



# Issue Brief

## Utilizing RTI to Access Information on the Kosi River in Nepal

### Executive Summary

**R**ight to Information is a fundamental human right that ensures easy and simple access to information of public importance and further encourages transparency and accountability while sharing information. This issue brief – the first in a series of three – summarizes the findings of a study conducted by the Institute for Social and Environmental Transition - Nepal (ISET-N)<sup>1</sup> on the availability and accessibility of hydrological data and information on the Kosi River. Specifically, this issue brief assesses the efficacy of the Right to Information (RTI) Act as a tool to access hydrological data and information related to the Kosi River in Nepal.

As a part of the study, researchers at ISET-N filed and tracked RTI requests to assess the effectiveness of the law. In total, 21 RTIs were filed with eight different agencies. Ten RTIs were filed at ministries, three at government departments, four at government-owned companies, two at public companies and two at private companies.

Out of the RTIs, the researchers received six positive responses from three different agencies the Department of Hydrology and Meteorology, Melamchi Water Supply Development Board and Upper Tamakoshi Hydropower Limited. The remaining 15 RTI requests did not yield the desired information: the most commonly cited reason for the refusal of information was that it was not available or held by the agency to which the request was made. Researchers received information on stream flow data, sediment flow data and hydro-engineering details of Melamchi Water Supply and Upper Tamakoshi Hydropower along with their environmental impact assessment (EIA) reports. The information received was relatively easy to understand but outdated. For example, the most recent stream flow and sediment flow data was not available and required revision. EIA reports were comprehensive and provided useful baseline information.

The Asia Foundation is a nonprofit international development organization committed to improving lives across a dynamic and developing Asia. Informed by six decades of experience and deep local expertise, our programs address critical issues affecting Asia in the 21<sup>st</sup> century—governance and law, economic development, women's empowerment, environment, and regional cooperation. In addition, our Books for Asia and professional exchange programs are among the ways we encourage Asia's continued development as a peaceful, just, and thriving region of the world.

Some of the key findings from the RTI-monitoring exercise were that awareness about RTI and its procedures are fairly limited among the public and government officials. In general, the number of requests for information received by government officials is quite low. Poor documentation and record management practices also make it quite difficult to access information held by different agencies. In terms of recommendations, creating greater awareness on RTI should be a national priority of the National Information Commission, civil society organizations and groups working on RTI. At the level of practice, it is also necessary for all agencies covered by the RTI Act to designate an information officer in order to improve the process of implementation of the law and process of accessing and disseminating information.

## Background

Right to information (RTI), also known as freedom of information, is a right that seeks to enhance transparency of public authorities by requiring the disclosure of information held by them proactively and on the basis of requests from citizens. To test the efficacy of the Right to Information Act 2007 in Nepal, ISET-N conducted a RTI-tracking exercise which involved test filing and tracking of RTI requests with different public agencies in the country. Specifically, the objective of this exercise was to test the availability and accuracy of hydrological data and information on the Kosi River in Nepal. The study also focused on assessing the willingness and responsiveness of government in collecting, maintaining, and disseminating relevant data and information. Furthermore, the study also assessed the quality, comprehensiveness and usability of obtained data and information.

RTI requests were filed to access three different types of data: stream flow data, sediment flow data and details of hydro-engineering structures and Environmental Impact Assessment (EIA) reports for existing and proposed hydro-engineering projects. The first phase of the study involved the identification of agencies that could provide information on the selected data. A thorough web search was carried out to assess the nature of the institutions. Researchers then prepared request letters in Nepali and delivered the letters to the selected institutions. The RTI requests filed and their responses were then tracked to assess the availability and accessibility of the data along each of the data points as well as its comprehensiveness and usability. Through this exercise, researchers were able to analyze the effectiveness of the RTI Act 2007 in Nepal.

