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RIGHT TO INFORMATION

Discourse and Compliance in Sri Lanka

Sabrina Esufally and William Ferroggiaro

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This report was compiled in collaboration between Verité Research and Democracy Reporting International. Verité Research analysed the right to information in the Sri Lankan context, while Democracy Reporting International detailed international best practices relating to proactive disclosure.

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Contents

1

Background

In August 2016, the Sri Lankan Parliament enacted the Right to Information Act, No. 12 of 2016. The Act received high levels of support from both civil society and government, and was enacted unanimously by Parliament. The Act's successful passage was the culmination of a history of prior attempts to enact right to information (RTI) legislation since the mid-1990s, many of which failed to progress beyond draft stage. Enacting RTI legislation was among the key campaign pledges of President Maithripala Sirisena, who was elected to office in January 2015 on a platform of good governance and anti-corruption. On 4 August 2016, the Speaker of Parliament certified the RTI Act into law.

The preamble to the RTI Act states that it aims to 'foster a culture of transparency and accountability in public authorities', thereby enabling citizens of Sri Lanka to 'fully participate in public life through combating corruption and promoting accountability and good governance'.[1] It grants Sri Lankan citizens the right of access to information in the possession, custody or control over an estimated 4,500 public authorities.[2]

The provisions of the Act pertaining to the supply of information are due to come into effect within a period of six months after its certification, and no later than one year since the same.[3] In October 2016, the Ministry of Parliamentary Reforms and Mass Media directed ministries, provincial councils and other government departments to: (i) nominate Information Officers for all institutions falling under their purview, and (ii) archive and

1. Preamble, Right to Information Act, No. 12 of 2016.
2. 'RTI, lifting the curtain of secrecy', *The Daily News*, 4 October 2015. available at *http://dailynews.lk/2016-10-03-193000/features/94810* [accessed on: 1 February 2017].
3. Section 1 (3), Right to Information Act.

maintain information and records. Furthermore, the Ministry issued a gazette notification stating that the RTI Act will come into operation on 3 February 2017.[4] Accordingly, all public authorities falling under the scope of RTI are now expected to be able to receive and process RTI requests. Under its powers in terms of section 41(2) of the RTI Act, the Ministry passed a series of Regulations governing RTI implementation. These Regulations set out the procedure on matters including: (a) the initiation of information requests, (b) rejection of information requests, and (c) continuous proactive disclosure.

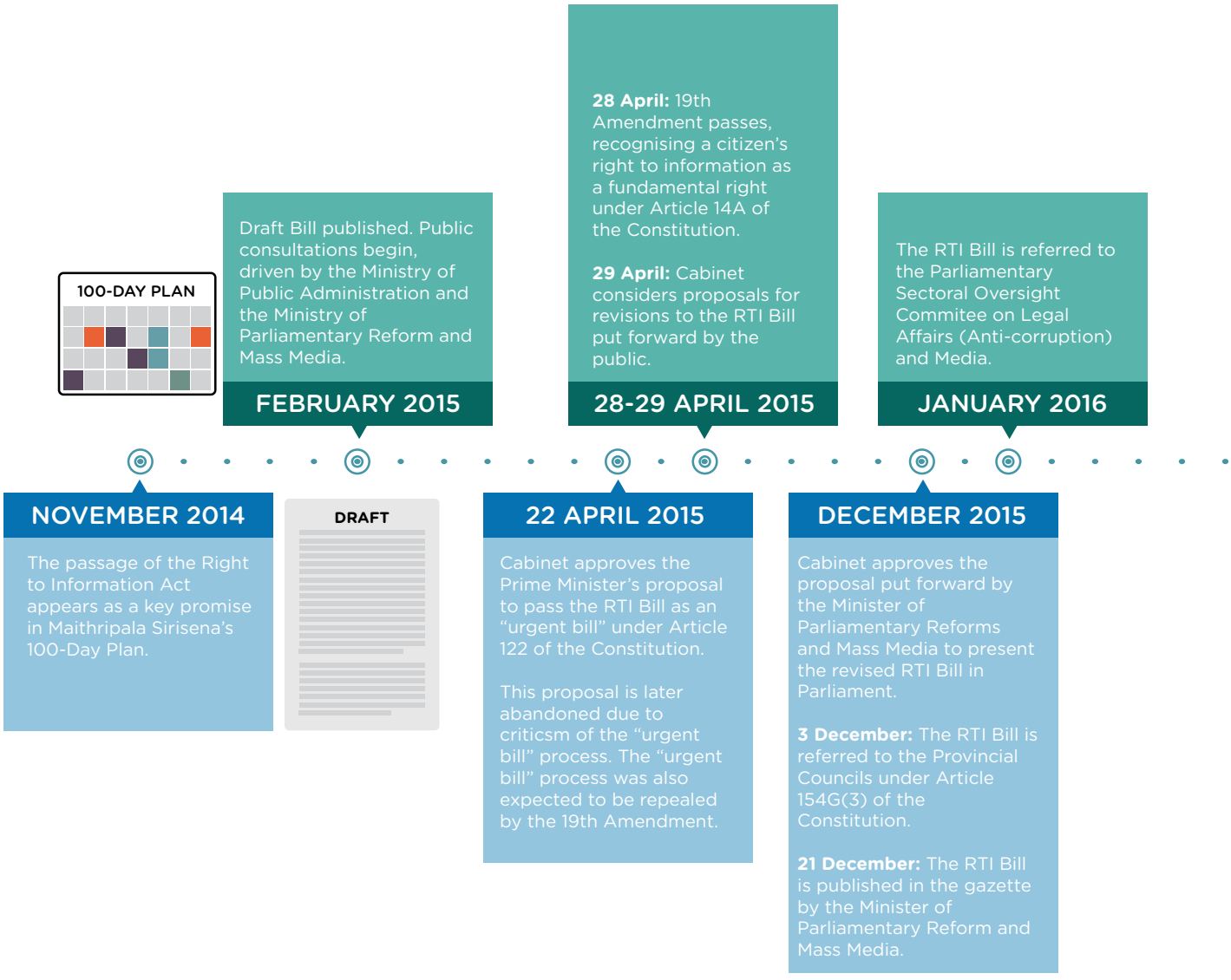
This briefing paper discusses the process through which the RTI Act was drafted and enacted, and recommends strategies to ensure better compliance. It is presented in three sections. The first section chronicles the drafting process pertaining to Sri Lanka's RTI legislation, and examines the role that public consultation played in the successful passage of the RTI Act. The second section outlines the existing laws that are inconsistent with the RTI Act, and proposes recommendations for compliance. The third section discusses international best practices on proactive disclosure, and offers recommendations to public authorities on fulfilling their obligations on proactive disclosure under the Act.

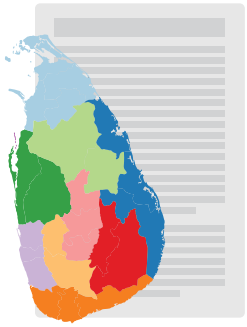
4. Extraordinary Gazette No.2002/42 issued in January 2017.

