

Notable Developments in the Progress of the Right to Information Regime in Sri Lanka

2023- First Quarter of 2024

1. Context and Key Developments

1.1 Right to Information (RTI) Act

In Sri Lanka, the fundamental right to information was introduced by an amendment made to the Constitution¹ in 2015². Not long after, the Right to Information Act, No. 12 of 2016 (RTI Act) was passed into law in 2016 and came into effect on February 4, 2017.³ In 2015, Sri Lanka became the 68th signatory to the Open Government Partnership (OGP) shortly after it constitutionally incorporated the Right to Information (RTI) through the 19th Amendment enacted in 2015. The enactment and implementation of an RTI Act, together with the establishment of the RTI Commission has turned out to be in fulfillment of one of the first 13 OGP Commitments made in 2016. The RTI Act, hailed as a landmark legislation and watershed moment in the country's public governance history, was ranked 4th globally and 2nd in Asia on the Canadian based Center for Law and Democracy's Global RTI index.

In September 2023, the RTI Act and the work of the RTIC has been assessed by the International Monetary Fund in its recent Governance Diagnostic Report issued in the context of Sri Lanka's debt restructuring as an 'outstanding example' of transparency (see, from pp 42 onwards)⁴ in regard to which the IMF has called upon the Government of Sri Lanka to strengthen the capacity and competencies of the Commission, not to enact future laws that will strip the Act of its effectiveness and emphasized the need for policies and rules around anti-terrorism, anti-corruption and privacy laws not to shut out the reach of the Commission. The Commission has moreover been requested to exercise oversight over the proactive release of procurement data by the Ministry of Finance.

1.2 Right to Information Commission (RTIC)

The RTIC was established on 01.10.2016 under Section 11 of the RTI Act as a body corporate with perpetual succession and having a common seal. The RTIC is the main monitoring and enforcement authority as well as primary appeal hearing body under the Act and has issued rules and regulations *inter alia* determining fees for the release of information and the appeal procedure under the Act, as specified in the Right to Information Rules of 2017 (Fees and

¹See the 19th Amendment to the 1978 Constitution of Sri Lanka

²However, the Supreme Court of Sri Lanka has long recognized that the Constitution implicitly recognized the right to information. See; *Fernando v. the Sri Lanka Broadcasting Corporation* ([1996] 1 Sri. L.R. 157, *Visuvalingam v. Liyanage* (1984) 2 Sri.L.R. 123, *Environmental Foundation Limited v. Urban Development Authority* (2005)

³ The Official Gazette version of the Act in English is available at: http://www.news.lk/images/pdf/RTI-Act-SriLanka_E.pdf.

⁴ Vide; <https://www.imf.org/en/Publications/CR/Issues/2023/09/29/Sri-Lanka-Technical-Assistance-Report-Governance-Diagnostic-Assessment-539804>

Appeal Procedure), published in Gazette No.2004/66 on February 03, 2017. The RTIC is further empowered to recommend disciplinary action against Information Officers whose actions violate the Act and has the power to take legal action against persons who do not adhere to the decisions of the Commission. As of this date, eleven prosecutions have been instituted for non-compliance to orders of the RTIC under Section 39 of the Act in the Magistrate's Court against several Public Authorities, including universities, cabinet ministries and government departments.

1.3 Citizens' Filing of RTI Requests in 2023-1Q, 2024

Section 3(1) of the RTI Act states that, subject to Section 5(1) of the RTI Act which details fourteen narrow exceptions which are however subject to the public interest override (Section 5(4), every citizen shall have a right of access to information which is in the possession, custody or control of a Public Authority. Section 43 of the RTI Act defines "Public Authorities" broadly to include all constitutional and statutory bodies from the Office of the President downwards with no exceptions, all educational institutions, the judiciary as well as non-governmental organisations and State-owned enterprises and private bodies which undertake public functions or operate with public funding.

During this period, the use of the RTI Act by Sri Lankan citizens continued to be as vigorous as in previous years. Information requests were filed to the Office of the President, the Office of the Prime Minister, the Cabinet, key national entities and several other prominent state sector enterprises including banks regarding matters ranging from the use of funds by Presidents downwards for local and overseas travel to procurement procedures and recruitments and promotions of employees. Parents filed RTI requests asking for information on admission of children to schools in a background where the admission process is governed by corruption (i.e. bribing of principals and political influence to prefer one child over another more meritorious child). Teachers filed RTIs to check on recruitments, promotions and dismissals in the context of alleged unfair procedures; citizens filed requests in regard to information on disbursements of school funds etc.

The employing of the RTI Act against non-state entities, including private banks, private media companies (television) and private insurance companies became more pronounced in the first quarter of 2024, testifying to an important expansion of the Act beyond Government entities. Where universities and educational institutions are concerned, the subject-matter of requests to universities largely concerned relating recruitment, promotion etc; investigations or enquiries conducted within universities; details of students enrolled, examinations and examination scripts, amongst others. Information requests have been made by the concerned person as well as third parties. Assessment criteria for appointments of Vice Chancellors, recruitments and promotions of university staff, appointment letters and description of payments made to staff, interalia have been directed to be released.