## Right to Information Act 2007

The Right to Information Act (RTI Act) was formally enacted in Nepal in 2007.<sup>2</sup> The Act aims to make the functioning of the government more open and transparent, through easy access to information of public importance. The RTI Act covers a range of public authorities in Nepal including government agencies, political party organizations, and corporate bodies fully or partially-owned by government, corporate bodies established by government or law upon entering into agreement, NGOs and foreign government or international organizations. All citizens have a right to request information held by these bodies. Public authorities covered by the law are responsible for categorizing and updating information to make citizen's access to information simple, easy and transparent. However, the law does place limits on public access to information that is genuinely

sensitive. This includes information the disclosure of which may jeopardize the sovereignty, integrity, national security, public peace, stability and international relations of Nepal; affect investigation or inquiry or prosecution of a crime; economic relations and/or infringe on the privacy, property or life of an individual etc.

Nepali citizens can submit an application to public authorities covered by the law, stating the reason for which information is being requested. As per Section 8 of RTI Act 2007 and Section 4 of RTI Rules 2009, applicants have to pay a fee as prescribed while requesting information. The RTI Act mandates public authorities to respond to requests for information within 15 days; if information cannot be provided within the stipulated time frame the applicant must be informed. If information is related to the life security of a person, then it should be given within 24 hours. If the information is not related to the concerned body, the officer should instantly notify the applicant.

However, there is no direct provision for transfer of such information requests. If information is denied, partially provided or incorrect, applicants can appeal in two stages. In the first appeal stage, applicants can complain to the Chief Officer within the public authority within seven days from the date of information denied or partial information received. The Chief may even take departmental action against the information officer for denying information without providing valid reasons. If information cannot be provided; the Chief, Officer shall make a decision accordingly and provide a notice stating the reasons to the applicant. In the second stage of appeal, if an individual does not agree with the decision of the Chief, he or she can appeal before the Information Commission within 35 days of the notice of the decision being received. In reviewing the appeal, the Commission may order the concerned Chief to provide the information or dismiss the appeal as unreasonable as the case may be. The Commission is required to give a final verdict within 60 days of the appeal being filed. The Commission may also impose fines of Nepali Rs. 1,000-25,000 if the information is denied without valid reasons or if partial or wrong information is provided. Information delivery delay without reason shall also be punished with fine of Nepali Rs. 200 per day. Additionally, the Commission may impose fines between Nepali Rs.5000-25,000 if any person misuses the information acquired from the public body instead of using it for a purpose it was obtained for.

## Test Filing and Tracking of RTI Requests

### 1. Number of RTI Requests Filed

In all, as a part of the study, ISET-Nepal filed 21 different RTIs with eight different agencies in Nepal. RTI requests were filed with a wide range of agencies including national ministries, government departments, government-owned companies, private and public companies. Specifically, six RTI requests were filed with the Ministry of Physical Planning, Infrastructure and Transport and four RTIs with the Ministry of Science, Technology and Environment. Two requests were filed with the Department of Hydrology and Meteorology (DHM) and one with the Department of Irrigation. Six RTI requests – two per agency – were also filed with government owned companies, including Melamchi Water Supply Development Board, Upper Tamakoshi Hydropower and Himal Hydro and General Construction Limited. Even though private companies does not fall under the purview of the RTI Act, two RTI requests were also filed with the Bhotekoshi Power Company Limited. The list of

agencies, number of requests filed and types of information requested from each agency is provided in Table 1.