2

The Passage of the RTI Act: Lessons Learnt

2.1 The Chronology of RTI Legislation





MARCH 2016

The RTI Bill approved by all nine Provincial Councils. The Northern Provincial Council submitted certain recommendations for revisions to the Bill.

The RTI Bill is placed on the Order Paper of Parliament.

5 APRIL 2016

The constitutionality of the RTI Bill is challenged in the Supreme Court under Article 121 of the Constitution.

3 MAY 2016

Subject to minor alterations, the Supreme Court holds that the RTI Bill is consistent with the Constitution.

JUNE 2016

23 June: Second Reading of the RTI Bill in Parliament.

24 June: Proposed amendments to the RTI Bill, including those recommended by the Supreme Court, are incorporated into the Bill during the Committee Stage of Parliament.

The RTI Bill passes in Parliament with unanimous approval without a vote.

4 AUGUST 2016

The Speaker's Certificate is issued and the RTI Bill becomes law.

2.2 Key Actors involved in the Passage of the RTI Act

2.2.1 Ministries

The key ministries involved in initial deliberations on the RTI Act were the Ministry of Public Administration and the Ministry of Parliamentary Reforms and Mass Media. In February 2015, the role played by these two ministries in the passage of the RTI Act was unclear. This lack of clarity resulted in parallel public consultations and the circulation of conflicting versions of the draft Bill. However, after the General Elections in August 2015, the Ministry of Parliamentary Reforms and Mass Media took clear leadership for the passage of the Bill. The Ministry ensured that the Bill (a) received Cabinet approval, (b) was published in the gazette, (c) was placed on the Order Paper of Parliament, and (d) received cross-party support. Moreover, the Ministry also convened consultations on the Bill and established the RTI Advisory Taskforce.

2.2.2 Department of Government Information

The Department of Government Information falls under the purview of the Ministry of Parliamentary Reforms and Mass Media. The Department assisted the Ministry with the passage and implementation of the RTI Bill. Accordingly, it (a) convened the meetings of the RTI Taskforce, (b) facilitated consultations and training sessions on RTI within government, and (c) coordinated between Ministry officials, the RTI Advisory Taskforce, and the Technical Drafting Committee.

2.2.3 Technical Drafting Committee

The Bill circulated for consultation in February 2015 was a version of the RTI Bill that was drafted in 2003. Improvements to the draft Bill were made by a Technical Drafting Committee. The Committee comprised twenty members including Ministry secretaries, state counsel from the Attorney General's Department, CSO activists and media personnel. The Committee was able to leverage its expertise to ensure that the RTI Bill aligned to international best practices in terms of both its drafting process and its outcome. During the initial drafting stages, the Committee conducted consultations within government to increase multi-sectoral support for and ownership of RTI. The Technical Drafting Committee was also responsible for receiving and processing proposals from the public to revise and improve the RTI Bill.

2.2.4 RTI Advisory Taskforce

The RTI Advisory Taskforce was set up by the Ministry of Parliamentary Reforms and Mass Media. The Taskforce comprised a cross-section of stakeholders, including government officials, media personnel, and civil society actors. The Taskforce engaged in training of government officials on the application of the RTI Bill, and conducted an information session for Members of Parliament prior to the parliamentary debate on the Bill. The Taskforce was also able to propose certain improvements to the RTI Bill once it had been gazetted.

2.2.5 Civil Society Organisations

Advocacy by civil society organisations (CSOs) and actors resulted in important revisions to the RTI Bill. There was consistent and collective CSO engagement throughout the drafting process. CSOs assisted the RTI Advisory Taskforce in organising the information session for Members of Parliament, and workshops for government officials. CSOs also organised public consultations on draft versions of the Bill. Moreover, CSOs played a vital role in increasing public awareness and support for the Bill through grass-root level advocacy and media engagement.

2.3 Role of Consultations in the Passage of the RTI Act

2.3.1 Impact of Consultations

The success of the RTI Act was attributed to widespread consultations among stakeholders in government, provincial councils, CSOs and the media. These widespread consultations resulted in at least four strengths of the RTI in Sri Lanka. They are as follows:

i. **Ensuring increased compliance with international standards**

Sri Lanka's RTI Act is regarded as the third strongest in the world, and the strongest in South Asia.[5] Consultations with CSO actors during all stages in the drafting process ensured that the Bill was compliant with international standards. For instance, CSOs played a role in ensuring that provisions relating to the narrow framing of denial clauses, and the proactive disclosure of information by Ministries were incorporated in the RTI Act. Moreover, the technical expertise of CSO actors involved in the Drafting Committee and the RTI Advisory Taskforce ensured that progressive elements of the Bill, such as the public interest override clause, were retained in the text during the drafting process.

ii. **Broad-based support for RTI**

Consultations resulted in multi-sectoral ownership for RTI, which strengthened prospects for its implementation. For instance, CSOs representing the interests of families of the disappeared and the private sector managed to secure amendments to the Bill. The Ceylon Chamber of Commerce successfully introduced a proposal to revise one of the grounds on which information requests could be denied. The original Bill provided that information could be denied if the information harmed the commercial interests of any person. This ground was later narrowed down to only include information relating to commercial confidence, trade secrets or intellectual property.

5. 'Sri Lanka jumps to third place globally on the RTI rating', 10 February 2017, Centre for Law and Democracy, accessible at: https://www.law-democracy.org/live/wp-content/uploads/2012/08/17.02.10.Sri-Lanka-RTI.PR_.pdf [accessed on: 12 February 2017].

Meanwhile, groups representing families of the disappeared managed to ensure that 'urgent requests' (i.e. information requests that require a response within 48 hours) could be filed by any person on behalf of another person whose life or liberty was in danger.[6] The original Bill only permitted the affected party to receive a response within 48 hours.

Early consultations within government resulted in numerous opportunities to address the concerns and secure the buy-in of a diverse range of state officials, such as those from the Ministry of Defence and the Ministry of Finance. Furthermore, closer to the Bill being tabled in Parliament, an information session on RTI was organised for Members of Parliament. Accordingly, at the time the Bill was placed on the Order Paper of Parliament, it had already received the endorsement of key players within the legislature, thus increasing chances of its passage. Moreover, the fact that the Bill was referred to the Provincial Councils for their views prior to its enactment increased its ownership at the sub-national level.

iii. Increased functionality of the RTI Act

The repeated consultations on the RTI Bill had an impact on the functionality of the RTI Act. Improvements were made to provisions that ensured the utility of RTI to the general public. For instance, CSO input through the Advisory Taskforce ensured that bi-annual Ministry reports were made available both at ministry premises and on their websites. Furthermore, the cycle of public authority reporting to the RTI Commission was made uniform, to ensure greater comparability between these reports. Moreover, given that RTI legislation had already been widely adopted across South Asia, Sri Lanka's RTI Act benefitted from the influence of practical experiences of RTI implementation across the region.

iv. Addressing miscommunication on RTI

In the early stages of the drafting process, there was a paucity of media coverage on RTI. Furthermore, media reportage on RTI was dominated by popular opinion rather than based in fact. This contributed to miscommunication regarding the utility and scope of the Act. For instance, members of the Joint Opposition such as Wimal Weerawansa claimed that the RTI Act sought to conceal government information, thus depriving people of the right to access information.[7] This criticism was reported in the vernacular press, without questioning its accuracy.

