Briefing Note

Open Data and Right to Information

Freedom Forum, Nepal

2014

Improving access to information

Access to information is an essential component of transparency and accountability. To be able to hold their government to account, citizens need greater access to information about government decision-making processes and about the performance of the state. Greater access to data and information will not only empower citizens to hold their government to account, but it will enable their engagement in public issues, and help them make better informed decisions to improve their lives. Country-level efforts to improve access to information are being driven by two separate measures – firstly by "Right to Information" (also known as "Freedom of Information") and more recently via the emergence of "Open Data". As open data[1] gains traction questions are arising as to how these two movements are similar to each other, how they are different, what they can learn from each other, and how they can work together to complement each other.

Right to Information and Open Data

Right to Information definition:

"*Freedom of Information is a fundamental human right and the touchstone of all freedom to which the United Nations is consecrated*", Resolution 59 (1) of the UN General Assembly.

Right to Information, also referred as Freedom of information, is a fundamental human right allowing access to national government data by the general public. This "Right to Information" (RTI) is well established, both in legislation and in practice, and has been gradually gaining in popularity in many parts of the world as an effective tool to strengthen participatory democracy, promote good governance, check corruption and help ensure other rights, thereby building an open and transparent society.

Open data definition:

"*A piece of data or content is open if anyone is free to use, reuse, and redistribute it — subject only, at most, to the requirement to attribute and/or share-alike*" (Open Definition: Open Knowledge Foundation).

Open data, in reference to government data, is the proactive publication of unpackaged, no-spin, raw government information in a way that can be reused and repackaged for different uses and audiences. By providing access to comprehensive, timely and detailed raw data, open data enables new forms of civic participation in decision-making processes. In addition to the rights based rationale for information access, the open data community has been driven by technical and innovation motives. It enables third parties to leverage the potential of government data via the development of applications and services that address both public and private demands.

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[1] Please note this briefing uses the term 'open data' to describe open government data only; open data as a concept is broader than just open government data and can refer to data from many sources.
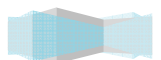
Similarities between open data and RTI

- **Drivers: Transparency and Accountability**

Both open data and RTI are driven by the motive to improve citizens' access to information held by public agencies, thereby facilitating greater openness in many areas of public life. Advocates of both movements argue that it is the obligation of public agencies to release public records as they have been funded by citizens through taxation. Via RTI and open data, accountability activists such as watchdog organizations, civil society organisations (CSOs) and journalists, are able to find out where, how and when money is being spent and how the government is performing in different sectors. The transparency and accountability resulting from improvements in access to information can support meaningful debate, enable evidence-based decision-making and deliver more effective governance of public resources.

- **Goals: Citizen Empowerment and Engagement**

The essence and emergence of both movements is recognized for fostering greater citizen participation, government accountability and a lowering of corruption. The information availability resulting from RTI and open data provides an opportunity for direct interaction by societal actors with government counterparts, thereby widening the space for citizens and their organizations to engage with the state. Enhanced access to information can lead to greater participation of non-state actors in decision-making - citizens are able to question authorities, demand accountability and exercise their freedom of choice. Through this empowerment of the citizen voice, bottom-up pressure is built for transparent and accountable use of public resources, leading to greater effectiveness of development efforts.

Distinction between open data and RTI

- **Type of disclosure: Information versus data**

RTI requests result in the release of information or targeted datasets that answer specific questions, whereas open data efforts result in the release of raw data, usually as broad disaggregate datasets. Information is data with context that may have been processed with analysis and interpretation, while raw data is unprocessed, disaggregated and machine readable. With the raw data one can produce their own analysis and interpretation; however in contrast to the RTI disclosures, skills and facilities are needed to interpret open data. Another distinction between open data and RTI is the understanding of copyright. To be classified as open data, it must have an open license. This means that the user is clear of their rights with simple conditions that place very few restrictions on what people can do with the content. In contrast, there is often very little detail on if and how the public may re-use the information provided through RTI. Many of those that re-use public data do not have a wide knowledge about copyright law, and so there is a potential for confusion about how far information obtained by RTI can be used and reused.

