Comments on the
Telangana State Open Data Policy 2016
by
The Centre for Internet and Society, India

1. Preliminary

1.1. This submission presents comments and recommendations by the Centre for Internet and Society ("CIS")[1] on the proposed draft of the Telangana Open Data Policy 2016 ("the draft policy"). This submission is based on Version 1 of the draft policy shared by the Information Technology, Electronics & Communications Department, Government of Telangana ("the ITE&C Department").

1.2. CIS commends the ITE&C Department for its generous efforts at seeking inputs from various stakeholders to draft an open data policy for the state of Telangana. CIS is thankful for this opportunity to provide a clause-by-clause submission.

2. The Centre for Internet and Society

2.1. The Centre for Internet and Society, CIS, is a non-profit organisation that undertakes interdisciplinary research on internet and digital technologies from policy and academic perspectives. The areas of focus include digital accessibility for persons with diverse abilities, access to knowledge, intellectual property rights, openness (including open data, free and open source software, open standards, open access, open educational resources, and open video), internet governance, telecommunication reform, digital privacy, and cyber-security. The academic research at CIS seeks to understand the reconfiguration of social processes and structures through the internet and digital media technologies, and vice versa.

2.2. This submission is consistent with CIS' commitment to safeguarding general public interest, and the interests and rights of various stakeholders involved. The comments in this submission aim to further the principle of citizens' *right to information*, instituting *openness-by-default* in governmental activities, and to realise the various kinds of public goods that can emerge from greater availability of open (government) data. The submission is limited to those clauses that most directly have an impact on these principles.

3. Comments and Recommendations

This section presents comments and recommendations directed at the draft policy as a whole, and in certain places, directed at specific clauses of the draft policy.

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[1] See: http://cis-india.org/.

3.1. Defining the Scope of the Policy in the Preamble

3.1.1. CIS observes and appreciates that the ITE&C Department has identified the open data policy as a catalyst for, and as dependent upon, a larger transformation of the information systems implemented in the state, to specifically ensure that these information systems.

3.1.2. CIS commends the endeavour of the draft policy to share data in open and machine-readable standards. To further this, it will be useful for the preamble to explicitly mandate proactive disclosure in both human-readable and machine-readable formats, using open standards, and under open license(s).

3.1.3. CIS recommends that the draft policy state the scope of the policy at the outset, i.e. in the Preamble section of the document. This will provide greater clarity to the stakeholders who are trying to ascertain applicability of the draft policy to their data.

3.1.4. CIS commends the crucial mandate of creating data inventory within every state government ministry / department. We further recommend that the draft policy also expressly states the need to make these inventories publicly accessible.

3.1.5. CIS commends the draft policy's aim to build a process to engage with data users for better outcomes. We suggest that the draft policy also enumerates the "outcomes" of such engagement, in order to provide more clarity. We recommend that these "outcomes" include greater public supply of open government data in an effective, well-documented, timely, and responsible manner.

3.1.6. Further, CIS suggests that the draft policy define "information centric and customer centric data" to provide more clarity to the document, as well as its scope and objectives.

3.2. Provide Legal and Policy References

3.2.1. Strengthening transparency, predictability, and legal certainty of rules benefits all stakeholders. Thus, as far as possible, terms in the draft policy should use pre-existing legal definitions. In case of ambiguities arising after the implementation of the policy, consistency in definitions will also lead to greater interpretive certainty. It must be noted that good quality public policies which promote legal certainty, lead to better implementation.

3.2.2. CIS observes that the draft policy re-defines various terms in Section 4 that have already been defined in National Data Sharing and Accessibility Policy ("NDSAP") 2012,[2] the Right to Information 2005 ("RTI Act"),[3] and IT (Reasonable security practices and procedures and sensitive personal data or information) Rules 2011.[4] We strongly recommend that the draft policy uses the pre-existing definitions in these acts, rules, and policies.