However, due to repeated consultations with prominent editors in the media, this miscommunication was gradually addressed

6. In an earlier version of the RTI Bill, Section 25(3) of the Bill stated that 'where the request or information concerns the life and personal liberty of the citizen making such a request, the response to it shall be made within forty-eight hours of receipt of the request'. This provision prevented a family member of a disappeared person from seeking information on his or her whereabouts.
7. Verité Research, The Media Analysis, Vol.6 No.13, 28 March 2016 - 4 April 2016.

closer to the Bill's passage in Parliament. Furthermore, the endorsement of these editors altered the perception that the RTI was a purely CSO-driven initiative.

2.3.2 Key Enablers of Success

The positive impact of consultations on the RTI Act may be attributed to a number of enabling factors. They are as follows:

i. **The existence of a base draft**

The 2003 RTI Bill was drafted by a group of experts including members of civil society, the media, the Legal Draftsman and the Attorney General. As such, although there were certain regressive provisions in the draft that was circulated for consultation in February 2015, it provided a strong basis for consultation. Furthermore, negotiations in relation to the draft text were framed in terms of improvements to the 2003 RTI Bill. This framing minimised contestation in relation to certain progressive clauses that existed in the 2003 RTI Bill, such as the public interest override clause, and whistle-blower protection.

ii. **Early dissemination of the draft Bill**

A number of versions of the draft RTI Bill were made public and consulted on prior to it being gazetted in August 2016. This prior publication ensured that the version of the RTI Bill that was gazetted was (a) a consultative draft, (b) a significant improvement from the 2003 RTI Bill, and (c) contained provisions that were anticipated by key stakeholders. As such, following the gazetting of the Bill, RTI advocates were able to make incremental improvements to the Bill.

iii. **Government ownership**

The Ministry of Parliamentary Reform and Mass Media was intent on ensuring the passage of the RTI Act, and accordingly leveraged its convening power to consult with government and civil society on the draft Bill. The Ministry also took steps to neutralise actors (e.g. through negotiation) that threatened to prevent the enactment of RTI. Additionally, in the interests of ensuring the RTI Bill's timely passage in Parliament, the Ministry was receptive to receiving technical support on drafting from experts outside the Legal Draftsman's Department. Moreover, once the Bill was placed on the Order Paper, the Ministry lobbied for broader government support to bolster the Act's passage in Parliament.

iv. **Internal advocacy**

The Technical Drafting Committee and the RTI Advisory Taskforce comprised CSO actors with high levels of technical expertise. This ensured that CSO actors were able to introduce progressive amendments to the Bill, while ensuring government ownership. Moreover, these actors were able to influence the Bill by referring to international standards, and practical approaches to RTI gained from regional experiences. Additionally, the CSO actors partnering with government on the drafting of the Bill were also able to influence the process of the

Bill's passage through the legislature. This included: (a) ensuring the repeated publication of the Bill prior to it being gazetted, and (b) persuading the government to abandon its attempts to pass the RTI Bill as an urgent bill.

v. **Receptive political context**

After the Bill received Cabinet approval there was an impetus to ensure increased understanding and awareness on RTI, both from within and outside government. In this context, the information session for Members of Parliament conducted by the RTI Advisory Taskforce in collaboration with CSO actors enabled greater understanding and cross-party support for RTI. Moreover, grass-root advocacy campaigns conducted by organisations such as Transparency International Sri Lanka bolstered community awareness and demand for the RTI Bill. Support from editors in the media also increased the ability for consultations to shape reportage on RTI towards the latter stages of the drafting process. Collectively, the above factors helped position RTI as a non-negotiable reform initiative expected of a 'good governance' government.

Meanwhile, the RTI process commenced in a context of high government sensitivity to public opinion. The passage of the Act came to be seen as necessary to reinforce the government's credibility and commitment to anti-corruption in the public eye. This political context also motivated the government to proceed with the enactment of the RTI Act, despite attempts by the Attorney General to stay its passage.[8] The political capital that RTI represented was evidenced by its unanimous passage in the legislature, receiving support even from members of the Joint Opposition that had previously opposed the Bill.

2.4 Recommendations

Given the vital role of consultations in the successful passage of the RTI Act, this section offers recommendations on institutionalising consultations in Sri Lanka's legislative process.

i. Drafting of government Bills should be conducted by a technical drafting committee in collaboration with the Legal Draftsman's Department. This technical drafting committee should comprise diverse stakeholders, including the relevant ministry officials, technical and legal experts, and representatives of the Attorney General's Department. The technical drafting

8. The Attorney General objected to the Right to Information Act on the grounds that it permitted communication from the Attorney General's Department to government entities being accessible by the general public. Consequently, section 5(1)(f) of the final version of the Right to Information Act permits information requests to be denied if it relates to 'any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority'.

committee should ensure that key government ministries (e.g. Ministry of Defence, Ministry of Finance, and Ministry of Public Administration) are consulted in the drafting of the Bill. The line Ministry should then coordinate the publication of the draft Bill.

ii. At least two weeks prior to the Bill being tabled in Cabinet for its approval, the draft Bill should be disclosed to the public on the Ministry's website. Furthermore, the Bill should not be tabled for Cabinet's approval unless at least one public consultation on the Bill has taken place. The minutes of this consultation should be published on the Ministry's website.

iii. Following Cabinet's approval of the Bill, the Ministry responsible for the passage of the Bill should appoint a taskforce comprising stakeholders from the Ministry, media, and civil society. The taskforce should be mandated to increase awareness, and carry out training on the Bill both within government and among the general public. This awareness raising can also include a communication strategy for disseminating the purpose and scope of the Bill.

iv. Upon receiving Cabinet approval, the Ministry responsible for the passage of the Bill should conduct regular consultations on the revisions and improvements made to the version of the Bill tabled in Cabinet. At a minimum, the Ministry should be required to hold one public consultation (a) prior to the Bill being published in the gazette, and (b) prior to the Bill being placed on the Order Paper. Moreover, the relevant Parliamentary Sectoral Oversight Committee should be required to hold at least one public consultation before completing its deliberations on the Bill. All minutes of these consultations should be made public on the Ministry's or Parliament's website.

v. Once placed on the Order Paper of Parliament, the President should ensure that Bills that are related to matters on the Provincial Council List or the Concurrent List are referred to all nine Provincial Councils for their comments prior to their passage in Parliament. All comments received from the Provincial Councils should be published on the Parliament's website.

