you finalise your own right to information bill.

### Maximum Disclosure

The value of access to information legislation comes from its importance in establishing a framework of open governance. In this context, the law must be premised on a clear commitment to the rule of maximum disclosure. This means that there should be a presumption in favour of access in the objectives clause of any Act. Every member of the public should have a specific *right* to receive information and those bodies covered by the Act therefore have an *obligation* to disclose information. Any person at all should be able to access information under the legislation, whether a citizen or not. People should not be required to provide a reason for requesting information.

To ensure that maximum disclosure occurs in practice, the definition of what is covered by the Act should be drafted broadly. Enshrining a right to access to "information" rather than only "records" or "documents" is therefore preferred. Further, the Act should not limit access only to information held by public bodies, but should also cover private bodies "*that carry out public functions or where their activities affect people's rights*". This recognises the fact that in this age where privatisation and outsourcing is increasingly being undertaken by governments, the private sector is gaining influence and impact on the public and therefore cannot be beyond their scrutiny. Part 3 of the South African *Promotion of Access to Information Act 2000* provides a very good example. Bodies covered by the Act should not only have a duty to disclose information upon request, but should also be required to proactively publish and disseminate documents of general relevance to the public, for example, on their structure, norms and functioning, the documents they hold, their finances, activities, any opportunities for consultation and the content of decisions/policies affecting the public. Section 4 of the new Indian *Right to Information Act 2005* provides a useful model.

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<sup>91</sup>Hussain, A. (2000) Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted in accordance with Commission resolution 1999/36, Doc.E/CN.4/2000/63, 5 April. See also Ligabo, A., Haraszti, M. & Bertoni, E. (2004) *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*.

<sup>92</sup>See Organisation of American States - General Assembly (2003) *Access to Public Information: Strengthening Democracy*, resolution adopted at the fourth plenary session, June 10 2003, AG/RES.1932 (XXXIII-O/03).

<sup>93</sup>See (1999) Commonwealth Freedom of Information Principles, in *Promoting Open Government Commonwealth Principles And Guidelines On The Right To Know*, Report of the Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development, Marlborough House, London, 30-31 March 1999.

An Act should also provide that bodies covered be required to make every reasonable effort to assist applicants on request. "Every reasonable effort" is an effort which a fair and rational person would expect to be done or would find acceptable. The use of "every" indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the completeness of the response. The burden of proof should be on the public body to show that it has conducted an adequate search. Section 6 of British Columbia's *Freedom of Information and Protection of Privacy Act* provides a useful model.

In order to support maximum information disclosure, the law should also provide protection for "whistleblowers", that is, individuals who disclose information in contravention of the law and/or their employment contracts because they believe that such disclosure is in the public interest. Whistleblower protection is based on the premise that individuals should be protected from legal, administrative or employment-related sanctions for releasing information on wrongdoing. It is important in order to send a message to the public that the government is serious about opening itself up to legitimate scrutiny.

### **Minimum Exceptions**

The key aim of any exceptions should be to protect and promote the public interest. The law should therefore not allow room for a refusal to disclose information to be based on trying to protect government from embarrassment or the exposure of wrongdoing. In line with the commitment to maximum disclosure, exemptions to the rule of maximum disclosure should be kept to an absolute minimum and should be narrowly drawn. The list of exemptions should be comprehensive and other laws should not be permitted to extend them. Broad categories of exemption should be avoided and blanket exemptions for specific positions (e.g., President) or bodies (e.g., the Electoral Commission) should not be permitted; in a modern democracy there is no rational reason why such exemptions should be necessary. The law should require that other legislation be interpreted, as far as possible, consistently with its provisions.

Even where exemptions are included in legislation, they should still all be subject to a blanket "public interest override", whereby a document which is presumed exempt under the Act should still be disclosed if the public interest in the specific case requires it.

### **Simple, Cheap and Quick Access Procedures**

A key test of an access law's effectiveness is the ease, inexpensiveness and promptness with which people seeking information are able to obtain it. The law should include clear and uncomplicated procedures that ensure quick responses at affordable fees. Applications should be simple and ensure that the illiterate and/or impecunious are not in practice barred from utilising the law. Officials should be tasked with assisting requesters. Any fees which are imposed for gaining access should also not be so high as to deter potential applicants. Best practice requires that fees should be limited only to cost recovery, and that no charges should be imposed for applications nor for search time; the latter, in particular, could easily result in prohibitive costs and defeat the intent of the law. The law should provide strict time limits for processing requests and these should be enforceable.

All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information. Likewise, provisions should be included in the law which require that appropriate record keeping and management systems are in place to ensure the effective implementation of the law.

### **Effective Enforcement: Independent Appeals Mechanisms & Penalties**

Effective enforcement provisions ensure the success of access legislation. In practice, this requires that any refusal to disclose information is accompanied by substantive written reasons (so that the applicant has sufficient information upon which to appeal) and includes information regarding the processes for appeals.

While internal appeals provide an inexpensive first opportunity for review of a decision, oversight by an umpire independent of government pressure is a major safeguard against administrative lethargy, indifference or intransigence and is particularly welcome where court-based remedies are slow, costly and uncertain. The fear of independent scrutiny ensures that exemption clauses are interpreted responsibly and citizens' requests are not unnecessarily obstructed. While the courts satisfy the first criteria of independence, they are notoriously slow and can be difficult to access for the common person. As such, in many jurisdictions, special independent oversight bodies have been set up to decide complaints of non-disclosure. They have been found to be a cheaper, more efficient alternative to courts and enjoy public confidence when they are robustly independent, well-funded and procedurally simple.