**Table 1. List of Agencies, Requests Filed and Type of Information Requested**

Name of Agencies	No. of RTI Requests Filed	Information Requested
Ministry of Science, Technology and Environment	4	EIA reports of <ul style="list-style-type: none"> <li>• Upper Tamakoshi HP<sup>3</sup></li> <li>• Bhotekoshi HP</li> <li>• Indrawati III HP</li> <li>• Melamchi Water Supply</li> </ul>
Ministry of Physical Planning, Infrastructure and Transport	6	Location, structural details, operation and purpose of: <ul style="list-style-type: none"> <li>• Upper Tamakoshi HP</li> <li>• Bhotekoshi HP</li> <li>• Indrawati III HP</li> <li>• Melamchi Water Supply</li> <li>• Kosi Bridge (Chhatra)</li> <li>• Sunkoshi Bridge</li> </ul>
Melamchi Water Supply Development Board	2	<ul style="list-style-type: none"> <li>• Location, structural details, operation and purpose of Melamchi water supply</li> <li>• EIA report of Melamchi water supply</li> </ul>
Department of Irrigation	1	<ul style="list-style-type: none"> <li>• Location, structural details, operation and purpose of Sunsari-Morang Irrigation Scheme</li> </ul>
Department of Hydrology and Meteorology	2	<ul style="list-style-type: none"> <li>• Mean monthly stream flow data (30-35 years)</li> <li>• Mean monthly sediment flow data (30-35 years)</li> </ul>
Bhotekoshi Power Company Pvt. Limited	2	<ul style="list-style-type: none"> <li>• Location, structural details, operation and purpose of Bhotekoshi HP</li> <li>• EIA report of Bhotekoshi HP</li> </ul>
Upper Tamakoshi Hydropower Limited	2	<ul style="list-style-type: none"> <li>• Location, structural details, operation and purpose of Tamakoshi HP</li> <li>• EIA report of Tamakoshi HP</li> </ul>
Himal Hydro and General Construction Limited	2	<ul style="list-style-type: none"> <li>• Location, structural details, operation and purpose of Khimti HP</li> <li>• EIA report of Tamakoshi HP</li> </ul>
Total No. of RTIs filed	21	

## 2. Types and Format of Information Requested

The researchers requested information related to stream flow data, sediment flow data, and hydro-engineering structures and their operation along with Environmental Impact Assessment (EIA) reports of the existing and proposed projects. Reports, circulars and other forms of information such as excel sheet/word data, brief synopsis and outlines of requested questions and agency newsletters were requested for assessment.

Information was requested in report format from six different agencies. EIA reports of hydro-engineering structures were requested from five agencies (government, public and private) and updated structural details report were requested from the Department of Irrigation. Circulars were requested from four different project related agencies managing hydropower and water supply projects. Excel/word data was requested from the Department of Hydrology and Meteorology (DHM)

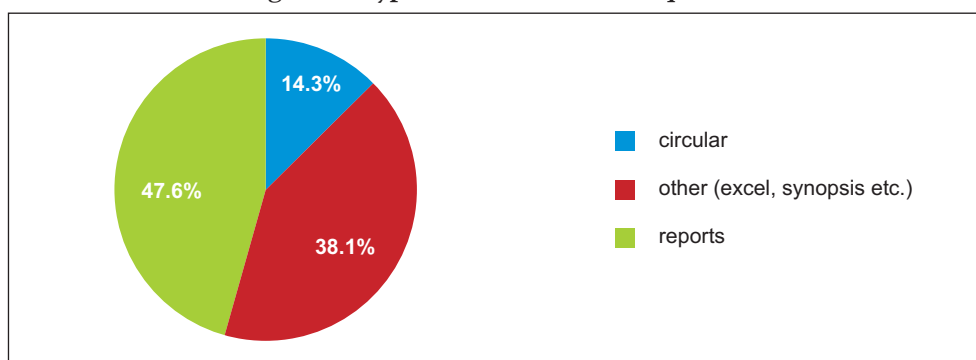
and synopsis/outlines of structures were requested from Ministry of Physical Infrastructure and Transport.<sup>4</sup> Table 2 provides additional details on the format of information requested from different agencies.

**Table 2. Requested Format in Different Agencies**

Request Format	Name of Institution
Report	Upper Tamakoshi Hydropower Limited Melamchi Water Supply Development Board BhoteKoshi Power Company Pvt. Limited Himal Hydro and General Construction Limited Department of Irrigation Ministry of Science, Technology and Environment
Circular	Upper Tamakoshi Hydropower Limited Melamchi Water Supply Development Board BhoteKoshi Power Company Pvt. Limited Himal Hydro and General Construction Limited
Excel sheet/word data	Department of Hydrology and Meteorology
Synopsis/outlines	Ministry of Physical Infrastructure and Transports

About 47.6 per cent of information requested was available in report format, 38 per cent in excel sheets/word data and synopsis; and 14.3 per cent in the form of circulars (see Figure 1).