- **Disclosure philosophy: Demand (reactive) versus supply (proactive disclosure)**

The information released via the RTI process is usually in response to individual requests by the public. RTI provides answers to specific questions, provides the information directly to the requester and places the onus on the providing agency to find the answer to the question asked. In contrast,
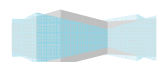
with open data the providing agency has the choice over which data they disclose, so the data released is chosen by the provider rather than by public demand. This data is released into the public domain, placing the onus on the user to interpret it. Proactive disclosure of information is one of the salient features of open data. Reactive disclosure, where bodies provide information on request, has been the approach traditionally adopted by RTI. However proactive disclosure of select information has recently become a feature of some RTI legislation, for example in Nepal (see boxed case study).

- **Approach: Right-based versus technical**

RTI is a rights-based movement advocating that every citizen shall have the right to seek, obtain and impart information. It has advocated for improved access to information via the implementation of legal obligations enshrined in law. Although open data's proponents acknowledge this crucial right, its approach to improve access to information has largely been technical rather than rights-based. Open data takes the approach that the legal availability of information is not adequate to ensure people's accessibility to it. To address this open data offers a technical solution by providing usable and consumable data that is accessible, machine readable and openly licensed.

- **Drivers: Open data's extra driver of innovation and efficiency**

In addition to the drivers of transparency and accountability shared with RTI, open data aims to also support innovation and improve efficiency both in the process of governance and in the delivery of public services. The sharing of data by all parties, whether they are government, private sector or NGO, enables economic opportunities through shared knowledge and improved harmonization of services and programmes.

- **Enforcement: Legal enforcement versus moral pressure**

Through legal Acts the access to information delivered via RTI is legally enforceable. RTI's information seeking procedure has a clear-cut timeline, provisions for reward and punishment, an independent information commission, a record management obligation, and whistleblower protection. In contrast enforcement of access to information delivered via open data relies on arguments of moral pressure for transparency and accountability, and incentives for innovation and efficiency gains. This lack of legal enforceability may be due to the early stage of open data– it is possible that some of the commitments highlighted by the Open Government Partnership and the G8's open data Charter may develop into the basis of legal enforcement in future.
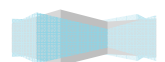
RTI and open data in Nepal – a case study

Although a relatively recent feature of Nepal's legal process, Right to Information (RTI) is taking root and success stories of citizen empowerment reveal that the idea is well-received in Nepal. Open data however, in Nepal as in most of the rest of the world, is a very nascent movement that has arisen separately from the RTI community and from very different origins. Despite the differences these two movements share much in common in Nepal, most crucially the goal to improve the transparency and accountability of the Nepalese government.

The *Interim Constitution of Nepal 2006* defined RTI as a right of the citizen to seek information of public concern (Article 27). The provision states, *'Every citizen shall have the right to demand and receive information on any matter of his or her interest of public interest'*. This applies to all information except that any matter on which secrecy is to be maintained by law. The *Right To Information Act, 2007* and *Right To Information Rules, 2009* of Nepal requires public agencies[2] in Nepal to proactively release information on 21 different types of information[3], maintain updated information and appoint an information officer. Efforts to promote a proactive demand side and to make public authorities responsive, transparent and accountable through RTI are increasingly gaining in momentum while the open data movement is also progressing in the context of Nepal.

Open data is gradually gaining ground as an innovative movement to leverage open governance and open development. Growing internet penetration accompanied by steps towards increased government transparency, evidenced through the public sharing of the Aid Management Platform (AMP), together with the CSO-led Open Nepal Initiative have paved the way for the open data to grow in Nepal. Other steps towards open data have included a biennial open budget survey and subsequent advocacy for improving the availability and accessibility of central budget information; an ongoing impact research project exploring the emerging impact of open budget and aid data in Nepal; and initiatives to engage different audiences (journalists, techies, parliamentarians, CSOs, researchers) on the subject of open data. Despite this promising beginning, much has yet to be done to promote the culture of disclosing data in an open format and to bring about a specific policy on open data that recognizes its importance to open government and citizens' entitlement over state information.

The following two cases are examples how RTI is being used in Nepal to exposure misuse of public resource, and how RTI has paved way for open data.