3.2.3. Further, CIS observes that while certain sections accurately reflect definitions and parts from other acts, rules and policies, such sections are not referenced back to the latter. These sections

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[2] See: http://data.gov.in/sites/default/files/NDSAP.pdf.
[3] See: http://rti.gov.in/webactrti.htm.
[4] See: http://meity.gov.in/sites/upload_files/dit/files/GSR313E_10511(1).pdf.

include, but are not limited to: Sections 3, 7, 8, 4 (definitions of Data set, Data Archive, Negative list, Sensitive Personal data). We strongly recommend that accurate legal references be added to the draft policy after careful study of the language used.

3.3. Need for More Focused Objective Statement

3.3.1. While the draft policy has a very comprehensive statement of its objectives, including "*all issues related to data in terms of the available scope of sharing and accessing spatial and non-spatial data under broad frameworks of standards and interoperability*," it may consider offering a more focused statement of its key objective, which is to provide a policy framework for proactive disclosure of government data by the various agencies of the Government of Telangana.

3.3.2. Further, the objective statement must clearly state that the policy enables publication of data created by the agencies of the Government of Telangana, and/or by private agencies working in partnership with public agencies, using public funds as open data (that is, using open standards, and under open license). The present version of the objective statement mentions "*sharing*" and "*accessing*" the data concerned under "*broad frameworks of standards and interoperability*" but does not make it clear if such shared data will be available in open standards, under open licenses, and for royalty-free adaptation and redistribution by the users concerned.

3.4. Suggestions related to the Definitions

3.4.1. The term "Data" has not been defined in accordance with NDSAP 2012. We suggest that the definition provided in NDSAP is followed so as to ensure legal compatibility.

3.4.2. The term "Sensitive Personal Data" seems to have been defined on the basis of the definition provided in the IT (Reasonable security practices and procedures and sensitive personal data or information) Rules 2011. Please add direct reference so as to make this clear. We further suggest that the term "Personal Information", also defined in the same IT Rules, is also included and referred to in the draft policy, so that not only Sensitive Personal Data is barred from disclosure under this policy, but also Personal Information (that is "*any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person*").[5]

3.4.3. The term "Negative List" is defined in a manner that allows the state government ministries and agencies to identify which data are to be considered as non-shareable without any reference to an existing policy framework that list acceptable grounds for such identification. The term must be defined more restrictively, as this definition can allow an agency to avoid disclosure of data that may not be legally justifiable as non-shareable or sensitive. Thus, we recommend a more limited definition which may draw upon the RTI Act 2005, and specifically consider the factors mentioned in Sections 8 and 9 of the Act as the (only) set of acceptable reasons for non-disclosure of government data.

3.4.4. The terms "Shareable Data" and "Sensitive Data" are used in several places in the draft policy but are not defined in Section 4. Both these terms are defined in NDSAP 2012. We suggest

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[5] See Section 2 (1) (i) of IT (Reasonable security practices and procedures and sensitive personal data or information) Rules 2011.

that both these terms be listed in Section 4, in accordance with the respective definitions provided in NDSAP 2012.

3.4.5. The terms "Data Archive", "Data Acquisition", "Raw Data", "Standards-Compliant Applications", and "Unique Data" are defined in Section 4, but none of these terms appear elsewhere in the draft policy. We suggest that these terms are either better integrated into the document, or may not be defined at all.

3.5. Rename Section 6 to Focus on Implementation of the Policy

3.5.1. Though the Section 6 is named as "Shareable Data", it instead categorically lists down how the policy is to be implemented. This is a very welcome step, but the Section title should reflect this purpose of the Section.

3.5.2. The decision proposed in the draft policy to make it mandatory for "*each funding organization*" to "*highlight data sharing policy as preamble in its RFPs as well as Project proposal formats*" is much appreciated and commendable. For a clearer and wider applicability of this measure, we recommend that this responsibility should apply to all state government agencies, including agencies where the state government enjoys significant stake, and all public-private partnerships entered into by the state government agencies, and not only to "funding organizations" (a term that has also not been defined in the draft policy).