3

Right to Information Compliance: A Legal Analysis

Section 4 of the RTI Act stipulates that the Act supersedes all other laws in Sri Lanka. Therefore, it is advisable that current laws that are inconsistent with the Act be amended to the extent of their inconsistency. Such amendments will strengthen the implementation of and compliance with the RTI Act, particularly in a context of a prevailing culture of secrecy around the supply of government information. This section sets out the key provisions of the RTI Act. It then analyses the current laws that are inconsistent with the RTI Act, and proposes recommendations for amending the identified inconsistencies.

3.1 The Right to Information Act: Key Provisions

The Act gives every citizen the right to access information that is in the possession, custody or control of a public authority. 'Information', under the Act includes a wide variety of material such as emails, logbooks, photographs, diagrams, memos and circulars.[9] 'Public authorities' under the Act include ministries, public corporations, a company where the state owns in excess of twenty-five *per cent* of the shareholding, and higher educational institutions that are substantially funded by the state.[10]

3.1.1 Obtaining information under the Act

a. Information Requests

Every public authority is mandated to appoint an Information Officer, who is tasked with receiving and processing information requests.[11] Information Officers are required to process information requests within a fourteen-day period.[12] If the Information Officer decides that the information

9. Section 43, Right to Information Act, No. 12 of 2016.
10. *Ibid.*
11. *Ibid.* Section 23(1).
12. *Ibid.* Section 25(1).

requested could be disclosed, he or she is required to grant access to such information within a period of fourteen days.[13] In the event the Information Officer decides to deny the individual's information request, he or she must do so in terms of the specific grounds listed under the Act.[14] For example, information requests may be denied if the disclosure undermines the defence of the state, causes serious prejudice to the economy of Sri Lanka, or harms the competitive position of a third party.[15] However, even if the information requested falls under one of the specified grounds for denial under the Act, the Information Officer is required to disclose the information if the public interest associated with the information outweighs the harm that is likely to be caused by disclosure.[16]

Individuals that are dissatisfied by the decision of an Information Officer have the right to appeal first to a Designated Officer appointed by the Ministry, then to the independently appointed Information Commission, and finally to the Court of Appeal.[17]

b. Proactive Disclosure

The RTI Act requires that certain kinds of information are disclosed on a proactive basis. For instance, under section 8 of the Act, every Minister is required to publish a bi-annual report detailing particulars that include: (a) organisational duties and functions of Ministry staff, (b) facilities available to citizens that request information, and (c) details of Ministry budgets and expenditure.

13. Under section 25 (5) of the RTI Act this fourteen-day period can be extended to a maximum of twenty one days, inthe event the volume of documentation is high. Moreover, in the event the information request relates to the life or liberty of a person, this information is required to be supplied to the individual within a period of forty-eight hours under section 25 (3) of the RTI Act.
14. Section 28, Right to Information Act, No. 12 of 2016.
15. *Ibid.* Section 5 (1).
16. *Ibid.* Section 5 (4).
17. *Ibid.* Sections 31, 32 and 34.

Moreover, under section 9(1)(a) of the Act, a duty is placed on Ministers to communicate details regarding 'projects' initiated by their Ministries three months prior to the project's commencement. A 'project' is defined as a venture that: (a) exceeds one million United States Dollars (in the case of foreign funded projects), and (b) exceeds five hundred thousand rupees (in the case of locally funded projects).[18]

3.1.2 Information Commission

The Information Commission is required to monitor public authorities' compliance with the RTI Act; prescribe a fee schedule for information requests; and issue guidelines for proper record management within public authorities.[19] Moreover, the Commission is permitted to hold inquiries, inspect information records, and direct a public authority to publish any information that has been denied to the public.[20] At present, the Information Commission comprises five Commissioners.[21]

3.1.3 Offences and Protection

Any person who deliberately obstructs the provision of information under the RTI Act, tampers with information, or fails to give effect to a decision by the Information Commission commits an offence under the RTI Act.[22] Meanwhile, whistle-blower protection is available under section 40 of the Act. The provision prevents the punishment (disciplinary or otherwise) of a public officer that discloses information that is permitted to be disclosed under the Act.[23]

3.2 Present Laws that are Inconsistent with the RTI Act

3.2.1 The Official Secrets Act No. 32 of 1955

The Official Secrets Act, No. 32 of 1955 (Official Secrets Act) is an Act to restrict access to 'official secrets' and 'secret documents,' and prevent their unauthorised disclosure. Under the Act, the definition of an 'official secret' includes any information of any description relating to (a) any arm of the armed forces, and (b) directly or indirectly to the defences of Sri Lanka. Moreover, the definition of a 'secret document' is any document containing an official secret (e.g. maps, sketches, plans and drawing relating to the defences of Sri Lanka). Offences under the act include: (a) communicating an official secret to an unauthorised person, and (b) the knowing receipt of an official secret.

18. *Ibid.* Section 9 (3).
19. *Ibid.* Section 14.
20. *Ibid.* Section 15 .
21. 'RTI Commission comes legally into force', Colombo Telegraph, 22 December 2016, available at https://www.colombotelegraph.com/index.php/rti-commission-comes-legally-into-force [accessed on: 12 February 2017].
22. Section 39 (1), Right to Information Act, No. 12 of 2016.
23. *Ibid.* Section 40.

The expansive definition of an 'official secret' contravenes information disclosure obligations under the RTI Act. Under section 5 (1)(b) of the Act, public authorities are only permitted to deny information requests if the disclosure could 'undermine the defence of the State or its territorial integrity or national security'. Moreover, in the event the public interest associated with the information is greater than the harm caused by disclosure, public authorities are required to disclose the information in question.

The definition of an 'official secret' under the Officials Secrets Act extends beyond the permissible grounds for information denial under section 5(1)(b) of the RTI Act. Therefore, when faced with an information request that relates directly or indirectly to matters of defence, public officers may be reluctant to disclose the corresponding information – notwithstanding the fact that the threshold for denial under the RTI Act has not been met.

It is accordingly recommended that the definition of an 'official secret' under the Official Secrets Act be amended so that it does not prohibit the disclosure of information as permitted under the RTI Act. The recommended amendment to the Official Secrets Act is detailed below:

Interpretation	"Official secret" means – i. Any secret official code word, countersign or pass word; ii. Any particulars or information relating to a prohibited place or anything therein; iii. Any information of any description whatsoever relating to any arm of the armed forces or to any impediments of war maintained for use in the service of the Republic or to any equipment, organisation or establishment intended to be or capable of being used for the purposes of the defence of Sri Lanka; iv. Any information of any description whatsoever relating directly or indirectly to the defences of Sri Lanka. *Provided, however, that it shall not include any information of any description whatsoever that is permitted to be disclosed under the Right to Information Act, No. 12 of 2016.*

3.2.2 Sri Lanka Press Council Law, No. 5 of 1973

The Sri Lanka Press Council Law, No. 5 of 1973 (Press Council Law) provides for the appointment of the Sri Lanka Press Council to regulate and tender advice on matters relating to the press. Section 16 of the Act contains a series of prohibitions on publication. These prohibitions include (a) documents sent to Ministers, (b) cabinet decisions, (c) information that could adversely affect the economy, and (d) proposals that are under consideration by Ministries.