**Figure 1. Types of Information Requested**

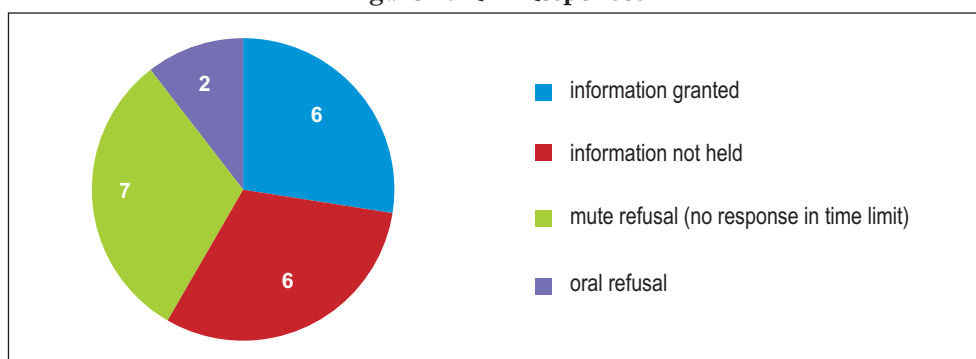


### 3. RTI Responses

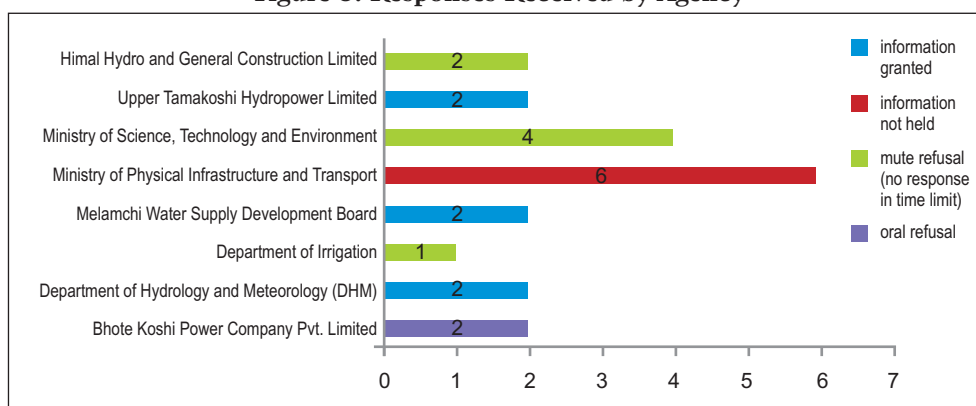
Overall, the responses to RTI requests from agencies were disappointing. Out of 21 requests filed, a positive response was received in relation to only six requests (28.6 per cent). These responses were from the DHM, Melamchi Water Supply Development Board and Upper Tamakoshi Hydropower Limited. The DHM promptly provided stream flow data within one day and sediment flow data within four days whereas the Melamchi Water Supply Development Board provided the information on the same day that it was requested. The Upper Tamakoshi Hydropower Limited also provided access to the information requested but after 28 days i.e. well after the time limit of 15 days. Seven requests – four filed with Ministry of Science, Technology and Environment; two with Himal Hydro and General Construction Limited and one request with the Department of Irrigation received no response at all and were categorized as mute refusals as the agencies failed to provide information within the given 15-day deadline despite repeated follow-ups. In response to six RTI requests, agencies responded that the information was not available or held by them. For example, the Ministry

of Physical Infrastructure and Transport stated that it did not have information on hydropower, water supply, roads and bridges etc. Two requests filed with the Bhotekoshi Company were orally refused by the agency (see Figure 2 and 3 for details).

**Figure 2. RTI Responses**



**Figure 3. Responses Received by Agency**



#### 4. Response Format

Information was received in a number of formats including digital format, circulars/leaflets and printed reports. Stream flow and sediment flow data provided by the DHM was provided in digital form. Notably, researchers paid Nepali Rs. 1880 and Nepali Rs. 300 for stream and sediment flow data respectively. Structural details of hydro-engineering projects and EIA reports provided by Melamchi Water Supply Development Board and Upper Tamakoshi Hydropower Limited were in the form of leaflets and printed reports (see Table 3).

