

## RESEARCH BRIEF

# W(H)ITHER ENVIRONMENTAL GOVERNANCE?

Limited access to information undermines meaningful public participation in development projects

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## 1. INTRODUCTION

There is a surge in public agitation against environmental destruction caused by ongoing development projects in Sri Lanka. Recently, the public displayed strong opposition against the implementation of the Central Expressway due to the damage likely to be caused to the highly endangered *Crudia Zeylanica* species of flora.<sup>1</sup> Even in general, the public continues to actively denounce several development activities due to the resulting widespread deforestation and ecological destruction.<sup>2</sup> The surfacing of environmental issues after construction has commenced is highly problematic for two reasons. First, the construction may have already caused damage to the environment, which may be irreversible in certain cases. Second, the revising of original project plans to mitigate environmental damages can result in delays and increased costs. In respect of projects that are funded with public money, the burden of increased costs caused by delays and project revisions will ultimately be borne by the people.<sup>3</sup>

A mechanism used globally to protect the environment and avoid such costly readjustments and delays is to conduct an Environmental Impact Assessment (EIA) prior to commencing a project. An EIA is a consultative scientific process, which aims to “avoid, reduce or mitigate potential adverse impacts through the consideration of alternative options, sites or processes.”<sup>4</sup> A successful EIA framework ensures that environmental issues are raised as early as possible and that such issues are routinely addressed as the project continues to gain momentum and throughout its implementation.<sup>5</sup> However, public participation from the early stages of EIA preparation is critical to achieve this outcome. Public participation helps resolve issues before they lead to conflict and reduces financial losses.<sup>6</sup> Furthermore, increased public participation enables the harnessing of local knowledge and creates a sense of legitimacy and ownership of the project in the eyes of the public.<sup>7</sup> Principle 10 of the 1992 Rio Declaration aptly captures the importance of public participation. It states that:

*“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*

As highlighted in Principle 10, the availability and accessibility of information is critical to enabling meaningful public participation. Access to information empowers citizens to participate in decision making processes in an informed and constructive manner.<sup>8</sup> Access to information throughout the EIA process also enhances the public’s confidence in the process and of the project, reducing the probability of public opposition once the construction has commenced. Thus, proactive publication and dissemination of information serves two crucial purposes: 1) it imbues the EIA process with transparency and legitimacy; and 2) it equips the public with information and data to enable them to effectively participate in the EIA process.

This research brief finds that the ability of Sri Lanka’s public to meaningfully participate in the EIA process is severely hampered by limited access to vital information. This brief identifies a number of gaps that exist in Sri Lanka’s EIA framework with respect to the disclosure of information and documents. These are: 1) the gaps in information disclosure in Sri Lanka’s EIA laws and regulations; and 2) the gaps in Sri Lanka’s EIA practice with respect to information disclosure.

## 2. GAPS IN SRI LANKA'S LAWS AND REGULATIONS

The best practices on EIA processes recognise that the 'public has a right to be informed early [of proposed projects that may affect them] and in a meaningful way'.<sup>9</sup> Accordingly, an effective EIA framework is premised on the principle that 'relevant information must be provided in a form that is easily understood by non-experts (without being simplistic or insulting)'.<sup>10</sup>

Therefore, to incentivise public participation and build confidence in the EIA process, it is important for the public to have access to vital documents. Examples of such documents and information include: a) pre-feasibility reports; b) environment scoping reports; c) the Terms of Reference (TOR) that defines the boundary of the EIA; d) the final EIA report; e) reports/recommendations of technical committees; f) comments made by the public in response to the findings of the EIA; g) responses of the project proponents to public comments; h) approval letters issued by the project approving agencies; i) environment management plans; and, j) monitoring reports.

### 2.1. Key Findings: gaps in laws and regulations

Sri Lanka's EIA framework is encapsulated in four statutes, which are briefly outlined in Box 1. Within this framework, two key gaps were identified with respect to accessibility of information. First, the legal framework does not obligate the relevant authorities to disclose EIA information. Second, it was identified that there is no obligation on the relevant authorities to make information available in an easy to comprehend format.

#### BOX 1 - AN OVERVIEW OF THE EIA LEGAL FRAMEWORK IN SRI LANKA

To contend with the environmental implications arising from the different types of development activities, Sri Lanka has introduced EIA processes and procedures that are required to be followed before implementing development activities. These processes and procedures are contained in several laws that are applicable to different geographies. A brief description of the applicable legislation is provided below.