The scope of these prohibitions can hinder the media from publishing information obtained through RTI requests. Obtaining information pertaining to cabinet decisions and Ministry proposals is permissible under the RTI Act (unless they pertain to the grounds for information denial under section 5 of the Act). Furthermore, the RTI Act contains no restrictions on the publication of information received pursuant to RTI requests. Yet the prohibitions on publication outlined in section 16 of the Press Council Law could disincentivise the media from publishing information corresponding to these matters, thus frustrating the purpose of the RTI Act.

Repealing section 16 of the Press Council Law is necessary to prevent undue restriction on the use of information obtained through the RTI Act in the public domain. Accordingly, it is recommended that section 16 of the Act be replaced by the following formulation:

No prohibition on publication	No person shall be restricted from publishing any information obtained under the Right to Information Act, No. 12 of 2016.

3.2.3 The Establishments Code of Sri Lanka, 1971

The Establishments Code of Sri Lanka, 1971 (Establishments Code) regulates the conduct of public officers. Paragraph 6 of Chapter XLVII of the Code permits a Secretary to a Ministry to take disciplinary action against officers who disclose information that 'may cause embarrassment to the government as a whole, or any government department, or officer'. These penalties are applicable even if the information disclosed was a statement of fact.

This provision directly contravenes the whistle-blower protection available under section 40 of the RTI Act, thereby disincentivising public officers from disclosing instances of corruption and mismanagement in good faith. Under section 40 of the RTI Act, an officer disclosing information that is permitted to be disclosed under the RTI Act is protected from disciplinary sanction, even if the disclosure may result in subsequent embarrassment caused to

the government. Section 40 is hence designed to protect officers who disclose instances of fraud or misappropriation within their ministries.

In this context, it is imperative that the Establishment's Code be amended to reflect the whistle-blower protection available under section 40 of the RTI Act. This amendment will increase the assurance among public officers that they will not be sanctioned for disclosing information on wrongdoing. The recommended amendment to paragraph 6 of Chapter XLVII is as follows:

Release or disclosure of information by an employee of a public authority.	(1) No person shall be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment. (2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

3.2.4 Declaration of Assets and Liabilities Law, No. 1 of 1975

The Declaration of Assets and Liabilities Law, No. 1 of 1975 (Assets and Liabilities Law), compels certain categories of persons (e.g. Members of Parliament, elected members and staff officers of local authorities, judges and public officers appointed by the President) to make periodic declarations of their assets and liabilities in and outside Sri Lanka.

Section 8 (1) of the Assets and Liabilities Law requires a person to 'aid in preserving secrecy with regard to all matters relating to the affairs of any person to whom this law applies'. Moreover, a person obtaining information under the law is prohibited from communicating such information to any person other than the person to whom such matter relates.[24]

The above section could result in public officers failing to comply with RTI requests relating to asset declarations of public officials for fear of breaching the 'secrecy provision' in section 8 (1). Moreover, the prohibition on public disclosure of the assets and liabilities obtained under the law could result in the media being hesitant to publish such information, even if it were obtained by way of an RTI request. Such

24. Section 8 (1), Declaration of Assets and Liabilities Law, No. 1 of 1975.

hesitance may frustrate the purpose of the RTI Act.

In this context, repealing section 8 of the Assets and Liabilities Law is essential to ensure the enforcement and usage of the RTI Act in relation to matters pertaining to the assets and liabilities of public officials.

3.2.5 Urban Development Projects (Special Provisions) Act, No. 2 of 1980

Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980 (Urban Development Project Act) empowers the Minister in charge of Urban Development to formulate an opinion that any particular land is urgently required for carrying out an urban development project that would meet the just requirements of the people. In such an event, the President is empowered to publish a declaration in the gazette for the purpose of acquiring the land.

Section 9(1)(a) of the RTI Act states that:

> It shall be the duty of the Minister, to whom the subject pertaining to any project has been assigned, to communicate, three months prior to the commencement of such project, to the public generally, and to any particular persons who are likely to be affected by such project all information relating to the project that is available with the Minister.[25]

A 'project' is defined as a venture over one hundred thousand United States Dollars if it is a foreign funded project, or five hundred thousand Sri Lankan Rupees if it is a locally funded project. Notwithstanding this requirement, section 2 of the Urban Development Act does not require the President to publish the declaration pertaining to lands urgently required for urban development projects three months prior to the project's initiation. The absence of this timeframe could result in confusion among Urban Development Authority officials regarding the appropriate publication process for information relating to development projects.

It is therefore recommended that section 2 of the Urban Development Project Act be amended to require that the declaration pertaining to lands urgently required for development projects be published at least three months prior to the commencement of the project.

25. Section 9(3), Right to Information Act, No. 12 of 2016.

Declaration of lands urgently required for urban development projects	(2) Where the President, upon a recommendation made by the Minister in charge of the subject of Urban Development, is of the opinion that any particular land is, or lands in any area are urgently required for the purpose of carrying out an urban development project which would meet the just requirements of the general welfare of the People, the President may, by Order published in the Gazette, declare that such land is, or lands in such area as may be specified are, required for such purpose. *Provided, however, if the total value of the development project in question exceeds one hundred thousand United States Dollars if it is a foreign funded project or five hundred thousand Sri Lankan Rupees if it is a locally funded project, the President shall on the recommendation of the Minister in charge of the subject of Urban Development, by Order published in the Gazette, declare that such land is, or lands in such area as may be specified are urgently required for a development project at least three months prior to the project's commencement.*

4

The Right to Information Act and Proactive Disclosure

The RTI Act creates obligations on public authorities to proactively disclose information to the public. This chapter focuses on the scope of this obligation and the role of the RTI Commission in ensuring that it is met. The chapter refers to global norms on proactive disclosure, as well as lessons learnt and best practices from international experiences.

4.1 The Act's Provisions on Proactive Disclosure

4.1.1 Obligations concerning Proactive Disclosure

As indicated in section 3.1.1 above, the Right to Information Act mandates that 'public authorities' proactively disclose information to the public. While the Act does not have a separate section on proactive disclosure, it details minimal requirements for ministries to publish and disclose certain categories of information.