**Table 3. Format in which Information was Received**

Name of agencies	Acquired information	Requested Format	Information received in requested format
Department of Hydrology and Meteorology	Stream flow data	Digital (Excel sheet or any table format)	Yes
	Sediment flow data	Digital (Excel sheet or any table format)	Yes
Melamchi Water Supply Development Board	Details of hydro-engineering structure of Melamchi water supply	Leaflet/ circular	Yes
	EIA report of Melamchi water supply	Report	Yes
Upper Tamakoshi Hydropower Limited	Details of hydro-engineering structure of Upper Tamakoshi HP	Leaflet/ circular	Yes
	EIA report of Upper Tamkoshi HP	Report	Yes

## 5. Comprehensiveness, Usability, Accuracy, Language of Information Obtained

The acquired information was reviewed for its comprehensiveness, usability, accuracy as well as the language in which it was provided (see Table 4 for a summary)

**Table 4. Comprehensiveness, Usability, Accuracy and Language of Acquired Information**

Acquired information	Comprehensiveness		Usability		Accuracy		Language	
	All available	Some available	Easy to understand	Moderately easy to understand	Relevant and up to date	Relevant but old/out of date	English	Local
Stream flow data								
Sediment flow data								
Details of hydro-engineering structure of Melamchi Water Supply								
EIA report of Melamchi Water Supply								
Details of hydro-engineering structure of Upper Tamakoshi HP								
EIA report of Upper Tamkoshi HP								

### a. *Comprehensiveness*

The EIA reports of Melamchi Water Supply Project and Upper Tamakoshi Hydropower, available at the head offices of both agencies, are quite comprehensive and detailed. However, improvements could be made even here. For example, while the leaflet of the Melamchi Water Supply Project highlights structural details of the tunnel only, it could have included additional information on the sedimentation tank, filtration plant and other similar structures. The leaflet of the Upper Tamakoshi provides location and structural details in both text and illustrative format, but GPS locations could also have been provided.

In terms of the stream flow data provided by the DHM, the data provided was not uniform and there were a number of gaps in the data sets. For example, the starting date of all the stream flow data was not uniform as the stations were not established in the same year. In some stations, data between 1980-2010 or 1975-2010 was obtained depending on the availability of data. Notably, researchers were able to purchase data from 1960s and 1970s. None of the chosen stations had a complete data set, some were missing data for months while others had data that was missing for two-four years. Despite some missing values, stream flow data could still be used for tentative estimation as the researchers acquired records from the 1960s. The researchers, therefore, determined the data to be of average quality. Sediment flow data dating back to 1974 is available, but again lacks continuity. For

example: if one record belongs to 1975, the next record is from 1984. Most of the records were from the 1970s and 1980s and recent data is not available. Even years for which data is available, there are huge data gaps. In some stations, data for eight-nine months is completely missing.

### ***b. Usability and Accuracy***

Data and information provided by the DHM, Melamchi Water Supply Development Board and Upper Tamakoshi Hydropower Limited was not difficult to understand. Stream and sediment data was provided by the DHM in simple and easy to interpret formats. The leaflet information of the Melamchi and Upper Tamakoshi projects was also found to be straight-forward and easy to understand. The EIA reports of Melamchi Water Supply and Upper Tamakoshi Hydropower were found to be slightly difficult to understand due to the extensive use of technical terms. As mentioned above, the most recent stream flow and sediment flow data was not available and could not be provided to researchers. The most updated stream flow data was for 2010 and sediment flow data for 2003. The leaflet explaining structures of the Melamchi Water Supply Project was a bit dated as the office location and phone number had not been updated in the given leaflet.