##### **National Environment Act No. 47 of 1980 (NEA)**

The NEA, which established the Central Environmental Authority (CEA), sets out the EIA framework that is applicable to projects undertaken in all areas of the country, except the North Western Province and coastal areas.<sup>11</sup> The types of projects to which the NEA framework applies are specifically prescribed based on their magnitude and location of implementation.<sup>12</sup> In 1993, the National Environmental (Procedure for Approval of Projects) Regulations ('NER') were passed, which sets out procedural steps for conducting EIAs under the NEA.<sup>13</sup>

##### **Coast Conservation Act No. 57 of 1981 (CCA)**

The CCA established the framework for the Department of Coastal Conservation and Coastal Resource Management (CCD)<sup>14</sup> and is applicable to all areas constituting the 'coastal zone'.<sup>15</sup> The 2011 amendment to the CCA set out the EIA procedure to obtain a 'Permit' for proposed projects in the coastal zone.<sup>16</sup>

##### **Fauna and Flora Protection Ordinance (FFPO)**

An amendment made to the FFPO in 2009 authorises the Director-General of Wildlife to request that an EIA report be published prior to implementing any development activity within a distance of one mile from the boundaries of any national reserve.<sup>17</sup>



### **North Western Province Environmental Statute No. 12 of 1990 ('NWPES')**

The North Western Provincial Council enacted the NWPES, which established the North Western Province Environmental Authority.<sup>18</sup> This Authority is vested with powers to regulate all environmental matters within the North Western Province,<sup>19</sup> and as such, the operation of the NEA is suspended in the North Western Province.<sup>20</sup> The NWPES prescribes a separate EIA procedure that is required to be followed by projects that are proposed in the North Western Province.

#### **2.1.1 The lack of legal obligation to disclose information**

Except for the disclosure of the final EIA report for public inspection, the NER, CCA, FFPO, and the NWPES are all silent on the proactive disclosure of any other information during the EIA process.<sup>21</sup> An EIA is typically a technical and consultative exercise involving the gathering of information on the proposed project and its environmental concerns. Such information is materialised through feasibility reports, Terms of Reference documents, minutes of meetings for public/stakeholder consultation, evaluation reports, and baseline data documents. The inability to access such information constrains the public from being able to independently assess the comprehensiveness of an EIA process for a proposed project.

There are, however, examples from other jurisdictions in which the legal frameworks explicitly require project proponents to carry out an array of 'information, education, and communication' activities to empower the community on EIA matters.<sup>22</sup> These activities include information dissemination campaigns, organising field visits, affixing posters in strategic locations regarding the details of the project, publicising the anticipated effects and other details of the project in the newspaper or on national radio etc.<sup>23</sup> Public authorities are also legally obligated to allow the public to access any 'information or documents... in connection with an environmental impact assessment', as well as decisions taken by the public authorities on EIAs and the reasons for such decisions.<sup>24</sup> For instance, the EIA regulations of Kenya require the approving authority to specifically take into account the 'comments made by a lead agency and other interested party' when making a decision, and to record the reasons for the decision in writing.<sup>25</sup>

#### **2.1.2 The lack of legal obligations to disclose information in digestible forms**

The EIA laws of Sri Lanka do not impose any obligations or rules requiring the authorities to make vital information available in easy-to-understand formats in all three languages (i.e., Sinhala, Tamil and English). EIA documents, particularly the final EIA report, are highly technical, as they involve assessments of prevailing environmental & geographical conditions, biodiversity, project planning, and implementation. Therefore, even if the public were to be given access to key documents such as the EIA report, language constraints and the technical nature of the information restrict the public's ability to comprehend and meaningfully respond to the findings of such documents.

Comparative analysis reveals that the disclosure of EIA information in local languages and in summarised or easily digestible formats should form part of the obligations of public authorities and the project proponent.<sup>26</sup> There are examples from other countries where government agencies are required to assist in translating and sharing EIA information in "print media, newsletters, leaflets/booklets for the benefit of those well-educated stakeholders (i.e., teachers, pastors, local councillors, chiefs and other community leaders) in order for them to also reach illiterate members of communities."<sup>27</sup>

The lack of a legal obligation in Sri Lanka's EIA framework to proactively disclose certain vital information during the EIA process and to make highly technical information available to the public in a simple, easily understandable

manner, severely undermines meaningful public participation. This, in turn, may result in the EIA failing to identify and mitigate issues that the public considers to be important, which leads to low confidence among the public in the EIA process. A lack of confidence in a proposed project by the public is likely to increase the probability of opposition to projects at a later stage leading to unnecessary costs and delays.