Under Part III, 'Duties of Ministers and Public Authorities,' the law stipulates:

> 8 (1) It shall be the duty of every Minister to whom any subject has been assigned to publish biannually before the thirtieth of June and thirty first of December respectively of each year, a report in such form as shall be determined by the Commission as would enable a citizen to exercise the right of access to information granted under section 3 of this Act.[26]

The section delineates six categories of information that must be included in these reports. These categories include information on: (a) the organisation and functions of the Ministry, (b) powers and authorities of the Ministry, (c) rules and instructions issued by the Ministry (d) budgets and expenses, and (e) filing RTI requests. Consequently, the onus on proactive disclosure in the RTI Act rests with the Minister of each public authority, who is obligated to publish these reports in Sri Lanka's official languages and make them available for inspection and copying for a fee.[27]

26. Section 8 (1), Right to Information Act, No. 12 of 2016.
27. *Ibid.* and "Sri Lanka's RTI Law To Be Phased In," Commonwealth Human Rights Initiative, undated,

The Act specifies an additional 'duty' upon 'Ministers and Public Authorities' in Part III, namely:

> 9 (1) (a) It shall be the duty of the Minister, to whom the subject pertaining to any project has been assigned, to communicate, three months prior to the commencement of such project, to the public generally, and to any particular persons who are likely to be affected by such project all information relating to the project that is available with the Minister, as on the date of such communication.[28]

Rather than require production and publication of a report, this proactive disclosure requirement is in the form of a notice to the public. While not delineated in the Act, this might occur through a written notice in the Government Gazette, a Ministry's website or official publication, or a combination of these methods.

4.1.2. The Role of the RTI Commission regarding Proactive Disclosure

As noted earlier, while the Ministry of Parliamentary Reforms and Mass Media is tasked with the responsibility for implementing the RTI Act, the statute requires the establishment of a five-member Commission to ensure public authorities' compliance with the law. The RTI law sets out the organisation, function and duties of the Commission. While the Act does not specifically define a role for the Commission regarding proactive disclosure, it provides that one of the duties and functions of the Commission shall be to:

> Prescribe the fee Schedule based on the principle of proactive disclosure, in regard to providing information.[29]

The principle of proactive disclosure is not enumerated in the Act. Proactive disclosure as both a norm and in practice means records or information that are disclosed without cost to the

http://www.humanrightsinitiative.org/blog/sri-lankas-rti-law-to-be-implemented-in-a-phased-manner-over-one-year-salient-features, [accessed: 19 February 2017].

28. *Ibid.* Section 9 (1)(a).
29. *Ibid.* Section 14 (e).

recipient. Consequently, this sub-section may be interpreted to direct the Commission to devise the fee Schedule for public authorities with the goal of ensuring the least cost to the recipient and that any fees should not seek to recover the expense of search, production, and disclosing the information ('non-cost recovery basis').

4.1.3 Regulations Promulgated by the Ministry of Parliamentary Reforms and Mass Media

In accordance with the RTI Act, the Ministry of Parliamentary Reforms and Mass Media recently promulgated regulations to implement the law, including Regulation No. 20 concerning Proactive Disclosure of Information.[30] There are several important aspects to this regulation. The regulation:

i. stipulates that public authorities should proactively disclose information 'routinely', rather than in an *ad hoc* manner, thereby increasing the frequency of disclosure;

ii. requires that the information to be proactively disclosed is 'at a minimum', thereby establishing a base standard which public authorities should seek to exceed;

iii. stipulates the described information should be disseminated by 'digital or electronic format', ensuring that that the information reaches the broadest possible audience, and results in greater transparency and accountability;

iv. identifies sixteen categories of information that must be proactively disclosed, ranging from information about the organisation and function of a public authority to information on subsidies and public procurements;

v. encourages public authorities to include in their biannual reports required under Section 8 'such information as may be of interest to the public', to limit the need to file RTI requests for such information;

vi. provides that a recipient may challenge the accuracy or age of the proactively disclosed information before the head of the public authority or the RTI Commission.

The above Regulation issued in terms of the RTI Act expands the scope of proactive disclosure in the Act and gives the principle its full effect.

30. Extraordinary Gazette No. 2004/66, published 3 February 2017.

4.2 International Norms and Practice on Proactive Disclosure

4.2.1 Global Norms and Practice

Article 19 of the Universal Declaration of Human Rights holds that the right to freedom of expression includes the freedom 'to seek, receive and impart information'.[31] The International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a party, contains the same provision and creates a legally-binding obligation on signatories. The UN Human Rights Committee, which monitors the implementation of the ICCPR, has subsequently adopted General Comments to provide practical guidance to states on meeting their obligations under Article 19.

General Comment 10, adopted in 1983, reiterated that states must protect freedom of expression including the 'freedom to 'seek' and 'receive' (information and ideas) 'regardless of frontiers' and in whatever medium.' However, it did not address proactive disclosure.[32] In 2011, with scores of RTI laws in effect across the globe, the Human Rights Committee adopted a more comprehensive General Comment 34, replacing General Comment 10, that addresses states' obligation concerning the 'right of access to information' and proactive disclosure, specifically:

> To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation.[33]

In addition to this practical guidance on the obligations of states on the right to information, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression is charged with providing advice and recommendations in these areas. Under this mandate, each Special Rapporteur has addressed the right of access to information. In 1999, Special Rapporteur Abid Hussain urged states to 'review existing legislation or adopt new legislation on access to information' and articulated general principles for states to follow, among them, proactive disclosure:

> Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how

31. See *http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng* and *http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx*, respectively; [accessed: 20 February 2017].
32. UN Office of the High Commissioner for Human Rights, General Comment No. 10: Freedom of Expression (Art. 19) 29/06/1983.
33. UN Human Rights Committee, International Covenant on Civil and Political Rights: General comment No. 34; Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 11 September 2011.

> the public body functions and the content of any decision or policy affecting the public.[34] With this report, Hussain also endorsed *The Public's Right to Know: Principles on Freedom of Information Legislation*, a declaration of norms developed by the international NGO Article 19, which included the principle that governments have the 'obligation to publish, at a minimum, five categories of information'.[35]

More recently, Special Rapporteur Frank Larue called on states to implement measures on right to information, including proactive disclosure:

> States should, in particular, consider the appointment of a focal point, such as an information commissioner, to assist in the implementation of national norms on access to information or the creation of a State institution responsible for access to information. Such mechanisms could be mandated to process requests for information, assist applicants, ensure the proactive dissemination of information by public bodies, monitor compliance with the law, and present recommendations to ensure adherence to the right to access information.[36]

Since 2011, the Open Government Partnership (OGP), a multilateral initiative of more than 75 countries,[37] has served as an important manifestation of the importance of RTI laws. The right to information is one of the four areas to which member states must commit in order to participate in the OGP. Furthermore, the OGP also demonstrates the complementary and reinforcing norms of right to information and proactive disclosure. In addition to access to information laws, the OGP requires participating states to commit to timely publication of budget documents, public disclosure of assets of public officials, and government openness to citizen engagement on policymaking and governance. Sri Lanka applied for membership in the OGP in October 2015 and committed to meet provisions on proactive disclosure starting in February 2017.[38]

In determining what information may be proactively disclosed, a US freedom of information expert has devised a practical set of questions. While this checklist could be used by drafters of laws considering proactive disclosure, it can also be used to guide decisions on voluntary disclosure beyond what a law requires.