### ***c. Languages***

Information and data were obtained in both English and Nepali. Out of the six responses to RTI requests, information in relation to four was available only in English. The numerical data of stream flow and sediment flow data was in English as well as the EIA reports of the Melamchi Water Supply and the Upper Tamakoshi Hydropower Limited. The Upper Tamakoshi Hydropower Limited also provided an executive summary in Nepali, but it would be useful to have this available in English in order to make it accessible to a broader audience. The leaflets of the Melamchi Water Supply Project and the Upper Tamakoshi Hydropower projects are only in Nepali. Therefore, in this case, providing leaflets translated into English would also be useful for non-natives speakers who seek information on the Melamchi and Upper Tamakoshi projects.

## **6. Transfers**

The RTI Act 2007 and RTI Rules 2009 in Nepal do not clearly mention or provide for the transfer of requests for information from one public authority to another in the event that the information requested is held elsewhere. This was reflected in the experience of filing RTIs under this project. Notably seven different requests did not result in information being provided as the requested information was not held by the agencies. Of the seven requests filed, only the Department of Irrigation voluntarily transferred a request to the Sunsari-Morang Project office in Biratnagar, Morang for the request on structural details. The department notified ISET-Nepal's researchers about the transfer. Despite this proactive effort on the part of the Irrigation Department, no information was ultimately received by the Sunsari-Morang Project office. While the Ministry of Physical Planning and Infrastructure initially informed that they would transfer the six requests they received to the Department of Road, Ministry of Energy and Department of Urban Development, ultimately no transfer was made. Unlike the RTI Act in Nepal, Section 6 (3) of Indian RTI Act 2005 requires public authorities to transfer RTI requests where the information requested is held by another public



authority or the subject matter is closely connected to the function of another authority. It is necessary to bring in such a provision within the law and rules in Nepal to enable better access to information held by public authorities in the country.

## 7. Reasons for Refusals:

Out of 21 RTIs, 15 were refused from four different agencies. Different reasons were cited for the refusal of information. For example, the Bhote Koshi Power Company stated that they could not provide the requested structural information or EIA report as they are a private company and do not disclose any documents. However, they also mentioned that applicants could check the website of the company to access information that was proactively disclosed. The officer who responded to the request also offered to respond to specific questions via email. The Department of Irrigation failed to respond to the request in time and it was difficult to reach the officer over the phone. The Ministry of Physical Infrastructure and Transport stated that they did not have information on the Kosi Bridge (Chhatra), Sunkoshi Bridge, Melamchi Water Supply, Upper Tamakoshi Hydropower, Bhotekoshi Hydropower and Indrawati III Hydropower projects. They did, however say they would transfer the requests pertaining to bridges to the Department of Roads, request on hydroelectricity to the Ministry of Energy and the request on the Melamchi Water Supply Project to the Department of Urban Development. However no transfers were ultimately made. The Ministry of Science, Technology and Environment stated that they had all of the requested EIA reports but were unable to provide them immediately as the reports were not properly documented. They further stated that since they only have a single copy of these reports, they do not allow anyone to take EIA reports outside office premises. The Himal Hydro and General Construction Limited did not respond to the request and failed to provide information within the given time limit.

## Conclusion and Recommendations

Out of 21 requests for information filed as a part of the study, information was provided in response to only six. Seven requests received no response or mute refusal, two requests were denied verbally; and in response to six requests, agencies claimed that the information requested was not held by them. Notably, government officers never formally denied any request but responses to RTI requests were delayed in most cases. One of the main reasons for this is the poor records and information management within public authorities. For example, public authorities stated that they could not locate the information or had only limited copies. The fact that requests were not transferred from one agency to another also prevented access to the information requested. The stipulation of clear guidelines for the transfer of requests for information will serve to strengthen the implementation of the RTI Act in Nepal and ease the process of acquiring information under the law.

