

Sri Lanka's Draft Right to Information Bill, 2015

Commonwealth Human Rights Initiative's (CHRI) Preliminary Comments & Key Concerns

CHRI welcomes the initiative of the Government of Sri Lanka to approve a draft legislation to give effect to the fundamental right of people's access to information guaranteed by Article 14A that was recently inserted in the Constitution through the 19th Amendment to the Constitution. However the following key areas need to be addressed urgently to make the draft legislation stronger and bring it in line with well recognised international standards:

1) **Clause 40** - The RTI Commission is virtually toothless with no power to impose any sanctions on anybody for non-compliance. The RTI Commission will not be able to impose its writ and champion the cause of transparency in the absence of powers to impose sanctions.

2) **Clause 5(1)** - The Attorney General's Office has included an exemption to protect its communication with Government. This is a blanket exemption which is not in tune with international best practice standards.

3) **Clause 5(1)** - Trade secrets and intellectual property (IPR) related information may be disclosed in public interest but only by a public authority- the power to direct such disclosure must also be given to the RTI Commission as they are an appellate body.

4) **Clause 5(1)** - All exemptions are not subject to a sunset clause of ten years.

5) **Clause 5(3)** - Trade negotiations have an interminably long period of secrecy which I think is unfair.

6) **Clause 5(5)** - By making the RTI Commission to get involved in deciding on exemptions at the application stage, the appeals procedure is effectively rendered nugatory. However nothing in that provision requires the Commission to give advice as may be sought by the Information officer (IO). That is a saving grace. They can instead tell the IO to decide the case on merits and then take up the matter when it comes to them for appeal for deeper consideration.

7) **Clause 7(3)** - The 12 year records maintenance requirement is an undue burden on the public authority. For example, why should leave applications of RTI applications themselves be maintained for 12 years?

8) **Clause 8** - The proactive information disclosure categories should be expanded further to include all categories mentioned in the RTI laws of Bangladesh, Khyberpakhtunkhwa, Mexico and India.

9) **Clauses 10 & 38** duplicate each other. One of them may be deleted. Annual reporting of compliance requirement should include the number of cases in which penalty was imposed by the RTI Commission (after making provisions for their power to impose penalties) and courts.

- 10) **Clause 12(1)** - How will CSOs nominate candidates for selection as RTI Commissioners will be a big challenge.
- 11) **Clause 13(2)** - The RTI Commission should be responsible for the running of the Commission and have disciplinary control over its officers. The Director General should only be the Chief Operating Officer of the Commission. There should be a procedure for his removal as well.
- 12) **Clause 23(1)(b)** - If the Chief Executive Officer (CEO) of a public authority will be the Information Officer (IO) until a regular IO is appointed then who will hear appeals internally? It is best to appoint the second in command as the IO and make the CEO the appellate authority.
- 13) **Clause 23(3)** - Duty of other officers to provide assistance should be linked to penalties if they fail to assist the IO.
- 14) **Clause 27(3)(d)** - Nobody uses diskettes and floppies anymore. So it is better to mention emails and USB sticks instead as purveyors of information.
- 15) **Clause 28(a)** - The manner of communication of rejection of a request by the IO should once again mention that the reasons must be connected with Section 5(1) and none other.
- 16) **Clauses 5(1)(d) and 29** - The third party provisions spread out all over the Bill are unsatisfactory. There is an undue weightage given to confidentiality in one provision and a to the public interest override in another provision. This will create confusion and make almost every third party information contentious.
- 17) **Clause 31** - An additional ground for submitting appeals should be refusal by the IO or the appellate authority to receive and process an RTI application or appeal.
- 18) **Clause 31** – The time limit for filing the internal appeal is too less. It should be at least 30 calendar days or 25 working days.
- 19) **Clause 31(4)** - The draft Bill allows two modes of appeals - one is two staged- internal plus external and another is direct appeal to the RTI Commission. This will create confusion as it did in India. Instead the circumstances in which direct appeal to the RTI Commission may be filed bypassing the internal appeals mechanism should be specified in the Bill.
- 20) **Clause 31** - Condonation of delay for filing internal appeal late is missing.
- 21) **Clause 32** - Time limit for appeal to the Commission must be increased to 90 days. 2 months are not adequate.
- 22) **Clause 32(4)** -The burden of proof provision should be strengthened to include burden of proving rejections as lawful, specifically.

23) **Clause 34** - Time limit for going to Court of Appeal is too less. This should go up to at least 6 months.

24) **Clause 35** – The duty to disclose reasons for a decision must become routine rather than request driven. It should be automatic. When the decision is communicated, reasons must also be communicated simultaneously.

25) **Clause 39** – In this Clause, the term- "willfully" must be substituted with "unreasonably" or "without reasonable cause". Or else the provision will become unimplementable and can lead to harassment of the IO.

26) **Clause 42(3)** - Parliament should also have the power to modify the regulations made by the Minister as he exercises the power of delegated legislation.

27) **Clause 42** - Both regulations and rules must be subjected to prior publication before Gazette notification at the draft stage for the purpose of public consultation and feedback.

28) **Definitions** - It will be very difficult to separate the public functions from the private functions of a "private entity" covered by the law, especially their administrative functions. So it is better to subject them to the RTI law entirely. Further, any government owned or controlled company must be required to comply with the RTI Act even after disinvestment by the Government.

29) **Political parties** should be covered by the RTI law to make them more accountable to the people.

30) **Schedule:** Is it wise to give the power to recommend appointment and removal of RTI Commissioners to the same body- the Constitutional Council? This goes against the principles of checks and balances. It is better to involve the Supreme Court to inquire into misbehaviour or get a medical board set up to assess physical or mental incapacity and then get Parliamentary approval for removal.

31) The **salaries and rank** of the RTI Commissioners must be determined by the RTI law and not left to the discretion of the Minister. This must be kept higher than the highest ranking civil servant in the country.

32) The **RTI Commission must work on all working days**. That is its purpose. Meeting once a month will not enable it to monitor compliance properly and adjudicate RTI appeals quickly.

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