Best practice supports the establishment of a dedicated Information Commission with a broad mandate to investigate non-compliance with the law, compel disclosure and impose sanctions for non-compliance. Experience from a number of Commonwealth jurisdictions, including Canada, England, Scotland and Western Australia, has shown that Information Commission(er)s have been very effective in raising the profile of the right to information and balancing against bureaucratic resistance to openness. Of course, there are alternatives to an Information Commission. For example, in Australia, the Administrative Appeals Tribunal has appeal powers and in New Zealand and Belize the Ombudsman can deal with complaints. However, experience has shown that these bodies are often already overworked and/or ineffective, such that they have rarely proven to be outspoken champions of access laws.

The powers of oversight bodies should include a power to impose penalties. Without an option for sanctions, such as fines for delay or even imprisonment for willful destruction of documents, there is no incentive for bodies subject to the Act to comply with its terms, as they will be aware that the worst that can happen is simply that they may eventually be required to disclose information.

In the first instance, legislation should clearly detail what activities will be considered offences under the Act. It is important that these provisions are comprehensive and identify all possible offences committed at all stages of the request process – for example, unreasonable delay or withholding of information, knowingly providing incorrect information, concealment or falsification of records, willful destruction of records without lawful authority, obstruction of the work of any public body under the Act and/or non-compliance with the Information Commissioner's orders.

Once the offences are detailed, sanctions need to be available to punish the commission of offences. International best practice demonstrates that punishment for serious offences can include imprisonment, as well as substantial fines. Notably, fines need to be sufficiently large to act as a serious disincentive to bad behaviour. Corruption – the scourge that access laws assist to tackle – can result in huge windfalls for bureaucrats. The threat of fines and imprisonment can be an important deterrent, but must be large enough to balance out the gains from corrupt practices.

### **Monitoring and Promotion of Open Governance**

Many laws now include specific provisions empowering a body, such as an existing National Human Rights Commission or Ombudsman, or a newly-created Information Commissioner, to monitor and support the implementation of the Act. These bodies are often empowered to develop Codes of Practice or Guidelines for implementing specific provisions of the Act, such as those relating to records management. They are usually required to submit annual reports to parliament and are empowered to make recommendations for consideration by the government on improving implementation of the Act and breaking down cultures of secrecy in practice.

Although not incorporated in early forms of right to information legislation, it is increasingly common to include provisions in the law itself mandating a body to promote the Act and the concept of open governance. Such provisions specifically require that the government ensure that programmes are undertaken to educate the public and the officials responsible for administering the Act.

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## Annexure 2: Arguments in Support of the Right to Information

When presenting any Bill in Parliament, you may wish to draw on some common arguments as to why the right to information is so crucial to democracy, development and human rights. In fact, more than fifty years ago, in 1946 the United Nations General Assembly recognised that “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated”.<sup>94</sup> Soon after, the right to information was given international legal status when it was enshrined in Article 19 of the International Covenant on Civil and Political Rights which states: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and *to seek, receive and impart information and ideas through any media and regardless of frontiers*” (emphasis added). Over time, the right to information has been reflected in a number of regional human rights instruments, including the American Convention on Human Rights<sup>95</sup>. This has placed the right to access information firmly within the body of universal human rights law.

In addition to the overarching significance of the right to information as a fundamental human right which must be protected and promoted by the state, the following arguments in support of the right should also be recalled when advocating the right to parliamentarians and other key stakeholders:

***It strengthens democracy:*** The right to access information gives practical meaning to the principles of participatory democracy. The underlying foundation of the democratic tradition rests on the premise of an informed constituency that is able thoughtfully to choose its representatives on the basis of the strength of their record and that is able to hold their government accountable for the policies and decisions it promulgates. The right to information has a crucial role in ensuring that citizens are better informed about the people they are electing and their activities while in government. Democracy is enhanced when people meaningfully engage with their institutions of governance and form their judgments on the basis of facts and evidence, rather than just empty promises and meaningless political slogans.

***It supports participatory development:*** Much of the failure of development strategies to date is attributable to the fact that, for years, they were designed and implemented in a closed environment - between governments and donors and without the involvement of *people*. If governments are obligated to provide information, people can be empowered to more meaningfully determine their own development destinies. They can assess for themselves why development strategies have gone askew and press for changes to put development back on track.

***It is a proven anti-corruption tool:*** In 2004, of the ten countries scoring best in Transparency International’s annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. In contrast, of the ten countries perceived to be the worst in terms of corruption, only one had a functioning access to information regime. The right to information increases transparency by opening up public and private decision-making processes to scrutiny.

***It supports economic development:*** The right to information provides crucial support to the market-friendly, good governance principles of transparency and accountability. Markets, like governments, do not function well in secret. Openness encourages a political

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<sup>94</sup> UN General Assembly, (1946) Resolution 59(1), 65th Plenary Meeting, December 14.

<sup>95</sup> See Art. 13(1), *American Convention on Human Rights*, 1969, Costa Rica, OAS Treaty Series No. 36, 1144 U.N.T.S. 123.

and economic environment more conducive to the free market tenets of 'perfect information' and 'perfect competition'. In turn, this results in stronger growth, not least because it encourages greater investor confidence. Economic equity is also conditional upon freely accessible information because a *right* to information ensures that information itself does not become just another commodity that is corralled and cornered by the few for their sole benefit.

***It helps to reduce conflict:*** Democracy and national stability are enhanced by policies of openness which engender greater public trust in elected officials. Importantly, enhancing people's trust in their government goes some way to minimising the likelihood of conflict. Openness and information-sharing contribute to national stability by establishing a two-way dialogue between citizens and the state, reducing distance between government and people, thereby combating feelings of alienation. Systems that enable people to be part of, and personally scrutinise, decision-making processes reduce citizens' feelings of powerlessness and weakens perceptions of exclusion from opportunity or unfair advantage of one group over another.

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