

Securing an Access to Information Law in Sri Lanka

Civil Society Capacity Building Workshop

Kani Lanka, Kalutara

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People's Access to Information and the Constitution of Sri Lanka

Key Provisions

The Constitution of Sri Lanka contains some provisions that require transparency in public affairs. Given below is a quick compilation of various constitutional provisions that –

- a) require public authorities and actors to furnish information to an individual or persons directly or
- b) require transparency in the working of public authorities for the implementation of such provisions.

#	Chapter / Theme / Article
<u>Preamble:</u>	
1	According to the Preamble the people of Sri Lanka are sovereign and the source of all fundamental rights and powers of the Government. <i>“Sovereignty of the People.</i> <i>3. In the Republic of Sri Lanka sovereignty is in the people and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise.”</i>
<u>Chapter 3: Fundamental Rights</u>	
2	<u>Right to equality:</u> According to Article 12(1), all persons will be given equal treatment by the State and are entitled to equal protection of the law. Equality must include equality of access to information. A situation where there is blanket secrecy or privileged access to information held by public bodies is opposed to a state of equality between individuals who run such bodies and individuals who are outside such bodies. <i>“12. (1) All persons are equal before the law and are entitled to the equal protection of the law.”</i>
3	<u>Freedom from arbitrary arrest:</u> According to Article 13(1), any person who is arrested has the fundamental right to know why he/she has been arrested. <i>“13. (1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.”</i>
4	<u>Freedom of speech &c:</u> According to Article 14(1) every citizen is entitled to freedom of speech and expression including publication. In order to exercise these rights in a responsible manner every citizen requires access to adequate and accurate information especially when he/she

	<p>intends to express or publish an opinion about the working, actions and decisions of public bodies. Under Article 15(2) this right is subject to lawful restrictions on grounds of racial and religious harmony, parliamentary privilege, contempt of court, defamation and incitement to an offence.</p> <p><i>“14. (1) Every citizen is entitled to -</i></p> <p style="padding-left: 40px;"><i>(a) the freedom of speech and expression including publication...</i></p> <p><i>15. (2) The exercise and operation of the fundamental right declared and recognized by Article 14(1) (a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.”</i></p>
<p><u>Chapter 4: Language</u></p>	
<p>5</p>	<p><u>Languages of administration:</u></p> <p>According to Article 22(2)(b), in areas where Sinhala is the language of administration, any person (except an official in the course of official work) is entitled to obtain copies of official documents or extracts or a translation in English or Tamil if he/she has a legal right of access to such documents.</p> <p><i>“22. (2) In any area where Sinhala is used as the language of administration a person other than an official acting in his official capacity, shall be entitled:...</i></p> <p style="padding-left: 40px;"><i>(b) if the law recognizes his right to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document, or a translation thereof, as the case may be, in either Tamil or English;...”</i></p>
<p>6</p>	<p><u>Language of Legislation:</u></p> <p>Article 23(2) requires all orders, proclamations, rules, by-laws, regulations and notifications issued or made under any law to be published in the Gazette in Sinhala and Tamil together with an English translation. In the case of Provincial Councils and local authorities, Article 23(3) requires that all orders, proclamations, rules, by-laws, regulations, notifications and all documents, circulars and forms issued by any public institution shall be published in the language of the administration in the respective areas together with an English translation. For example the Supreme Court Rules are required to be published in the Gazette under Article 136(2).</p> <p><i>“23. (2) All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law other than by a Provincial Council or a local authority, and the Gazette shall be published in Sinhala and Tamil together with a translation thereof in English.</i></p> <p style="padding-left: 40px;"><i>(3) All Orders, Proclamations, rules, by-laws, regulations and notifications made or issued under any written law by any Provincial Council or local authority, and all documents, including circulars and forms issued by such body or any public institution shall be published in the Language used in the administration in the respective areas in which they function, together with a translation thereof in English.”</i></p>
<p>7</p>	<p><u>Language of the Courts:</u></p> <p>Under Article 24(3) every person who is party to a court case is entitled to interpretation and to translation into Sinhala or Tamil to enable him/her to participate in the proceedings and to obtain any part of the court records or a translation of such records according to his/her legal entitlements. The State will provide these facilities at its own cost.</p>

	<p><i>“23. (3) Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the language used in a court, shall be entitled to interpretation and to translation into [Sinhala or Tamil] provided by the State, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in [such language] or any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law.</i></p>
<p><u>Chapter VI: Directive Principles of State Policy and Fundamental Duties</u></p>	
8	<p><u>Directive Principles of State Policy:</u> According to Article 27(4), the State is required to take steps towards decentralising the administration and enabling people to participate in government. People’s participation in government requires that they be provided information about the government and its decision-making processes before, during and after participation. Article 27(5) requires the State to take steps to eliminate discrimination and prejudice based on racial, religious or linguistic grounds in the field of teaching, education and information.</p> <p><i>“27. (4) The State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralizing the administration and by affording all possible opportunities to the People to participate at every level in national life and in government.</i></p> <p style="padding-left: 40px;"><i>(5) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups, and shall, take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.</i></p>
9	<p><u>Fundamental Duties:</u> Under Article 28(d) every person in Sri Lanka has a duty to ensure that public property is not misused or wasted. Taxpayer funds are spent on the upkeep of public property such as roads, bridges, dams, wells, public buildings, public transport etc. people have the right to know if their money is well spent or enough is being done to protect and preserve public property. People will be able to perform their duty effectively only if they have access to all information relating to the uses to which public property is put by the authorities and the manner in which taxpayer funds are being spent.</p> <p>Under Article 28(f) every person in Sri Lanka also has the duty to protect nature and conserve its riches. People can perform this duty effectively only if they have adequate and reliable information about the state of nature and natural resources. They should also have information about the proposals, plans, actions and decisions of public authorities regarding natural resources and the uses to which they are to be put.</p> <p><i>“28. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka -</i></p> <p style="padding-left: 40px;"><i>(d) to preserve and protect public property, and to combat misuse and waste of public property ;</i></p> <p style="padding-left: 40px;"><i>(f) to protect nature and conserve its riches.”</i></p>
<p><u>Chapter XI: The Legislature</u></p>	
10	<p><u>Publication of Bills and passing of Bills and resolutions:</u> Article 78(1) requires that all Bills identified to be placed before Parliament for its consideration, must be published in the Gazette at least seven days in advance.</p>

	<i>“78. (1) Every Bill shall be published in the Gazette at least seven days before it is placed on the Order Paper of Parliament.</i>
<u>Chapter XV: The Judiciary</u>	
12	<p><u>Public Sittings:</u> Under Article 106(1), all sittings of courts and tribunals or other institution established by the Constitution or by Parliament are required to be held in public and all persons are entitled to freely attend such hearings.</p> <p><i>“106. (1) The sittings of every court, tribunal or other institution established under the Constitution or ordained and established by Parliament shall subject to the provisions of the Constitution be held in public, and all persons shall be entitled freely to attend such sittings.”</i></p>

Compiled by Venkatesh Nayak for Commonwealth Human Rights Initiative, New Delhi.