

**Consultation
On
Freedom of Information Bill, 2008:
Analysis and Recommendations**

Background Note

Background Note

Consumer Rights Commission of Pakistan (CRCP) is pleased to announce a consultation on Freedom of Information Bill 2008 scheduled on July 14, 2008 at Islamabad. The main objectives of the consultation are to review and analyze the FOI Bill 2008 in comparison with current FOI laws; debate the strengths and weakness of the Bill; collate the feedback of key stakeholders; and develop proposals for improvement of the Bill keeping in view the universal principles of FOI and ground realities in the national context.

The 2008 FOI Bill is a modified version of an earlier Bill, which was initiated by Ms. Sherry Rehman in 2004 when her political party - Pakistan Peoples Party (PPP) - was in the opposition. The objective of the 2004 FOI Bill was to repeal the Freedom of Information Ordinance, 2002, and enact a national law with substantive improvements including the whistleblower protection. The Bill was submitted to the National Assembly as a Private Member Bill, but it could not be debated. After PPP was voted to power in the general elections held in February 2008, Ms. Sherry Rehman became the Federal Minister for Information and Broadcasting. Now, she has again taken up this matter and has proposed FOI Bill 2008, which is expected to be tabled soon as a Treasury Bill in the National Assembly. In this regard, the Ministry of Information and Broadcasting hurriedly convened a consultation with civil society and media on freedom of information on May 15, 2008. However, this effort proved futile to a great extent, as strengths and weaknesses of the Bill could not be debated in the consultation.

In this backdrop, CRCP has reviewed the 2008 FOI Bill at length and found that overall, the Bill is not as good as the 2004 FOI Bill, but is somewhat better than the Freedom of Information Ordinance 2002 and provincial FOI laws. The preliminary findings prompt us to assert that there is no point in enacting this Bill in its present form, as it contains few substantive improvements. As a lot of technical inputs, time and resources are being invested in this initiative, it is worth only if it promises greater dividends than the existing laws do. However, much like the existing FOI laws, the Bill fails to eliminate the possibility of misinterpretation due to narrowly defined terms and vague exemptions. Whistleblower protection was included in the 2004 Bill, but has been taken out in the 2008 FOI Bill. Failure of the Bill to make a reference to the provincial FOI laws indicates that it has been drafted without a situation analysis of the ground realities. Most importantly, the Bill does not introduce any meaningful improvement in the institutional mechanism for access to public records and grievance redress. A large number of improvements were obviously needed, but only some of them have been introduced into the Bill. This is not to say that the Bill has no strengths, the whole point is that it misses out a number of important provisions without which it cannot make much difference.

CRCP has submitted its preliminary comments to the Ministry of Information and Ministry of Law, Justice and Human Rights. These comments, however, are not final. We have identified important moot points to which a definitive answer has to be found in mutual consultations and deliberations as to what is workable in Pakistan. It is in this context that CRCP has scheduled the consultation. (CRCP's preliminary comments and 2008 FOI Bill are available at http://www.crmp.org.pk/foi_pakistan_publications.htm)

A brief description of the consultation agenda is provided below:

1. Introduction and Objectives of the Consultation

Introduction to the objectives of the consultation with the aim to set a broad context in which the discussion will take place. Broadly speaking, objectives of the consultation are to (a) review and analyze the FOI Bill 2008 in comparison with current FOI laws, (b) debate the strengths and

weakness of the Bill clause-by-clause, (c) collate the feedback of key stakeholders, and (d) develop proposals for improvement of the Bill keeping in view the universal principles and best practices of FOI and ground realities in the national context.

3. *CRCP's Preliminary Comments on 2008 FOI Bill and Some Moot Points*

The participants will be apprised of the major findings of CRCP's review of the 2008 FOI Bill. Broadly speaking, the comments will cover the following aspects of the Bill: (a) strengths, (b) weaknesses, (c) provisions that cannot be treated as a strength or weakness in their present form, and therefore, need to be debated, and (d) an comparative analysis of salient features of the 2008 FOI Bill with the 2004 FOI Bill, 2002 FOI Ordinance, 2005 Balochistan FOI Act, and 2006 Sindh FOI Act. Relevant provisions of Local Government Ordinance, 2001, will also be discussed, where relevant. Some moot points will be outlined that need in-depth deliberations by the stakeholders.

3. *International Perspectives on the Bill*

CRCP has shared its preliminary comments and the Bill with experts from international eminent organizations including the Commonwealth Human Rights Initiative (India), Campaign for Freedom of Information (UK), Article 19 (UK), Transparency International (Pakistan), University of Tasmania (Australia) and World Bank Institute, etc. The idea is to solicit the opinion of international experts on merits and demerits of the Bill. In addition, CRCP has identified some areas of FOI where a great diversity exists in different regions in terms of best practices and models. Some countries have experimented, for example, with dedicated information commissioners for dealing with requesters' complaints whereas others have relied upon the existing offices of ombudsman for the same purpose. CRCP has solicited the response of international experts on a set of questions dealing with such issues. The response of the experts will be shared with participants of the consultation.

4. *Civil Society's Reflections on the Bill*

Speakers from selected organizations working on FOI in Pakistan will reflect upon the Bill in general, and on the following moot points in particular:

- a. Who should be the requester - only citizens of Pakistan or any individual belonging to any country?
- b. What is the best litmus test available to determine "public interest", "national interest", "national security", "privacy", "public safety", and "good faith"?
- c. Whether the correspondence, summaries and noting on files should be public records?
- d. Whether the Ombudsman should be vested with the powers to handle requesters' complaints or should there be dedicated information commissioners?
- e. Because the law is going to cover the federal as well as provincial and local public bodies, should there be different grievance redress forums at each level?
- f. Should the information be provided free-of-cost or on cost? If on cost, then what parameter should be used to determine reasonability of the cost?
- g. Is the institutional mechanism given in the 2008 FOI Bill and FOI Ordinance 2002 (which are more or less the same) adequate, or do we need a different mechanism?
- h. Who should be custodian of an FOI law – Cabinet Division, Ministry of Information and Broadcasting, or other?

5. *Recommendations*

After presentations and discussion, a set of recommendations will be prepared by the consultation participants. The recommendations will aim to remove the deficiencies in the 2008 FOI Bill to align the law with ground realities in Pakistan and universal FOI principles.