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34. UN Commission on Human Rights, *Civil and Political Rights including the Question of: Freedom of Expression; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion andexpression, Mr. Abid Hussain, submitted in accordance with Commission resolution 1999/36*, E/CN.4/2000/63, 18 January 2000, para. 44.
35. *Ibid.* pp. 56-63.
36. UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/68/362, 4 September 2013, para. 103.
37. See *http://www.opengovpartnership.org/about*, [accessed on: 19 February 2017].
38. Sri Lanka: Open Government Partnership National Action Plan 2015-2017, pp. 39-40.

Considerations in Determining What May Be Proactively Disclosed

- Is proactive disclosure required by law, regulation or policy?
- Is there an interest in the information by a significant number of people?
- Will the proactive disclosure likely prevent numerous individual requests for the same information?
- Is there a governmental or societal interest in the proactive disclosure of the information?
- Is there any foreseeable harm to the government, society or particular persons in proactively disclosing the information?
- If there is a foreseeable harm, is there nonetheless a greater benefit to society as a whole in the proactive disclosure of the information?
- If a portion of a record or collection of information is exempt from disclosure, can that portion simply be redacted?[39]

4.2.2 Regional Norms and Practice

With its new RTI Act, Sri Lanka joins the community of one hundred and fifteen nations with right to information laws.[40] It is the latest South Asian country to adopt a RTI law; only Bhutan remains without one. Many countries in the region, including India, Bangladesh, and Nepal, have comprehensive proactive disclosure provisions in their RTI legislation.[41] In Bangladesh, the information commission actually issues the disclosure regulations.[42] While not specifically addressing proactive disclosure, right to information commissioners and ombudsmen in Bangladesh and Pakistan have reported many challenges in ensuring public authorities' compliance with their orders, while their Nepalese counterparts indicate substantial compliance.[43]

India

India's RTI Act contains 'Obligations of Public Authorities', which require such authorities to first maintain their records, and also to publish

39. Mitchell W. Pearlman, '*Proactive Disclosure of Government Information, Principles and Practice*', *www.nfoic.org, at: http://www.nfoic.org/proactive-disclosure-of-government-information*, [accessed on: *23 February 2017*].
40. 115 countries have RTI laws according to freedominfo.org, "the global network of freedom of information advocates." See *http://www.freedominfo.org*, [accessed on: 19 February 2017].
41. *Citizens' Access to Information in South Asia: Regional Synthesis Report*, The Asia Foundation, August 2014, p. 16. Note that two provinces in Pakistan – Punjab and Khyber Pahtunkhwa – have passed RTI legislation and established independent commissions. There are two draft bills at the national level; they draw to some degree on these provinces' legislation.
42. "Standards for Proactive Disclosure Recommended," freedominfo.org, 19 February 2013, *http://www.freedominfo.org/2013/02/standards-for-proactive-disclosure-recommended/*, [accessed: 18 February 2017].
43. The Asia Foundation, *Citizens' Access to Information in South Asia: Regional Synthesis Report*, August 2014, pp. 29-30.

at least sixteen different categories of general information about the organisation, function, powers, and rules of the authority, its advisory councils, budget, subsidies, and recipients of concessions.[44] Moreover, beyond that foundational information, the Act establishes a strong threshold for further disclosure:

> It shall be a constant endeavour of every public authority to take steps…to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.[45]

However, it is not clear from the text which entity is charged with enforcing these obligations. Section 18 of the Act, concerning the 'Powers and Functions of Information Commissions', delineates a number of ways the Commissions may act concerning a request for records, but does not specify a role concerning proactive disclosure. However, sub-section (e) provides the Commission's authority 'in respect of any other matter relating to requesting or obtaining access to records under this Act', which might be interpreted to include requirements concerning proactive disclosure. In the meantime, a 2009 study on implementation of India's RTI law found 'inadequate mechanisms for monitoring proactive disclosure, resulting in low compliance to Section 4(1b) of the RTI Act, with 65% of the public authorities failing to proactively disclose information on their websites'.[46]

Further, sections 26 ('Appropriate Government to prepare programmes') and 27 ('Power to make rules by appropriate Government') requires the government to establish programmes, funding schemes, and issue rules for RTI, including on proactive disclosure. However, the Act does not identify a specific authority to monitor implementation of the Act or proactive disclosure compliance.[47] In June 2016, India's Department of Personnel and Training, headed by Prime Minister Narendra Modi, ordered that frequently requested information must be disclosed to the public, through 'Information and Facilitation Centres' established at government departments. The departments were also instructed to set up 'Consultative Committees' of officials experienced in administering the Act to conduct 'transparency audits' and advise government departments on what information should be considered for *suo motu* disclosure. While this development was welcomed by some advocates, they also criticized the lack of a role for recipients of such information in the audit process.[48]

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44. Government of India, Section 4, Right to Information Act, 2005 (Act No. 22 of 2005, as modified up to 1st February 2011).
45. *Ibid.* Section 4 (2).
46. PriceWaterhouseCoopers, *Final Report: Understanding the "Key Issues and Constraints" in implementing the RTI Act,* June 2009.
47. Government of India, Sections 26 and 27, Right to Information Act, 2005 (Act No. 22 of 2005, as modified up to 1st February 2011).
48. "Indian Government Orders More Proactive Disclosure," freedominfo.org, 7 July 2016, *http://www.freedominfo.org/2016/07/indian-government-orders-more-proactive-disclosure/*, [accessed: 19 February 2017]; Mayank Ag-

Bangladesh

Bangladesh's 2009 right to information law has a statutory requirement for proactive publication. Each authority must publish, in an annual report free of charge, information concerning the organisation and function of the authority, laws governing the authority, descriptions of procedures for public access to services of the authority, and details of the place the public may access information. In addition, the authority must publish policy statements and important decisions. The authority is also required to publish matters of public interest through press notes. However, the law does not explicitly require proactively disclosed information to be published online.[49] Finally, Bangladesh's Act codifies an influential role for an Information Commission:

> The Information Commission shall, by regulations, frame instructions to be followed by the authority for publishing, publicising and obtaining information and all the authority shall follow them.[50]

This Information Commission is established separately in the statute with broad responsibilities and powers to ensure government compliance with the law. Under this section, the law obligates the Information Commission to:

> Issue directives for the preservation, management, publication, publicity of and access to information by the authority.[51]

Consequently, with the inclusion of 'publication', the Commission has a significant hands-on responsibility in effecting and promoting operation of proactive disclosure by Bangladesh's government authorities. However, it is not clear from the statute that the Information Commission has jurisdiction to enforce compliance upon the authorities, although it can make recommendations to authorities about any aspect of the Act. For example, authorities did not fully comply with the Commission's order to establish Public Information Officers. Moreover, the Information Commission's penalty provisions are seen as weak and lacking in budget autonomy.[52]

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garwal, "Government departments asked to carry out transparency audits," livemint.com, 2 July 2016, *http://www.livemint.com/Politics/iZ8733tIaLdry0IbLKhq6J/Government-departments-asked-to-carry-out-transparency-audit.html*, [accessed: 19 February 2017]; and "Centre asks depts to publish most sought-after RTI info," *Business Standard*, 30 June 2016, *http://www.business-standard.com/article/pti-stories/centre-asks-depts-to-publish-most-sought-after-rti-info-116063000864_1.html*, [accessed: 19 February 2017].

