

Civil and capacity building workshop
On
Securing an Access to Information (ATI) Law in Sri Lanka
At Kani Lanka Resort, Kalutara
July 5, 6, 2008

Organise by
The Commonwealth Human Rights Initiative (CHRI),
New Delhi
Institute and for Democracy and Leadership (IDL), Colombo, Sri Lanka
Transparency International Sri Lanka (TISL)
Supported by the Friedrich Naumann Stiftung (FNS)
Für Die Freiheit

Day 1: Saturday, July 05, 2008

Session 1

- **Welcome address, Mr Sunil Witharanage, IDL**

I welcome all of you to this workshop. This workshop is not just to deliver lectures and for you to listen. You represent various areas of the country and you touch upon various issues.

From 1997, IDL has been organising various activities, mainly focussing on youth and civil society. Our main sponsor is FNS. With their support we have expanded in the region.

We have formed a youth league and the youth is very active in taking the message of the Sri Lankan situation to the international arena. Also in disseminating what is happening in the region. This special workshop on ATI was designed because of its vital importance.

- **Address by Ms Katrin Bannach, FNS**

- **Setting out objectives of the workshop, Ms Reshmi Mitra, CHRI**

- India, Pakistan and Bangladesh, have RTI laws. Sri Lanka still does not have an RTI law. This workshop is to advocate on the new draft RTI law and to build capacity to advocate for the law.
- We also hope to explore ongoing and erstwhile campaigns and activities and to discuss how to take forward activities related to ATI
- We will share with you several case studies from different parts of the world and discuss what should be included in such a law and what is expected from it.

- **Participants introduce themselves**

- **Presentation on Philosophy of the Right to Information (RTI), Ms Reshmi Mitra, CHRI**

- This is a unique and a fundamental right recognised by regional and international human rights law.
- It is valuable to democracy, sustainable development and good governance.
- Lack of information for marginalised and poor has resulted in them not getting access to basic human rights.

- Information is a public good kept with government. So anybody can get I from the government.
- The right to information can hold governments accountable.
- Rights to information complements all the other rights. Many international conventions and treaties are linked to right to information (ICCPR, CEDAW Rights of women including the right to information, The Child Rights Charter, The rights of migrant workers, The UN convention against corruption)
- Nine out of 10 most corrupt countries, none had a freedom of information law and 9 did not have right t information laws.

- **Open floor for participant responses**

Participants noted that

- International conventions are not necessarily become part of law (Sinharasa case where the Supreme Court decided that unless complementary laws are passed in local legislature, it is not applicable.)
- Applications of conventions on migrant workers differs outside and inside the country.
- It would be interesting to do a comparison of precedents set in the Supreme Courts in Sri Lanka and India.
- Our constitution does not recognise the right to life but Justice Mark Fernando has included aspects from international conventions in the interpretation.
- Need to balance information is also important as in the case of infomrtaion available to children
- Right to information is recognised by Sri Lankan courts although here is no law. (Court ruling against criminal defamation case by the president on published news, court recognises that we don't need to disclose the sources of stories, ruling in his favour of a case against stopping a Sri Lanka Broadcasting Corporation programme)
- People are afraid to stand up for their rights. So the question is how to empower people. When politicians are young they will stand up for things but when they get into power they forget about it. So the challenge is, how to make sure young politicians carry this message throughout their career and when they get into power.

Session 11

- **Interactive session: Understanding the importance of information and rights of access, Venkatesh Nayak**

The session was conducted in question and answer form. The participants expressed divergent views on the various elements of an RTI law

Participants agreed that;

- Everyone paid taxes and therefore had a right to ask the government for information on how it makes use of tax money
- The Official Secrets Ordinances, Evidence Ordinance, establishment codes of government departments restrict access to information
- Some types of information should be restricted (defence, information that could lead to profiteering) . but only certain types of information relating to defence must be restricted.
- Right to information should be available to everyone including tourists/ non residents
- All government bodies (executive, legislature and judiciary) should be covered by the law
- Even NGOs should be covered by the law
- Some information should be made available without waiting until people ask for it
- There should be a time limit to get information
- Information should be given in the form you require

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- **Exemptions to RTI laws, continued from Session 11**

There were divergent views on the level of disclosure in the case of defence.

- When there are allegations of corruption they must set up a commission to look into it, not make defence information public because that can hurt the country.
- The information must be made public because it relates to lives of a larger public, keeping all information outside the purview of RTI is not good practice
- Information should not be made available in the case of crime against society, like trade secrets and exam papers and information that endangers life
- Personal information should not be given out, such as health related information, how much money a person has in the bank.