3.5.3. While the Section details out various measures and steps of implementation of the policy, it does not clarify which agency and/or committee would have the authority and responsibility to coordinate, monitor, facilitate, and ensure these measures and steps. Not only governmental representatives but also non-governmental representatives may be considered for such a committee.

3.6. Host All Open Government Data in the State Portal

3.6.1. We observe that the Section 6 indicates that <data.telangana.gov.in>, the designated domain for the open government data portal for the state of Telangana, will only store metadata related to the proactive disclosed data sets but not the data sets themselves. This is further clarified in Section 10. We strongly urge the ITE&C Department to reconsider this decision to not to store the actual open data sets in the state open government data portal itself but in the departmental portals. A central archive of the open data assets, hosted by the state open government data portal, will allow for more effective and streamlined management of the open data assets concerned, including their systematic backing-up, better security and integrity, permanent and unique disclosure, and rule-driven updation. This would also reduce the burden upon all the government agencies, especially those that do not have a substantial IT team, to run independent department-specific open data portals.

3.7. Reconsider the Section on Data Classification

3.7.1. While it is clear that the Section 7 on Data Classification follows the classification of various data sets created, managed, and/or hosted by government agencies offered in the NDSAP 2012, it is not very clear what role this classification plays in functioning and implementation of the draft

policy. While Open Access and Registered Access data may both be considered as open government data that is to be proactively disclosed by the state government agencies via the state open government data portal, the Restricted Access data overlaps with the kinds of data already included in the Negative List defined in the draft policy (and elsewhere, like the RTI Act 2005). Further, the final sentence in this Section ensures that all data users provide appropriate attribution of the source(s) of the data set concerned, which (though is an important statement) should not be part of this Section on Data Classification. We suggest reconsideration of inclusion of this Section.

3.8. Reconsider the Section on Technology for Sharing and Access

3.8.1. While it is clear that the Section 8 on Technology for Sharing and Access is adapted from the Section 9 of the NDSAP 2012, the text in this Section seems to be not fully compatible with other statements in this draft policy. For example, the Section states that "*[t]his integrated repository will hold data of current and historical nature and this repository over a period of time will also encompass data generated by various State Government departments.*" However, the draft policy states in Section 10 that "*data.telangana.gov.in will only have the metadata and data itself will be accessed from the portals of the departments.*"

3.8.2. We strongly urge the ITE&C Department to revise this Section through close discussion with the NDSAP Project Management Unit, National Informatics Centre, which is the technical team responsible for developing and managing the <data.gov.in> portal, since the present version of this Section lists the original feature set of the <data.gov.in> portal as envisioned in 2012 but does not reflect the most recent feature set that has been already implemented in the portal concerned.

3.9. Current Legal Framework (Section 9) should List to Relevant Acts, Rules, Policies, and Guidelines

3.9.1. CIS observes that the draft policy attempts to lay out the applicable legal framework in Section 2 and 9 of the draft policy, and submits that the legal framework is incomplete and recommends that the draft policy lists all the following relevant acts, rules, policies and guidelines:

A. National Data Sharing and Accessibility Policy, 2012

B. Right to Information Act, 2005

C. Information Technology Act, 2002

D. Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

3.9.2. CIS submits that apart from the policies mentioned above, the implementation of the draft policy is intricately linked to concepts of "open standards," "open source software," "open API," and "right to information." These concepts are governed by specific acts and policies, and are applicable to government owned data, as follows:

A. **Adoption of Open Standards**: CIS observes that the draft policy draws on the importance of building information systems for interoperability and greater information accessibility.

Interoperability is achieved by appropriate implementation of open standards. Thus, CIS submits that the Policy on Open Standards for e-Governance[6] which establishes the guidelines for usage of open standards to ensure seamless interoperability, and the Implementation Guidelines of the National Data Sharing and Accessibility Policy, 2012[7] should be mentioned in the draft policy.

