

Preparing to implement successfully

Introduction

On 12 May 2005, the Rajya Sabha (upper house of Parliament) finally passed the keenly awaited Right to Information Bill. With the President's assent, the Bill will finally come into force as the new national Right to Information Act 2005. To assist Central and State Governments to prepare for implementation of the new Act, Commonwealth Human Rights Initiative (CHRI) organised a conference on 'Effective Implementation: Preparing to Operationalise the New Right to Information Act 2005' from 24-26 May 2005 in New Delhi. The conference was designed to bring together government officials from the Centre and the States, as well as civil society representatives to focus on some of the key implementation issues that all stakeholders will have to consider. To facilitate discussions and share experiences on challenges and good practices, CHRI also invited international experts on RTI and its implementation from Mexico, UK, Canada, Jamaica and South Africa to act as resource people. The first day was devoted to civil society consultation, while the next two days involved all stakeholders.

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the Commonwealth countries. Right to Information is one of its important areas of work.

Conference theme

The focus of the conference was the new all India Right to Information law (RTI) which is probably one of the most important laws to be passed since independence. The successful implementation of the law is directly linked to the level of commitment within government especially the commitment of the political leadership and the bureaucracy. This in turn directly correlates with their knowledge and their understanding of the beneficial effects the new RTI Act will have on overall governance. It is, therefore, imperative that there be immediate and wide scale dissemination of knowledge about the law. The burdens and enormity of the tasks ahead will be much ameliorated when civil society and government collaborate through strategic initiatives designed for effective implementation.

Clarifying responsibilities and commitments

It was noted at the onset of discussions that the government envisaged that Central and State Acts could co-exist and that citizens would have an option to apply under either Act. Where there is a conflict, the Central Act will prevail. Some participants felt that this approach could lead to complications, particular in terms of

practical processing of applications and complaints by public officials in the States. Some felt that some conflicts would have to be decided by the courts. There was also some sense that if the Central Act was well implemented, State Acts might eventually simply fade away.

Comparatively, it was noted that in Canada, Mexico and Australia, each State has a separate Act with exclusive jurisdiction and the national access laws cover only national public bodies. It was agreed by participants that it would be very helpful for the Central Government to clarify the position on how to implement the Central Act in the States, particularly in those States that already have an Act.

Identifying key partners

Throughout the Conference, resource people and participants repeatedly stressed the importance of institutionalising collaborative and strategic partnerships. Aylair Livingstone, Director of the Jamaican Access to Information Unit gave the example of Jamaica where immediately upon commencement of the RTI Act, the Access to Implementation Unit (ATI) sent out introductory letters to MPs, the Opposition, civil society groups, human rights organisations, educational groups and the media. Phil Boyd, Assistant Information Commissioner from the UK Information Commissioner's Office said that in the UK, the Commission also recognised that building strategic relationships is the key to successful implementation.

Developing an Action Plan

The experience of both the national and international participants who have been involved in implementing a new access law was very illuminating. The new law contains a provision, which explicitly states that the Act will come into force within 120 days of enactment. In Mexico, the UK and Jamaica, the implementing agencies were given a time lag of 1-5 years to prepare for implementation. So in real terms, implementation possess a huge challenge to both Central and State governments of India.

A key point emerging from the discussions was the importance of a participatory process when developing an Action Plan.

Implementing proactive disclosure

Two themes dominated the discussion:

- Effective implementation of the proactive disclosure requirements;
- Publication of the information.

Juan Pablo Guerrero Amparan, Information Commissioner with the Mexican Federal Institute for Access to Public Information (IFAI) noted that, after poor initial implementation of the proactive disclosure requirements under the Mexican law, some Ministers actually asked the Commission to help them deal with the situation and this gave the Commission an opportunity to standardise information disclosure approaches. Mothusi Lepheana, Director of the Access to Information Unit in the South African Human Rights Commission noted that it is important to at least publish information on what information is available from government and where it could be found. Marc Aurele Racicot, Assistant Adjunct Professor, University of Alberta, Canada advised that immediate work should begin for developing a department directory of Public Information Officers (PIOs). This will be a very useful instrument for all citizens because it is like a map of Government, which at least tells a citizen where he/she need to go to find a particular information.

The Chairperson of the Delhi Public Grievances Commission noted that they have been very active in using the Internet, with almost every departments putting up information on the web. Some participants were concerned that too heavy a focus on the Internet was not appropriate considering the conditions of rural India today, where connectivity is low.

Setting up of Information Commission

The new law provides for the establishment of a Central Information Commissions as well as State Information Commissions throughout the country. There was considerable discussion regarding how the structure for each of the different Indian Commissions would be decided. The Mexican resource person stressed that essential to real independence was budget autonomy. The UK resource person specifically noted that the Office of the UK Information Commissioner has seen its role as a regulator facilitating good practice rather than as a tough enforcer of the law.

Running an information regime

Participants discussed a range of relatively technical issues, many of which appear minor but could have a serious impact on accessibility in practice. The crux of the issue is that very simple procedures need to be developed in terms of payment, receipting and actually accessing information. It was strongly recommended that a written receipt be provided to all the requesters.

Training/Capacity building

A consistent theme across all three days of the conference was that the training and capacity building for the officials responsible for providing information to citizens is an essential pre-requisite for an effective access regime. In Maharashtra, Yeshwantrao Chavan Academy of Development Administration (YASHADA), the state training institute, has played a very important role in the implementation of their access law, by providing effective training courses for Government officials, especially PIOs.

Monitoring

The RTI Act clearly gives both Information Commissions and Departments responsibility for monitoring implementation of the law.



Participants of the workshop

Credit: CHRI

In Canada, there is a quite sophisticated monitoring system, whereby all Departments are required to send the nodal agency monthly reports. These are all collated and published on the Internet. In Jamaica, the ATI Unit requires Departments to submit monthly and quarterly reports, which the Unit reviews. In South Africa, the South Africa Human Rights Commission has a similar responsibility to the Indian Information Commissions, because it provides an annual report based on other department's annual reports.

Raising public awareness

It was recognised that ideally civil society and Government could work together to raise public awareness and demonstrate the relevance of the law. Participants and resource people alike recognised that the media is an important group, which needed to be exploited to stimulate dialogue and raise the public awareness of the usefulness of the Act.

Recommendations

The recommendations that came up from the conference:

- The nodal agency responsible for implementation of the Act must design an implementation process that is inclusive and therefore should work in collaboration with multiple stakeholders, including State nodal agencies, other key departments, Administrative Training Institutes, civil society, the media, academics and international RTI officials;
- The Action Plan should identify what systems and tools need to be developed to support implementation;
- The Information Commissions should be empowered to make their own procedural rules;
- Records management and archiving need to be reviewed and improved as necessary;
- A directory of PIOs and other key officials responsible for implementing the Act should be collated and published as a matter of absolute priority;
- Rural people are the most critical target and so strategies need to be developed for outreach in both the short and long term. ■

Reported by: Charmaine Rodrigues
charmaine@humanrightsinitiative.org