Venkatesh: Information related to privilege ex doctor and patient, lawyer and client should not be given out under RTI. But public interest disclosure is an exemption.

- A good RTI law must say that some information must be kept secret because the public may be harmed by disclosure, but if it is in public interest to disclose, it must be allowed.
- The law must also include remedies if access to information is denied such as appeals at special tribunals, ombudsman, information commissioners. These bodies should have powers to hear cases and give penalties such as transfers, demotions, personal fines, compensation.
- The law must also have provisions to make the government educate people and train people to implement the law
- RTI laws is different because it is obeyed by government and implemented by people.

- **Presentation on Initiatives for Improving transparency in Tsunami Operations, Mr Rukshana Nanayakkara, TISL**

Participants were introduced to the concept of 'value for money auditing' which is adopting a holistic approach to auditing instead of only doing financial auditing

The outcomes of the TISL audit on tsunami reconstruction showed;

- A lack of information and a lack of consultative processes
- Poor information dissemination. (Government information in funds disbursement for tsunami reconstruction is in English in a computer in a

government website. But most people in Sri Lanka do not have access to internet or computers or speak English)

- Tsunami reconstruction not audited after June 2006
- Indications of misappropriation of funds – poor quality housing constructions that do not reflect the originally allocated amount of funds. US \$ 1.1 billion is unaccounted for in the government website on tsunami spending.
- Donors themselves are unwilling to involve public participation due to existing difficulties in implementing projects.
- There is no formal mechanism to make complaints to the government.
- Even when complaints were given to the Ministry of Public Administration, to-date there has been no response.
- The question as to whether we have sufficient protection for whistle blowers – to report corruption
- There is no coordination because there is no central information collection point and no system of registering beneficiaries
- Even to correct what is wrong, accurate information is required.

Participant feedback

- Get an MP to raise question in parliament
- The Matara District Secretary registered NGOs and held regular discussions with them. So it is possible this way to be aware of what is happening.
- In the Amapara housing scheme, we first got confirmation on who were real victims by coordinating with the Grama Sevaka. We then prioritised on need such as orphans and widows and gave them reference. We also held community discussions, so it was not possible for anyone to cheat. So it is possible to do a good job.
- This shows what a failure we are as a nation because we don't have a system for people to participate.

- **Presentation on the Freedom of Information Bill, Ms Sriyani Wijesundara, CPA**

Explanation on work done by CPA on the Freedom of information Bill

- Draft Bill was based on international standards and best practices
- Conducted awareness programmes among the public at national level
- Developed a plan to fight corruption
- Held discussions on COPE reports on government corruption

The national budget formulation process

- National budget is the tool of national development but tax payers have next to no chance to influence its formulation
- There is no accountability
- The budget is very technical and difficult for people to understand. It is a book keeping exercise in a closed door system. The Finance Ministry has a publication called the Medium Term Budgetary Framework, which simplifies the budget but they only print 2,000 copies. These copies go to government heads only and people don't have access to it.
- It is the national budget but only a few key people have the right to decide what goes into it.
- Even people inside the finance ministry do not have clear idea of how to make a national budget.
- We have decided to start at local government level. It is very similar to the central system and has very low transparency. Even the Public Galleries are closed in some Pradeshiya Sabhas.
- We have requested that the Palath Sabha law be reviewed.
- 13 civil organisations took the 2007 budget to court, on misusing the Consolidation Fund.
- People don't know about the laws and their rights. Even the Pradeshiya Sabha officials have not read the Pradeshiya Sabha Act.

Participant feedback

- Not even Parliament can question the budget. So how can you expect the public to contribute to budget?
- These leaders are elected by us. We have got the leaders we deserve. So what is to be done? We need to look at this.
- People feel the Pradeshiya Sabha activities and expenditure more than the national budget so people will support the programme.
- They have brainwashed people that NGOs are bad. So it is difficult for us to convince people.
- People have a distrust of NGOs but we work with the people. And when you do a good job, people can tell the difference between honesty and dishonesty

- **Film on people's use of RTI in India, facilitator Ms Reshmi Mitra, CHRI**

Case studies on how people use RTI

- Story from Jamaica – How civil society used the right to information, to curb abuses in government run children's homes by asking for information on the running of these homes.
- Story from India – How an individual, Aslambhai, used the RTI law for information on the Mamlatdar's official working hours for the poor to file complaints on the government ration shops.
- Story from UK – How the right to information was used to get information on salaries. This showed a huge pay difference between the salaries of men and women. As a result of this finding, all large organisations were told to undertake pay reviews.
- Story from India – How a village community used the right to information to stop the walling-off of a community well.