### 3. GAPS IN SRI LANKA’S EIA PRACTICE

To assess the ease of accessing information in practice, Verité Research investigated the availability of information related to 10 projects which required conducting an EIA prior to the commencement of the project.<sup>28</sup> The 10 projects included six projects funded by China and four projects funded by Japan, Sri Lanka’s largest bilateral lenders for infrastructure development. The projects selected were the highest value projects financed in the period 2005–2018 in the following five sectors: 1) Roads and Bridges; 2) Energy; 3) Ports; 4) Railway; and, 5) Water Supply and Sanitation. These projects were implemented by seven different government agencies/ministries. Of these 10 projects, seven were approved by the CEA, one was approved by the Ministry of Agriculture (MOA) under the concurrence of the CEA and the remaining two were under the purview of the CCD.

To assess accessibility of information, Verité Research sought access to eight key documents that the relevant agencies are required to compile when following the EIA process outlined in the country’s legal framework. These documents are also critical for gauging the level of compliance with the EIA process. Table 1 provides details of the 10 projects and the eight documents.

The analysis looked at the ability to access these documents online as well as offline. First, the availability of information online was assessed by perusing the websites of the proponent of the project as well as its project approving agency. Second, the ability to access information offline was assessed by filing right to information (RTI) applications with the relevant authorities under the RTI Act No. 12 of 2016. Under the RTI Act, Sri Lankan citizens can request disclosure of information from any public authority. As such, the gaps in the EIA laws in terms of proactive information disclosure could be overcome to some extent by having recourse to the RTI Act.

**Table 1 - List of projects and documents**

List of projects	List of documents
1. Puttalam Coal Power Plant (2005)	1. Terms of Reference that outline the boundaries of the EIA
2. Hambantota Port (2007)	2. Notifications calling for public inspection of the EIA report (for the reactive disclosure study)/ EIA report (for the proactive disclosure study) <sup>29</sup>
3. Southern Highway II (2008)	3. Public comments on the EIA report
4. Kandy City Wastewater project (2010)	4. Response by the project proponent to the public comments
5. Mattala Airport (2010)	5. Formal approval from the project approving authority
6. Greater Colombo Urban Transport Development (GCUTD) 2 (Outer Circular Highway)(2008)	6. Public notification of the approval <sup>30</sup>
7. Moragahakanda Agricultural Development project (2012)	7. Environment Management Plan (EMP)/ Environment Management Action Plan (EMAP)
8. Matara Beliatta Railway (2013)	8. Monitoring reports
9. Ext. Expressway Matara to Mattala (2014)	
10. New Kelani Bridge (2014)	