1.4 Important Policy Changes Arising from RTI Use

Release of information continued to impact on changes in State policy and practice during previous months. Some examples were the Government's proactive publication of criteria for obtaining Samurdhi (welfare) benefits by some Public Authorities; the publication of policies, directives and circulars by Ministry of Education; maintaining of records not previously maintained for example, the RTI Commission order to disclose Presidential Commission of Inquiry reports has led to the Department of National Archives to implement legal provisions requiring mandatory submission of such reports; information requests on financial statements of political parties led to publishing such information on Election Commission's website.

An RTI disclosure by a journalist on expenses related to Chairmen of dissolved Provincial Councils (PCs) unveiled glaring misuse of public funds. This included the revelation that continuous payments out of the public purse were being made as salaries for Chairmen of inactive PCs in addition to the salary payments for their personal staff, vehicles and fuel allowances.⁵ Following the story, the Government took steps to control the expenses of chairmen of dissolved PCs and their personal staff in 2023.

Most importantly, an appeal order of the Commission to the Department of the Police regarding the release of information on the importation of tear gas canisters to Sri Lanka which had been used against protestors disclosed that the tear gas so used were outdated and poisonous; this resulted in the Department of the Police being summoned to Parliament and new protocols put into place for the importation of tear gas to Sri Lanka.⁶ Other disclosures included an investigation report commissioned by the Ministry of Justice regarding a State Minister who had abused his powers to brandish a gun and threaten prisoners of minority ethnicity at the Welikada and Anuradhapura Prisons.⁷

Further, in *Transparency International Sri Lanka (TISL) v Presidential Secretariat (RTIC Appeal 06/2017)*, the Commission ordered the Presidential Secretariat to disclose certified copies of assets and liabilities of then Prime Minister Ranil Wickremesinghe for 2015 and 2016. The Commission rejected the Presidential Secretariat's reasons to deny the request on privacy

⁵Ali R, "Dissolved PCs Drain Millions from Public Coffers" (*Ceylon Today*, April 17, 2022) <https://www.lankaweb.com/news/items/2022/10/23/chairs-staff-of-dissolved-pcs-get-slashed-allowance/>

⁶Police Ordered to Reveal Tear Gas Truth before 14 November. <https://www.themorning.lk/police-ordered-to-reveal-tear-gas-truth-before-14-november/>

⁷ <https://ceylontoday.lk/2023/06/10/csr-urges-ag-to-act-against-ratwatte-based-on-rti-evidence/>

and parliamentary privilege. That decision was appealed by the Presidential Secretariat to the Court of Appeal where the case is yet pending. Similarly, in *Chamara Sampath v Parliament of Sri Lanka (RTIC Appeal 719/2018)*, the Commission directed Parliament to release the list of names of Members of Parliament (MPs) who have handed over their respective Declarations of Assets and Liabilities in 2018, which was also appealed by Parliament which led to the Court of Appeal upholding the decision of the Commission in 2023.

In 2023, Sri Lanka enacted a new anti-corruption law which compels elected officials and Public Officials to periodically declare their assets and liabilities within and outside Sri Lanka. The Act provides for a centralised electronic system for the submission of such declarations and allows for reference to be made to such declarations by appropriate authorities and for investigations to be conducted. It also provides that the centralized electronic system shall automatically generate a ‘redacted version of every declaration of assets and liabilities’ which would be accessible to the public through an IO and DO appointed in terms of the RTI Act. It also makes provision for “appropriate measures” to be taken in respect of late submissions, non-declaration of assets and liabilities, and against false declarations.

2. Development of the Law in 2023-1Q, 2024 - Decisions of the Commission upheld by the Court of Appeal

Under Section 34 of the Act, any citizen or Public Authority aggrieved by the decision of the Commission may appeal to the Court of Appeal within one month of receiving the decision. Between 2018 and 2023, 25 appeals are pending before the Court of Appeal accordingly. Below are examples of recent judgements of the Court of Appeal upholding decisions by the RTIC in reinforcing principles of transparency and accountability.

In *K.A.Rohanadeera and Dhammika Dassanayake Vs Chamara Sampath and others (CA/RTI/0004/2021)*, decided on 28.02.2023, the Court of Appeal ruled that the RTI Act No.12 of 2016 prevails over the Declaration of Assets and Liabilities Law, No.1 of 1975 and upheld the decision of the RTIC in favour of a journalist who had requested a list of MPs who submitted their asset declarations from 2010 to 2018. The Court of Appeal affirmed the right of the public to know if MPs comply with asset declaration laws and underscored the role of the RTI Act in promoting transparency and accountability.