Day 2: Sunday, July 06, 2008

Session 1

- **Recap of day 1 learning**
- **Group exercise: Looking at the world with RTI glasses**

Participants were divided into 6 groups and given newspaper articles as case studies to work with. The exercise was to find solutions to problems described in the stories, by using the right to information.

- **PRESENTATION BY GROUP 5**

Case synopsis : The Panadura Pradeshiya Sabha complained of favouritism and corruption by the Chief Minister in fund allocations and permits for sand mining.

The identified issues

- No criteria in selecting Pradeshiya Sabha in allocating funds by the Provincial Council
- Favouritism in selection of beneficiaries
- Lack of transparency in the processes
- Corruption

How to address these issues using RTI law

- We can request for criteria of fund allocation
- When information is available we/ people can monitor the allocations
- This would allow people to address discrimination/ favouritism
- This process would increase transparency
- This would address corruption

Feedback from Venkatesh

- Use the RTI law to ask for the file on this project. This will help you identify discrepancies.
- Ask for copies of permits for sand mining. Then you can get the name of the official and you will be able to fix accountability on the relevant official.

- **PRESENTATION BY GROUP 4**

Case synopsis : Fuel allowance of personal staff of personal staff of government politicians was increased.

The identified issues

- The need to raise publicity on the issue. Who would be interested in this.?
- Nepotism, cronyism
- Use vehicles for personal use and not public use

How to address these issues using RTI law

- The circular was issued by the Secretary to the President. So ask him for information (beneficiaries, total cost etc..)
- The information will help to monitor misuse of funds

Feedback from Venkatesh

- You need to specify what documents you want. So you need to ask for the logbooks of the vehicles.
- Ask for the designated purposes for which a public vehicle can be used

• PRESENTATION BY GROUP 3

Case synopsis : The JVP Party is saying the government should not remove the fertilizer subsidy.

The identified issues

- The JVP has raised issues of corruption in government
- How does the government decide on subsidies

How to address these issues using RTI law

- Check credibility of these statements.
- Ask for the justification for the subsidy
- Annual expenditure on the subsidy
- What percentage of annual fertilizer demand is given as a subsidy
- Break down of other expenditure like on the war
- The financial reports of the agriculture ministry
- Whether there is a pricing mechanism for the fertilizer subsidy

Feedback from Venkatesh

- The group has gone beyond the narrower issue of fertilizer subsidy and into governance issues.

• PRESENTATION BY GROUP 2

Case synopsis : The Badulla-Mahiyangana road is in very poor condition despite public complaints.

The identified issues

- Who is responsible for this
- How the funds are allocated for this
- The processes for fund transfer. Are the funds from the central government or local government

How to address these issues using RTI law

- We will set up a committee to look into this
- Submit petition from the public
- Get newspaper / media publicity
- We will ask for information and find out who is responsible

- If nothing is done we will go to courts to get the court to order the parties to maintain the road

Feedback from Venkatesh

- We need to identify what information to ask. When was the road repaired last?
- Ask for contract for the road repair for penalties, quality standards
- Ask for bills and vouchers from the contractor

• PRESENTATION BY GROUP 1

Case synopsis : Propose housing scheme for freshwater fisherman has failed

The identified issues

- The Ministry of Fisheries had promised Rs 50,000 per family but families received only around Rs 13,000 or Rs 8,000
- The project has been transferred to another Ministry
- So difficulty in identifying the responsible party
- The minister says he has not got any complaints

How to address these issues using RTI law

- First we will verify the information. We will do a survey for this
- Then we will organise these people and tell them they can get information under the Right to information law
- Get information about the project by looking at the files
- The people should be directed to the relevant authorities to complain
- If there is no response we can go to court

Feedback from Venkatesh

- A project fails because it is badly designed or badly implemented, or both
- The first thing you should ask for, is the project document
- Ask for the register of letters received by the ministry and all letters sent out by the ministry, to check whether complaints were made to the Ministry.
- Ask for actions taken by the Ministry

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PRESENTATION BY GROUP 6

Case synopsis : The National Design Centre is going to design handicrafts and Rs 80 million will be allocated for this. It is supposed to be 100% environmentally friendly. The crafts people must register with cooperative societies.

