

South Asian Forum

Strengthening Access to Information in South Asian Countries as a Mechanism of Transparency against Institutional Corruption

Resolution 01/01

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The South Asian Forum,

Reminding all State Parties about their obligation to ensure the right to freedom of opinion and expression, and the need to receive and impart information in accordance with article 19 of the Universal Declaration of Human Rights,

Recognizing the right of South Asians to freedom of expression; including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice,

Affirming the obligation of all State Parties to the International Covenant on Civil and Political Rights,

Welcomes all actions taken by State Parties towards minimising corruption, and strengthening transparency and accountability.

Recognizing the multilingualism, multiculturalism and multiethnic society in South Asian countries,

Affirming the values of democratic participation, mutual understanding between governments and the people,

Taking into consideration the Independence, Territorial Integrity and Public Security of the State Parties,

Keeping in mind that State Parties should be allowed to exclude disclosure of information based on reasonable grounds, including national security interests, national economic interests, national elections, foreign affairs, commercial interests, unwarranted invasion of privacy and other such interests,

Bearing in mind the need for public agencies of State Parties to provide information related to their performance and financial reports,

Keeping in mind the applicants can request not only written documents but any forms of information,

Recalling the growing factor of financial illiteracy in South Asia,

Noting with regret the irresponsible actions and misconceptions among authorities in executing Right to Information requests with State Parties,

Noting with regret the time taken by relevant authorities to provide the information requested under the RTI Acts,

Deeply disturbed by the threats and harassment faced by journalists, non-governmental organisations and other citizens who make RTI petitions,

Acknowledging the instability, corruption, and lack of transparency as the major issues that are obstructing the growth of South Asia,

Stressing the need for improved internal efficiency within governmental departments and government record management within the State Parties,

Observing the tendency of State Parties to withhold the information created for a public purpose in the name of commercial confidentiality,

Observing the lack of knowledge among the citizens of South Asia regarding the Right to Information,

01. Strongly urges all State Parties to guarantee the Right to Information to all citizens and include this right in the Fundamental Rights Chapter of the State Party's Constitution;
02. Calls upon all State Parties to ensure the access to the Right To Information to all citizens;
03. Reaffirms the adoption of relevant provisions of UDHR and ICCPR by enacting enabling legislation;
04. Declares Right to Information to be recognized as an independent human right;
05. Invites all State Parties to allow RTI acts to prevail over other laws. (concerned by the RTI laws not being applicable to the Office of Missing Persons Act in Sri Lanka);
06. Requests all exceptions of the RTI act be drawn clearly and narrowly;
07. Encourages maximum disclosure to be ensured by amending or repealing laws that do not provide for it;
08. Declares accordingly that all public authorities, including;
 - a. A Ministry established by a Government of the State Party;
 - b. Any constitutional or statutory body within a State Party;
 - c. Any government department;

- d. Any public corporation;
- e. Any state-level authority within a federal State Party;
- f. Any provincial-level authority within a State Party;
- g. Any institutions established for the administration of justice
- h. Any local authority;

shall be subjected to such act that would enable the Right to Information within a State Party;

09. Calls upon all State Parties to establish a legitimate structure for systematic implementation of the Right to Information in accordance with a Right to Information Act which shall include;

- a. An Information Officer - to whom the initial RTI request is made to by a citizen of a State Party;
- b. A Designated Officer - to whom the citizen aggrieved by the decision of the Information Officer can appeal to;
- c. A Right to Information Commission - to which the citizen aggrieved by the decision of the Designated Officer can appeal to;
- d. The Court of Appeal - the final entity to which the citizen or public authority aggrieved by the decision of the Right to Information Commission can appeal to;

10. Recommends all public authorities that are a subject of the Right to Information Act to appoint trained and well-guided public service officials for the post of Information Officer;

11. Encourages all public authorities that are a subject of the Right to Information Act to employ trained and well-guided public officials for the post of Designated Officer;