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[2]The RTI Act applies to 'public agencies', defined in Article 2(a). The definition covers constitutional and statutory bodies, agencies established by law to render services to the public, or agencies operating under government funding or controlled by government. It also covers political parties and organizations, and non-governmental organizations (NGOs) which operate with funds obtained directly or indirectly from the Nepal government, a foreign government, or an international organization.

3 The public agencies have legal bindings to proactively disclose different 21 types of information including structure and nature of the body, duties, responsibilities and powers, number of employees and working details, service to be provided, branch and responsible officer of the service providing agency, fee and time limit required for service, decision making process and authority, authority to hear appeal against decision, description of functions performed, name and designation of Chief and Information Officer, list of Acts, Rules, By Laws or guidelines, details of website and updated description of income and expenditures, financial transactions (Section 5(3) of the Nepal's RTI Act-2007 and Rule 3 of the RTI Rule 2008)
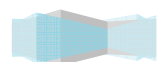
Example 1

The exposure of a multi-million rupee Value Added Tax (VAT) scam resulted from a successful civic initiative on RTI in Nepal. An information request was filed at the Ministry of Finance on in May, 2011 to request copies of the Ministry-commissioned report on VAT, based on a tip-off that the report contained evidence of fake invoices used by 518 business firms to evade VAT to the value of NPR 10 billion. After a six month battle, the Ministry disclosed names of tax-evading businesses. The government has so far reclaimed NPR 6 billion from taking action against most of the firms involved. The scandal exposed policy level corruption and an illicit nexus among government, political parties and business entities. Open data could be used as a preventative method to avoid this kind of corruption in future. The disclosure by the government of VAT records in a timely, comprehensive and open format would enable non-state actors such as journalists and CSOs to monitor for discrepancies. This kind of proactive transparency by the government would also warn business and corrupt officials away from malpractice.

Example 2

Similarly, it took nine months to obtain information from the Nepal Oil Corporation (NOC) – the monopoly state petroleum company. NOC has a history of financial losses and almost every attempt to raise prices to match international prices has been met with widespread protests due to the lack of transparency in how NOC conducts its business. An RTI request was made asking for information about the volume of fuel distributed, copies of the policies for distributing free coupons, the volume of oil and gas purchased and the cost and selling prices. Bowing down to the legal pressure of the RTI the NOC were forced to provide a 101-page document showing this information. This case established that no public agency is beyond the scope of the RTI law, and also serves as an example of how open data could be used to prevent this kind of distrust in public bodies. By regular publication of open format data on fuel supply the NOC could build a reputation of transparency and accountability.

With increased availability and accessibility of data, public participation in government decision making processes and their capacity to question authority is enhanced. The application of RTI and open data is key in making public agencies transparent and responsive to taxpayers. The recent amendment to the RTI Regulation of Nepal has obligated the public agencies to adopt the spirit of open data and proactively disclose important information around public resources. This development substantiates the need of a collaborative and complementary role of RTI to promote open data.

Opportunities – how RTI and open data can be mutually reinforcing

- **Raising the profile of access to information amongst all societal stakeholders**

Both movements have successfully engaged with societal stakeholders to raise the profile of access to information. RTI has a long history of advocacy successes and, with involvement from civil society, has successfully communicated its purpose and the importance of access to information to the public as well as to government. More recently, open data has become a buzz word in the fields of governance and development that has given access to information a heightened profile internationally. Popular spin-offs from open data such as innovation opportunities, interesting visualizations, and data hackathons have helped the open data movement to translate its purpose to key actors in society, as well as engage a youth following of technically savvy activists. Open data has come at a time when RTI in many countries is yet to be fully realized, however, combining the historical advocacy and public engagement success of RTI with the popular engagement and
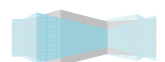
innovation aspects of open data will lead to an overall raising of the profile of access to information and an increased pressure on all stakeholders to improve access.

- **Increasing the availability of information and data disclosure**

In contrast to RTI, information released by the process of open data is publically available to all, not confined just to the requester. However, RTI is a key solution to the concerns about the data publisher's discretionary choice over which datasets should be opened, and can be used to dig deeper into the reasons behind government decision making. By working together to approach access to information open data and RTI mutually reinforce each other, filling the gaps left by the other and increasing the availability of the information in the public domain.