The identified issues

- How will the 80 million be distributed among the people
- How much for infrastructure
- Market availability. The government must find foreign markets
- How will they supply credit

How to address these issues using RTI law

- How to avoid environmental hazards
- Where will the Banks be located
- What is the reason for using cooperative societies

Feedback from Venkatesh

- RTI is not only about fixing a problem after it occurs. RTI should also be used for transparency even before a project

- **Presentation on access to information in Sri Lanka, Rohan Edrisinha, CPA**

- The first place you need to look, for provisions in the law for freedom of information, is in the Constitution.
- Sri Lanka's Bill of Rights has no freedom of information but we have provisions on freedom of speech and expression, including publication.
- Our courts have been reasonably good at protecting freedom of expression and have interpreted it to contain the right to vote.
- In some cases, the Supreme Court has held that the freedom of expression includes right to information. But the situation is not clear as these rulings are limited to the specific cases. Some of these cases are, Vishwalingam and Liyanage, Fernando Vs Sri Lanka Broadcasting Corporation and Environmental Foundation Ltd Vs the Urban Development Authority.
- I think it will be very, very difficult to get an RTI law or a Freedom of Information Law in Sri Lanka under the current conditions. This is because of the culture of secrecy and authority. This needs to change into a culture of justification and openness.

- For instance, some years ago, I asked for a copy of the Consumer Protection Bill from that Ministry but the official said Cabinet has to approve the Bill and it must be gazetted before he can release a copy. This is the culture of secrecy.

Participant: What about the opposition?

Rohan: We don't have a very effective opposition

- The Establishments Code governing public servants was drafted in a different political era. One section says 'It shall be an offence for a public servant to do anything that is likely to embarrass that government.' That includes giving information.
- There was an attempt about 3, 4 years ago to bring in such a law. Asanga will explain.

- **Presentation on the Freedom of Information draft Bill in Sri Lanka; a background and analytical view, Asanga Welikala, CPA.**

- In 2001 we held a major conference in Colombo. It brought together participants from civil society and political parties. The conference formulated a set of guiding principles.
- The first principle was on overturning the culture of secrecy. So the first principle was maximum disclosure.
- The second one was 'obligation to publish,' under which the government must not only make information available, but make it available as widely as possible.
- The other principle was promoting open government
- Exemptions must be very narrowly defined
- Set up a mechanism to facilitate access to information
- It must be able to pay for itself as much as possible but not by charging unreasonable fees from people requesting information
- Allow for open meetings, at for instance, Pradeshiya Sabhas, so that the public can observe them.
- People within government be given legal protection for whistle blowing.
- In 2001 some changes were made. Amendments were made to the Public Performance Act, the Criminal Defamation law and certain steps for a Freedom of Information Act, started. When the UNP was elected, Criminal Defamation was repealed.

- We started drafting a Bill for Freedom of Information. The Editors Guild and the Free Media Movement also joined. Article 19, an international NGO had a model law. We also drew heavily from the RTI Acts of Rajasthan and Andhra.
- The draft Bill was given to the government. Some changes were proposed. But overall they did not attempt to change the structure of the Bill.
- In 2003 a draft Bill was made. In January 2004 it was approved by Cabinet. It went to the President who also approved it and it was put into the Order Paper, as an urgent Bill, to go before Parliament by March. But by February the government was dismissed.
- A new government was elected and that was the end of the Bill. We tried to explain its importance to the President but he insisted that until the war is over such a Bill will not be entertained.
- Some Freedom of Information Acts, like the UK, sets out the right to information in a very convoluted way. New Zealand and South Arica has done it better. So we took that route.
- Critically important are the rights and exemptions. We had 5 exemptions in our Bill (Eg. personal medical records) and said no other exemptions are recognised.
- The Prime Minister said information related to the peace process must not be disclosed. So this came under the exemptions, where information is not divulged during an administrative process.
- In any conflict with other laws, the Freedom of Information Act prevails.
- The entities subjected to the Act included private companies doing public functions (Ex garbage collection in Colombo done by a private company).
- An Information Commission was to be established.

- **Question and Answer session**

Participant : Have you suggested putting defence matters under the exemptions and then getting the Act through?

Asanga: The danger is, if you allow that exemption, you may kill the whole Bill because of the current war obsession. So we felt that no law is better than a bad law.

Rohan: There was an understanding that the Bill would be operational only one year later. This was a preparatory period to get public servants and others, onboard. So right now, may not be the time for a good Bill.

Participant: If the government is not committed to good governance this is not possible.

Participant : Why do you feel private companies should be included?

Asanga: These are only companies doing public functions. If not, they are not included

Participant : Did you try to lobby within Parliament?