12. Further recommends the establishment of the Right to Information Commission to overlook the functionality of the system and to facilitate all citizens to exercise their Right to Information;

13. Further invites the Courts of Appeal of all South Asian countries to ensure the transparency and accountability of the government;
14. Emphasizes the necessity to appoint qualified officials to guarantee the smooth operation of the system;
15. Emphasizes the need for granting a request for Right to Information to be regarded as the rule, and the refusal to grant such request be the exception;
16. Further invites State Parties to consider the overarching public interest in every Right to Information request, and encourages State Parties to reconsider exceptions based on such public interest;
17. Endorses the non-disclosure of information under Right to Information, if the information;
 - a. Undermines the national security, defence and territorial integrity of a State Party;
 - b. Seriously prejudicial to the State Party's foreign relations with other States or international obligations;
 - c. Infringe the powers and privileges of the national or state legislature(s);
 - d. Seriously unfavourable for the prevention or detection of any crime, and the apprehension or prosecution of offenders;
 - e. Exposes identity of a confidential source of information relating to national security or law enforcement;
 - f. Detrimental to the economy of the State Party;
 - g. Includes trade secrets or intellectual property that would harm the competitive position of a third party, unless a large public authority warrants the disclosure of such information;
 - h. Includes medical records relating to a person, which they have not consented to disclose;
 - i. Include personal information which has no relationship to any public interest, and would cause an unwarranted invasion of privacy, without the consent of such a person to disclose such

information, unless the large public interest justifies the disclosure of such information;

18. Requests all State Parties to hold public officers and relevant authorities accountable for not responding to or committing offences regarding RTI laws. The offences are as follows;

- a. Giving incorrect, incomplete or inaccurate information;
- b. Destroys, invalidates, alters or conceals information;
- c. Fails to appear before the Right to Information Commission;
- d. Appears before the Right to Information Commission, but refuses to be examined or provide information, or provides false information upon oath;
- e. Does not give effect to a decision of the Right to Information Commission;
- f. Obstructs the work of the Commission;

19. Further requests the RTI commissions of the State Parties to institute legal action by way of prosecution in the Magistrate's Court or any other relevant court when any individual commits an offence or violates RTI laws;

20. Deplores the usage of broad language in the descriptions of the restrictions to RTI in the act;

21. Recommends that all private entities that provide a public service or have been substantially invested in by the government are applicable to the RTI act, with special emphasis on;

- a. Private entities that have a substantial impact on the rights of a citizen;
- b. The State Party is a beneficiary of the activities carried out by the organisation;
- c. The State Party exercises a high degree of control over the private entity, or the private entity was incorporated by a statute;
- d. Any department, authority, or institution established or created by a Provincial Council;

- e. Private entities or organisations which carry out a statutory or public function or service under a contract, partnership, agreement or licence from the government, its agencies or from a local body but only to the extent to activities covered by that statutory or public function or service;
22. Urges all private entities to create a regulation committee that ensures the smooth release of all information;
23. Suggests that all private organisations receiving aid from the government should also fall under RTI to increase the accountability of private entities and the misuse of government funds;
24. Further encourages the state to declare information related to individuals deemed as confidential, and the release of said information leads to the same circumstances as violating the Right to Information;
25. Recommends that the state consider Non-Governmental Organisations that are registered without having a profit motive, substantially funded by a State Party or any public authority, be considered under the RTI act keeping in mind that any entity which fails to comply with said RTI act should be released of the privilege of tax exemptions and government fundings;
26. Further requests State Parties to include the disclosure of State Officials' Declaration of Assets and Liabilities in the Right To Information Act;
27. Encourages State Parties to adopt disclosure laws which require officials to submit a Declaration of Assets and Liabilities for themselves and their family members;
27. Calls upon all State Parties to include the following information to be mandatory in the Declaration of Assets and Liabilities;
- a. Disclosure of all types of income as well as gifts and sponsored travel, including disclosure of the identification details of the legal

entity or individual who was the source of the income, gift or sponsored travel;