Out of the six requests for information that received a positive response, four responses were received within the 15-day time limit whereas the remaining two were received within a month. Of the information so obtained, most of the data or information received was simple and easy to understand, while the other half was incomplete and outdated. EIA reports are important official documents that guide future planning of projects while taking into consideration environmental conservation measures. Similarly, stream flow and sediment flow data helps in understanding the historical status

of a river and can be useful in predicting flood and sediment loading of the river system. It is necessary that different types of data or information related to rivers such as the Kosi whether it is stream flow or sediment flow data or information on hydro-engineering projects should be well maintained and frequently updated. In terms of the costs for accessing information, the RTI Act 2007 and RTI Rules 2009 stipulate a fee structure for filing requests and accessing information from public authorities. However, under this study, researchers only paid to access stream flow and sediment flow data, while the rest of the information was received free of cost. The fees for accessing stream flow and sediment flow data were in accordance with the DHM's departmental policy i.e. Nepali Rs. 5 for each year stream or sediment flow data.

The study found that in general the RTI in Nepal is not an effective means to access hydrological data and information on rivers such as the Kosi. Overall, researchers found that it was much easier and more effective to access information from official websites, libraries and on the basis of informal interactions with public authorities than the formal process of filing RTIs which was found to be quite lengthy. One of the reasons for this is that the implementation of the RTI Act in Nepal is still quite nascent. Most agencies in Nepal have not designated a separate information officer to handle and deal with requests for information. Absence of an information officer made the process more difficult as a large amount of time was wasted in identifying the potential authority that could provide the requested information. Secondly, there is a lack of responsiveness among some authorities. In the experience of ISET-N's researchers, providing access to information to the public via RTI is still not perceived as a priority by many officers. Furthermore, in government agencies, Under Secretaries, Section Officers, Directors, Chief Divisional Engineers and other officers are alternatively playing the role of Information Officer. They thus have competing duties and responsibilities. Even if the institutions have designated information officers, their role has been curtailed as they are able to provide only basic information to the public.

Key recommendations emerging from this study are as follows:

- Each agency covered by the RTI Act should appoint a qualified Information Officer to handle requests for information from the public.
- The agencies should systematically organize all official documents so they can readily provide the requested information to public without any difficulty. They should maintain hard and soft copies of information and upload all relevant documents on official websites where possible.
- There is a need to build greater awareness and capacity among government officials and the public on the importance of the RTI Act. This will not only educate the public about their fundamental rights but will also educate authorities to act more promptly in implementing the law and responding to requests for information.
- More RTIs should be filed with relevant agencies so that government agencies understand the significance of particular data/information and are motivated to make information publically available without a request.

- Applicants should provide feedback and review on information accessibility, comprehensiveness and usability of data or information to agencies and such agencies should aim to use this information to take the initiative to enhance accessibility of this information.
- To improve the transparency of data and information access on water governance issues, government bodies should proactively share information on water use at a local and regional level. Information should also address issues related to ongoing disputes, conflicts as well as mechanisms for dispute resolution. A lack of information on water sharing and benefits often gives rise to animosities and misunderstandings. Therefore, if different parties are made aware about the benefits they receive and the factors that are contributing to disputes, the scope for potential disputes and conflicts can be minimized. Conflict resolution mechanisms may not be the same in all cases but they may serve as guidelines and provide valuable lessons while dealing with water related disputes.
- Institutions should share analyzed data on stream flow, sediment flow, temperature, precipitation along with detailed report on disaster. Sharing of such types of data/information will promote transparency, minimize the propagation of myths and misconceptions among the public.

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## Endnotes

1. In June 2013, The Asia Foundation (TAF) with support from the Skoll Global Threats Fund and in partnership with the World Resources Institute and civil society organizations in Bangladesh, India and Nepal, initiated a project to promote and strengthen transparency and access to data and information on transboundary water governance in South Asia. Over a 15-month period, TAF and its partners assessed the availability of data and information relating to three transboundary rivers in Bangladesh, India and Nepal, while building the capacity of civil society and the media to utilize transparency tools and mechanisms – including the right to information – to push for greater access to data and information on water and climate issues, and disseminate this information within the region. In Nepal, TAF partnered with the ISET-N to implement the project.
2. Aryal, T. (2011). Assessment of Right to Information Law Regime in Nepal. *First National Convention on Right to Information* ( pp.1-13). Kathmandu: Citizens' Campaign for Right to Information.
3. HP: Hydropower
4. Please refer to Table 1 for details.



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