49. Article 19, *Asia Disclosed: A Review of the Right to Information across Asia, 2015, p. 25.*

50. Right to Information Act, 2009, Act. No. XX of 2009, Sec. 6, and Commonwealth Human Rights Initiative, *The Right to Information Act, 2009; Bangladesh—A Summary*, undated, p. 5.

51. *Ibid.* Sec. 13 (5)(a)

52. The Asia Foundation, *Citizens' Access to Information in South Asia: Regional Synthesis Report*, August 2014, pp. 29-30, 40.

4.3 Recommendations on Proactive Disclosure and the Act

4.3.1 Specific Recommendations on Regulation 20 concerning Proactive Disclosure

The regulations issued under the RTI Act are key to effective implementation of the law. The following recommendations correspond to aspects and elements of Regulation 20 issued by the Ministry of Parliamentary Reforms and Mass Media.

- *Time Periods for Dissemination*: the regulation specifies authorities shall 'routinely' disseminate key information. The frequency of dissemination is imprecise and will lead to a lack of uniform implementation across government. In order to ensure compliance, the Information Commission can distinguish between types of information in terms of immediacy of dissemination. For example, Indonesia's RTI Law 14/2008 makes a distinction between categories of information that a Public Agency must 'announce periodically' (information on activities and performance of authority at least every six months), 'supply…at any time (all public information of authority on decisions, policies, work plan and budget available any time),' and 'announce immediately (information that might threaten the life of the people and public order)'.[53] Sri Lanka's Information Commission can consult with key stakeholders to determine more finite time periods for proactive disclosure.
- *Useable Information*: the regulation stipulates the described information should be disseminated by 'digital or electronic format'. This ensures that the dissemination reaches the broadest possible audience as well as ensures broad transparency and fosters accountability.

  To enhance user accessibility, ministries could also ensure the information is in a format common to users' experience as well as able to be manipulated for research. For example, scanned documents often lack optical character recognition, which make PDFs difficult to search and use for data analysis. In addition, while digital penetration is increasing in Sri Lanka, there are populations, communities and groups that have little or no access to the internet. Similarly, issues of literacy need to be taken into account. Consequently, written, graphic or video products should also be produced of this baseline information and it could be disseminated in bulletins, newspapers, radio and/or television, notice boards or village kiosks, or community centres and transport hubs.
- *Dynamic Proactive Disclosure*: the information listed in Regulation 20 to be proactively disclosed is 'at a minimum', thereby establishing a floor which public authorities should seek to exceed. Although implementing this law will require political capital and

53. Article 19, *Asia Disclosed: A Review of the Right to Information across Asia*, 2015, pp. 23, 32-33.

human and financial resources, exceeding the minimum on proactive disclosure will result in longer-term benefits to both government and society by enhancing public debate and building public trust.

The government could consider reviewing the sixteen categories of information listed in Regulation 20 after a specified time period, to ensure an assessment of whether the list needs addition or revision. The RTI Commission could establish a joint government-civil society committee to contribute to that review and consider additional categories of information, and develop guidelines for public authorities for further proactive disclosure. For example, the Canadian government recently announced mandatory publication on ministry websites of 'travel and hospitality expenses for selected government officials; contracts entered into by the Government of Canada for amounts over $10,000 (with only limited exceptions such as national security); and the reclassification of positions.'[54] Similarly, Sri Lanka could go further than India's internal 'Consultative Committees', and establish joint government-civil society working groups to advise each ministry on proactive disclosure.

- *Public Interest Information in Biannual Reports on Proactive Disclosure:* the regulation encourages public authorities to include in their biannual reports required under Section 8 'such information as may be of interest to the public.' This provision is rather general; it might mean information that is of public interest and should be proactively disclosed, or of public interest because it is the subject of frequent reactive requests under the Act. This lack of definition in this case might not be problematic; the primary aim is to increase overall disclosure in part so that the public is not required to file resource-intensive RTI requests. However, this provision could provide a legal mechanism for disclosing information on sensitive topics relative to that public authority pertaining to public safety, corruption, or other topics.

- *Updating Proactively Disclosed Information:* some countries require annual or more frequent updates of particular documents or categories of information that are required to be proactively disclosed. The Information Commission could define the timeframe for updating, perhaps based on the type of information involved.

- *Online Portal for Access to Proactively Disclosed Data:* the government could create, upon the advice and guidance of the Commission, an online portal that aggregates the proactively disclosed information of all public authorities. A number of countries have instituted such portals, including Taiwan and South Korea.

In addition, existing initiatives on proactive disclosure, such as under the Open Data initiative of the ICTA, could also be aggregated at this portal.

54. Government of Canada, Treasury Board of Canada Secretariat, "Proactive Disclosure," *http://www.tbs-sct.gc.ca/pd-dp/index-eng.asp*, [accessed: 21 February 2017].

4.3.2 General Recommendations on Implementation of the RTI Act

The following recommendations are focused more generally on operational aspects of proactive disclosure.

- *Monitoring, Enforcement, and Encouragement of Proactive Disclosure*: the Commission has roles and responsibilities in terms of setting fee thresholds and ensuring accurate and timely reporting, but much of the onus on proactive disclosure appears to be left to the commitment and efforts of a Minister. Global practice shows that Information Commissions with enforcement powers and statutory autonomy have significant impact on effective operation of RTI laws, and proactive disclosure compliance. The Commission should be allocated specific powers to monitor and enforce proactive disclosure. These might include authority for investigations, orders, and penalties, as well as publicity, both positive and negative, in annual reports as practiced by Canada's Information Commissioner.

  CSOs can encourage adherence to proactive disclosure requirements as well as additional voluntary proactive disclosure by recognizing public authorities that are either exceptional performers or laggard performers. This recognition can be facilitated through public awards or scorecards.

- *Pilot Additional, Voluntary Proactive Disclosure at the Local Level*: voluntary proactive disclosure by local authorities beyond the 'at a minimum' threshold established in Regulation 20 that responds to local issues can serve as a test for addressing similar issues at the national level where they may be more politically sensitive.

- *Centralise the Location of Certain Proactively Disclosed Information on the Public Authority's Main Website*: government could centralize the location of certain information on a public authority's main website, rather than require local offices of decentralized authorities - for example, police stations, hospitals, or schools - to set up, maintain, and update their own website. Instead, the local office of these national authorities would provide terminals for the public to access the information on that main website as well as continue to provide it in other formats accessible to the locality. This practice would help reduce human and financial resource burdens. However, it would need to be reviewed after a defined period to ensure public access has not been hindered.

- *Public Demand for Proactive Disclosure:* CSOs can capitalise on public support for issues such as anti-corruption and public procurement reform to demand proactive disclosure in relation to the above areas. A first step in this effort will be public education on the scope of the law, as well as its procedural requirements. However, global practice has shown the best publicity for an RTI law is its use.

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