- b. Disclosure of national and foreign bank accounts and safe deposit boxes (vaults) to which the declarant or family members have access, even if formally opened by another person;
- c. Loans given or received by the public official, including to/from private individuals;
- d. Deferred corporate rights (e.g. options to purchase shares) and investments regardless of their form;
- e. Disclosure of expenditure above a certain threshold. this is essential to track significant changes in wealth by comparing income, savings and expenditures over time. Expenditures should cover not only the acquisition of assets but also payment for services and works;
- f. Disclosure of interests not related to income or assets, notably contracts with state entities of the declarant and family members or companies in their control, prior employment, and any link with legal entities and associations (e.g. membership in governing bodies);

28. Requests State Parties to adopt legislative and institutional conditions that provide the basis for effective verification systems that include;

- a. A clear legislative framework that establishes the verification mandate, its triggers and scope;
- b. Verification procedures that streamline the verification process and prevent unnecessary impediments (e.g. short time limits for verification procedures or the possibility to challenge each step of the proceedings);
- c. Use of a risk-based approach to trigger and prioritise verification when inherent risks are found in the disclosure form, such as the position/duties of the declarant. Systems which automatically trigger the verification on formal grounds (e.g. late submission) are ineffective as they overburden the verification agency,

- especially for systems where the number of disclosures is substantial and not matched with the resources to verify them;
- d. When the number of mandatory verifications is substantial, the verification agency has to prioritise its work by focusing on high-risk declarations. Such prioritisation should be transparent and based on clear criteria limiting discretionary decision-making. The system may categorise declarations submitted by certain top officials as high-risk by default, which will give credibility to the system and avoid focus on low-level officials or petty inconsistencies;
 - e. External signals (e.g. media reports, complaints of citizens or watchdog NGOs, referrals from other authorities) should take priority. The agency should verify them if they give rise to a substantiated suspicion of irregularity. Anonymous reports about verifiable facts should also be included;
 - f. The verification should include IT solutions that automate certain operations. Such solutions can perform a risk analysis of each declaration, compare several declarations of the filer or compare with declarations of similar filers. Applying analytical software to the disclosure data can help to find patterns that can be then used to develop red flags for future verifications;
 - g. Cross-checking disclosures with other government-held registers and databases is an important element of the verification that effectively uses government data. The system can also automate such cross-checks and perform them shortly after the declaration is filed or even at the time of the submission;

29. Emphasizes the need for verification agencies that are not law enforcement bodies to have sufficient powers and resources to perform its duties, and powers that include access to government registers and databases, including tax information, company register and registers of real estate and vehicles, right to obtain information and records from public and private

entities, access to banking and other financial data, and the possibility to request or access information abroad;

30. Further invites State Parties to ensure that the verification agencies may take a number of measures, for example;
 - a. Raise the technical expertise of their staff by providing training on the available open-source information and use of foreign jurisdiction registers;
 - b. Establish a legal mandate and the technical capacity of the verification agency to get and use information from foreign ownership registers for verification purposes;
 - c. Develop relations and sign information exchange agreements with verification agencies in other jurisdictions, especially in neighbouring countries where declarants often acquire or keep assets;
 - d. Join and support regional initiatives for information exchange on the assets and interests of public officials;
31. Encourages State Parties to make data from asset and interest disclosures available online free of charge with no technical barriers for the public view in order to ensure transparency;
32. Reminds to disclose all information that could be provided to the public as per the Right to Information Act of each country;
33. Further invites State Parties to take steps to strengthen laws relating to the safety of journalists, non-governmental organisations and other requesters of information under RTI;
34. Draws attention of all State Parties to provide accessibility to the requested information in the preferred language of the requester;

35. Encourages State Parties to provide incentives for bureaucrats who perform well in relation to providing information under RTI and enhancing transparency;

36. Encourages State Parties to take steps to strengthen public awareness and establish a mechanism for proactive disclosure with the use of ICT.