- **Increasing the accessibility and use of information and data disclosure**

For RTI concerns have been raised as to how citizens can be encouraged to engage with their information rights. For open data, concerns have been expressed about a perceived intellectual inaccessibility of open data as opposed to RTI causing a "data divide" between those who have the skills and IT infrastructure to make effective use of data and those who do not, exacerbated by the digital divide caused by limited internet penetration in many countries. For RTI to be successful citizens need to be made aware of how greater access to information can be of benefit to them and how to access this information. For open data to be successful its technical barriers need to be overcome so that the data is more accessible. Both of these can be addressed via the capacity development of intermediaries such as journalists, parliamentary staff and CSOs. The RTI movement and open data movement can work together to develop the skills of these groups so that they can access and use raw open data, seek missing information using RTI procedures and impart this information to citizens. The increased accessibility of information will increase the information flow to citizens.

- **Enabling increased impact of access to information**

By increasing the awareness of, availability of and accessibility of government information, open data and RTI can deliver additional government transparency and accountability than either alone. Using RTI, the public is able to maintain pressure for good practice and anti-corruption through RTI rules that require public authorities to give justification if they are not able to provide the requested information. Using the structured, disaggregated and comprehensive datasets released by open data, socially focused e-democracy tools, apps and websites enable new forms of citizen participation in government decision-making. These combine to enable greater impact of access to information. In addition to improved government transparency, open data can lead to efficiency gains by preempting RTI requests and preventing the administrative effort required for government agencies to investigate each request.

- **Greater protection of the future of access to information**

The current lack of legal enforcement is a challenge for the sustainability of the open data movement. For example, in Nepal there is neither a Data Protection Act nor an integrated mechanism to manage government data, despite the existence of an Electronic Transaction Act to authorize use of electronic records. The need for open data is yet to be fully realized in many countries or legislated as mandatory practice, which means that a change in government administration risks a loss of favor for the disclosure of open government data and a resulting loss of
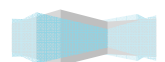
public access to government information. For the time-being, RTI's legal protection of access to information as a right constituted by law provides a platform for open data to build from. Any retraction of Right to Information laws would be a much more difficult undertaking for a government. To ensure the future progression of access to information the RTI and open data movements can work together strategically to lobby for the adoption of policy on open data to secure its acceptance by the state and strengthen access to information as a fundamental right.

Conclusion

Open data can play a significant role in strengthening and supporting the current gains in Right to Information by widening the scope of RTI and bring its benefits to a larger scale in less time and with less administrative inconvenience, however, open data will not supplant Right to Information and it is important that attention is not diverted away from the legal right of access to information. Open data can benefit from RTI's legal framework whereas RTI can embrace open data's digital means and innovation. Neither tool can thrive in isolation, but by working together these movements can remove the barriers and lengthy processes involved in accessing public information. As tools to secure and increase access to information for citizens, open data and RTI can complement each other and build synergies together to further access to information, and improve transparency, accountability and responsive governance.

Recommended Reading

- Freedom Forum (2013), Empowering Citizens through Right to Information, RTI Success Stories in Nepal, http://bit.ly/1kZ70ei
- Freedom Forum, (2013) Free Expression Quarterly Newsletter, Vol. 22, 23 and 24, http://bit.ly/1AadfPQ
- Freedom Forum, (2011) Towards Open Government in Nepal: Experiences with Right to Information, http://bit.ly/1nL6YRX
- Access Info (2011) Beyond Access: Open Government Data & the Right to (Re)use Public Information http://bit.ly/1q6i59p
- World Bank Institute (2010) Proactive Transparency: The future of the right to information? http://bit.ly/1p0G0ul
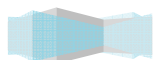
About Open Nepal:

Open Nepal is a collaborative platform to promote the availability, accessibility and use of better data. Our goal is to contribute to more effective development - our work includes an Open Data Platform, awareness raising, capacity development, support to selected open development case studies, and impact research. Launched in June 2013 following eighteen months of stakeholder consultations, Open Nepal builds on Nepal's existing information systems and processes (e.g. the Aid Management Platform and the Right to Information Act) to provide a hub that supports a diverse ecosystem of different actors to access, analyse and use the data to maximum value. Open Nepal is the collective effort of a coalition of organizations including Freedom Forum, NGO Federation of Nepal, Young Innovations and Development Initiatives.

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