In *Litro Gas Lanka Limited and other Vs W.K.S. Karunarathne and others (CA/RTI/REV/08/2022)* decided on 12.02.2024, the Court of Appeal affirmed the decision of RTIC requiring Litro Gas Lanka Limited and Litro Gas Terminal Lanka (Private) Limited, Sri Lanka’s largest supplier of cooking gas to disclose details of the monthly salaries and allowances of their top management, including loans and interest owed, rejecting grounds of commercial interests, trade secrets, and privacy. This was deemed to be in the public interest, particularly in light of substantial salary increases amid the financial crisis in 2022. Despite privacy concerns,

the public interest in transparency regarding public funds prevailed. The judgment emphasized the role of RTI Act in enabling citizens to hold the state accountable, dismissed Litro Gas’s claim of the requester’s malicious intent and affirmed that citizens do not have to provide reasons for requesting information.

In *Bank of Ceylon Vs Right to Information Commission and other (CA/RTI/REV/05/2021)*, decided on 12.02.2024, the Court of Appeal upheld the decision of RTIC to disclose information of candidates who sat for a competitive examination conducted by the Department of Examinations to recruit Trainee Staff Assistants to the Bank of Ceylon, dismissing the refusal by the Bank to release information based on privacy and harm examination integrity. The Court ruled that the disclosure related to public activity and interest, emphasizing that the concerned citizen represented broader public interests.

In *Sri Lanka Ports Authority Vs A A M Rifthi Ali (CA/RTI/07/2022)*, decided on 10.05.2024, the Court of Appeal agreed with the decision of the RTIC that the Sri Lanka Ports Authority (SLPA) had to apply the fee schedule prescribed by the Commission (in Sri Lanka Rupees) and not its own tariff schedule (in USD) when charging for information to be released under the RTI Act. This was based on the Commission and the Court finding that there was lack of mandatory ministerial approval for SLPA’s tariff schedules.

3. Statistical Data on Appeals heard by the Commission– 2023

3.1 Statistics on appeals received, heard and determined

Appeals Received	Amount	Appeals heard by the Commission	Amount
Opening Balance of Appeals	414	Total Number of Appeals heard by the Commission	1324
Number of Appeals received during year 2023	1688	Number of defective appeals identified by the Commission	364
		Number of Adjournd Appeals	64
		Number of Appeals set aside	21
		Total number of Appeals carried forward to 2024	329
Total Number of Appeals	2102	Total number of Appeals heard by the Commission	2102
Total number of appeals heard and decisions issued by the Commission during the year 2023			1500

3.2 Categorization of Appeals by Province

No.	Year	2018	2019	2020	2021	2022	2023
	Province						
1	Northern	48	69	71	82	116	181
2	North Western	26	17	34	21	73	99
3	Western	338	443	226	239	446	646
4	North Central	43	30	16	21	60	74
5	Central	77	74	83	80	215	175
6	Sabaragamuwa	35	64	30	63	67	95
7	Eastern	75	113	112	30	168	150
8	Southern	143	188	145	268	352	225
9	Uva	15	31	12	21	28	43
	Total	800	1029	729	825	1525	1688

4. Engagement with the Public Authorities, Civil Society Organizations (CSOs) and the Public - 2023/2024; Emphasizing Proactive Disclosure

4.1. General Advocacy

In 2023, the Commission conducted consultations across all provinces for Public Authorities and launched a Training Handbook on RTI for police officers as well as conducted advocacy programs with citizens and the media in the Southern, Central and Northern provinces with the collaboration of Sri Lanka's national civil society organisations (CSOs). These programs were continued in 1Q, 2024.

4.2 Proactive Disclosure

The Commission continued to emphasize the proactive disclosure of information by Public Authorities which requires voluntary release of information in relation to salaries of public officials⁸, details of recruitments to Public Authorities⁹, internal policies¹⁰, government structures, proposals and so on. During 2023/1Q, 2024, the Commission initiated consultations with senior officials of the President's Office, Prime Minister's Office, and Cabinet Ministries

⁸See; *W.K.W. Deshapriya v Information and Communication Technology and Agency (ICTA)* RTIC Appeal 169/2021, *T. Rusiripala v People's Bank* RTIC Appeal 774/2019

⁹See; *M. Fasly v National Insurance Trust Fund* RTIC Appeal 2211/2020,

¹⁰See; *Pulasthi Hewamanne v Human Rights Commission of Sri Lanka* RTIC Appeal 2322/2020

and commenced an island wide training for Public Authorities on adherence to proactive disclosure obligations under Sections 08, 09 and 10 of the RTI Act,

These consultations particularly focused on the imperative duty of Ministers 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’ (Section 09). This duty applies to foreign funded projects above, one hundred thousand United States dollars; and locally funded projects above five hundred thousand rupees.

5. Future Challenges

The RTI Act continued to play a central role in establishing a culture of transparency and accountability amongst Sri Lanka’s Public Authorities during the period under review. Despite this, several challenges remain. Although the RTI Act imposes obligations of “proactive disclosure” on Public Authorities under Sections 08 and 09 and 10, compliance is limited. Further, budgetary constraints of the RTI Commission directly impact the efficacy of its functioning and need to be urgently addressed through a) the direct channeling of funds to the Office of the Commission in terms of Section 16(1) of the RTI Act and b) increase in the budgetary limits.