Rohan: The lobbying we have been doing recently is on the 17 Amendment but the support from MPs is very disappointing. So I don't have much hope for the Freedom of Information Bill.

Participant : Can you give a small background on one of the cases discussed, so that people can understand the different ways of approaching the courts. Have you approached the Law Reform Commission?

Asanga: The Law Reform Commission also has a draft. I think our version is much better.

Rohan: We need to look at the Environmental Foundation Ltd Vs UDA case more carefully now and encourage people to use the opportunities created by that case. But relying on judgements is not easy. You also have to see the connections between basic principles of law and freedom of expression. But if the Supreme Court is so politicised, a lot would depend on who files the case. We are trying to increase awareness about the benefits of a Freedom of Information law. This will be the focus over the next few years.

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- **Evaluation**
- **Exercise on the way forward**

Participants formed 4 groups and discussed how to take the work on RTI forward in Sri Lanka.

Shyamala Perera, Project Director, IDL: IDL has an action plan which we will put into operation in the future. But I invite IDL members to come up with their own ideas here as well. Others may like to work with us. They may need some assistance to take this information to their areas. We can assist them if they communicate their requirements to us. Individuals can also join us.

Sandun Gamage, Director IDL: We are going to start 2 important projects. One is the Liberal Village project which we will start by September. The other is a regional academy called the Liberal Academy, which will also start in September. At the moment in Sri Lanka, there is no academic centre for you people in politics. So we can use ideas from this workshop in these 2 projects.

PRESENTATION BY GROUP 4

Ideas on the way forward

- You need to have an understanding of the laws, regulations and procedures applicable to public services.
- The 5S concept is being followed in some bodies in the government sector now. This can be used as a guideline to go for the freedom of information concept.
- A recent circular said that all government departments should follow the Citizen's Charter. Although the name is not there, these concepts of RTI can be found here.
- These policies (Eg Citizen's Charter) are operational in Divisional and District Secretariats. Licences can be obtained instantly now because these departments have been computerised.
- RTI can be used to educate people on procedures of government departments

Feedback from Venkatesh

What is the most important thing you will do to spread the concept of RTI

Participant: The most important thing is to raise awareness. We must be able to inform people about procedures and must raise awareness among school children

Participant: Even NGOs give wrong information to people. I work for a government organisation. I will try to change things in my office. Some departments have 'Public Days' but sometimes the relevant officials are not in during those days.

Participant: We are working with grass-root level people. We have planned a half day programme to raise awareness about this.

Feedback from Venkatesh

I have a request to Hiron. Does your office have a specific time for the public to meet the department head? Since the Citizen's Charter says it is possible to complain to Head of Department to set aside a date and a time in the week for the public to meet him.

Hiron: There is not such procedure

PRESENTATION BY GROUP 3

Ideas on the way forward

- Organise CBO level meetings in village inside temples or churches to raise awareness about RTI. We should also involve Pradeshiya Sabha officials and villagers that are interested in these concepts.
- They can participate in the budget formulation at the Pradeshiya Sabha. We can also make an observer committee to sit in at these meetings.
- We can also tell young people about this

Feedback from Venkatesh

- You are using existing laws instead of waiting for an RTI law to spread awareness about RTI.

PRESENTATION BY GROUP 2

Ideas on the way forward

- We have to pass the RTI Bill in Parliament
- We can start awareness programmes among the people that come to see us and our family members
- Identify what information people in villages need (Eg. Court procedures, information about diseases, death, birth, marriage certificates.) and make them understand the existing laws.
- Transform existing local organisations into 'pressure groups' to make them practice the existing laws and perform their duties
- National level organisations should influence lower level organisations
- Influence politicians to adopt RTI
- Raise publicity in the media

Feedback from Venkatesh

- You want to lobby for RTI law and you also want to make use of existing laws. So you have looked at both aspects.

PRESENTATION BY GROUP 1

Ideas on the way forward

- The general public is not aware about the existence of the draft Bill on Freedom of Information and they do not know the importance of it.
- So we have to educate people on RTI is a fundamental right.
- Put pressure on all political parties and government for this. Earlier they went only to the UNP. But we should tell each and every political party. Ask them to put it in their manifesto by the next general election.

Feedback from Venkatesh

- Putting this into the manifestos of political parties is very important

Sandun Gamage, Director IDL: IDL will target young, up coming politicians on the RTI

- **Views from the FNS, Ms Katrin Bannach and Ms Sagarica Delgoda**
- **End of workshop**