B. **Adoption of Open Source Software:** The Policy on Adoption of Open Source Software for Government of India states that the "*Government of India shall endeavour to adopt Open Source Software in all e-Governance systems implemented by various Government organizations, as a preferred option in comparison to Closed Source Software.*"[8] As the draft policy proposed to guide the development of information systems to share open data is being developed and implemented both by the Government of Telangana and by other agencies (academic, commercial, and otherwise), it must include an explicit reference and embracing of this mandate for adoption of Open Source Software, for reasons of reducing expenses, avoiding vendor lock-ins, re-usability of software components, enabling public accountability, and greater security of software systems.

C. **Implementation of Open APIs:** CIS observes that the draft policy refers to Standard compliant applications in Section 4. CIS suggests that final version of the policy refer to and operationalise the Policy on Open Application Programming Interfaces (APIs) for Government of India.[9] This will ensure that the openly available data is available to the public, as well as to all the government agencies, in a structured digital format that is easy to consume and use on one hand, and is available for various forms of value addition and innovation on the other.

D. **Refer to Official Secrets Act, 1923:** The Official Secrets Act penalises a person if he/she "*obtains, collects, records or publishes or communicates to other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy for which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States.*"[10] CIS submits that this Act should be referred to in this context of ensuring non-publication of the aforementioned data.

3.10. Mandate a Participatory Process for Developing the Implementation Guidelines

3.10.1. We highly appreciate and welcome the fact that the draft policy emphasises rapid operationalisation of the policy by mandating that the ITE&C Department will prepare a detailed implementation guideline within 6 months of the notification of this policy, and all state government departments will publish at least 5 high value datasets within the next three months. Just as an addition to this mandate, we would like to propose that it can be suggested that the ITE&C Department undertakes a participatory process, with contributions from both government agencies

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[6] See: https://egovstandards.gov.in/sites/default/files/Published%20Documents/Policy_on_Open_Standards_for_e-Governance.pdf.
[7] See: https://data.gov.in/sites/default/files/NDSAP_Implementation_Guidelines_2.2.pdf.
[8] See: http://deity.gov.in/sites/upload_files/dit/files/policy_on_adoption_of_oss.pdf.
[9] See: http://deity.gov.in/sites/upload_files/dit/files/Open_APIs_19May2015.pdf.
[10] See: http://www.archive.india.gov.in/allimpfrms/allacts/3314.pdf, Sections 2 (2) and 3 (1) (c).

and non-government actors, to develop this implementation guideline document. We believe that opening up government data in an effective and sustainable manner, for most government agencies, involves a systematic change in how the agency undertakes day-to-day data management practices. Hence, to develop productive and practical implementation guidelines, the ITE&C Department needs to gather insights from the other state government agencies regarding their existing data (and metadata) management practices.[11] Further, participation of the non-government actors in this process is crucial to ensure that the implementation guidelines appropriately identify the high value data sets, that is data sets that should be published on a priority basis.

3.11. Defer the Decision about Roles of Data Owners, Generators, and Controllers

3.11.1. As the draft policy does not specifically define the terms "Data Owners", "Data Generators", and "Data Controllers", and the Section 11 only briefly describes some of the roles of these types of actors, we suggest removal of this discussion and the decision regarding the specific roles and functions of the Data Owners / Generators / Controllers from the draft policy itself. It will be perhaps more appropriate and effective to define these terms, as well as their roles and functions, in the implementation guidelines to be prepared by the ITE&C Department after the notification of the open data policy, since these terms relate directly to the final designing of the implementation process.

3.12. CIS is grateful to the ITE&C Department for this opportunity to provide comments, and would be honoured to provide further assistance on the matter.

Submitted by the Centre for Internet and Society, Bangalore and Delhi, India, on August 31, 2016.

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[11] A similar process was undertaken by the IT Department of the Government of Sikkim when developing the implementation guideline document. The ITE&C Department may consider discussing the matter with the said department to exchange relevant learnings.