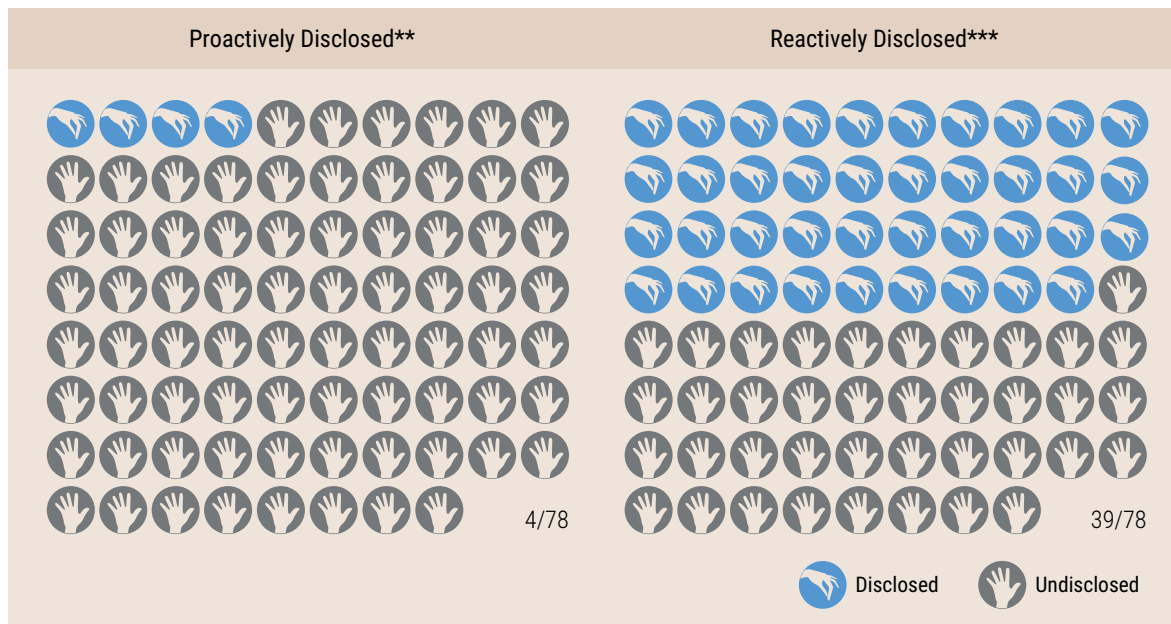
### 3.1. Key Findings: gaps in practice

The analysis revealed four gaps in the actual level of disclosure of EIA information/documents. First the level of proactive disclosure of information online is significantly low. Second, only half of the information sought was accessible via RTI requests. Third, the public’s ability to effectively exercise the right to information is severely hampered by the excessive time taken, and finally, the charges levied by certain government agencies to disclose information is grossly excessive.

#### 3.1.1 The accessibility of information online is low.

In the present age, the most cost-effective means of reaching a wide audience in a timely manner is the publication of information online.<sup>31</sup> The relevant government agencies/entities that implemented and approved the projects have their own official websites. However, the analysis reveals that the proactive disclosure of information on the websites of the relevant government agencies was very low. In total, Verité Research looked at whether 78 documents (eight documents each for the eight projects governed under the NEA and seven documents each for the two projects governed under the CCA) that would necessarily be generated when following the legally mandated EIA procedure were disclosed on the official websites. Of the 78 documents, only four documents were available online (Refer Exhibit 1).

**Exhibit 1:** Level of disclosure of the 78 documents assessed for the selected 10 infrastructure projects\*



\* Eight documents each for the eight projects governed under the NEA and seven documents each for the two projects governed under the CCA

\*\* Based on online checks carried out in September 2020 on project proponent and project approving agency websites

\*\*\* Based on responses to RTI requests made under RTI Act (requests made from August to December 2020)

It is important to note, however, the CEA has recently commenced publishing EIA reports (the only document that is legally required to be disclosed to the public) on their official website during the 30-day period mandated for public inspection. Furthermore, in 2018, the CEA set up an online repository of documents, including past EIA reports. However, the records maintained in this repository were incomplete and inaccessible as at the date of publishing this report.<sup>32</sup> While the EIA reports for certain projects were available in the repository, an error occurs preventing external parties from downloading these reports.



### 3.1.2 Half of the information requested via RTI was undisclosed.

The findings indicate that the RTI Act enables the public to access a greater degree of information compared to the information that is accessible online. Verité Research was able to secure 39 of the 78 requested documents in response to RTIs filed with the relevant agencies for this study, compared to just four documents that were accessible online. However, this still represents half of the information requested (50%), and highlights the limitations in the ability of the public to access this information even via the RTI Act. Table 2 provides a summary of the information made available by the authorities in response to RTI applications. The only information that was readily accessible via RTI applications for all 10 projects was the formal approval letter given by the project approving authority. Of the 39 documents that were not disclosed, 28 (i.e., 72%) were key documents that were critical to verifying the level of public engagement during the project cycle, such as:

- notifications published to call on the public to inspect the EIA report,
- public comments received on the EIA report in response to the call to inspect,
- responses given by the project proponent to public comments, and
- public notification of project approval.

Public notification of the approval (which is required by law) was not accessible for any of the projects and a response by the project proponent to the public’s comments was available for only one of the projects. The latter is important for the public to verify whether the concerns raised by citizens were adequately addressed by the project proponent or if the project approving agency has adequately considered the concerns of citizens. Non-disclosure of this information can undermine the transparency and value of the public inspection of the EIA report, and thereby reduce the public’s confidence in the process.

**Table 2 – Level of disclosure of information in response to RTI requests**

List of documents	Accessibility via RTI for 10 projects
1. Terms of Reference that outline the boundaries of the EIA	7/10
2. Notifications calling for public inspection of the EIA report	4/10
3. Public comments on the EIA report	5/10
4. Response by the project proponent to the public’s comments	1/10
5. Formal approval from the project approving authority	10/10
6. Public notification of the approval	0/8
7. Environment Management Plan (EMP)/ Environment Management Action Plan (EMAP)	5/10
8. Monitoring reports	7/10

The predominant reason given by public authorities for the non-disclosure of information in response to RTI requests made was that they were not in possession of the documents. This raises two serious questions: 1) were these vital documents available to the public even at the time the project was being developed and implemented?

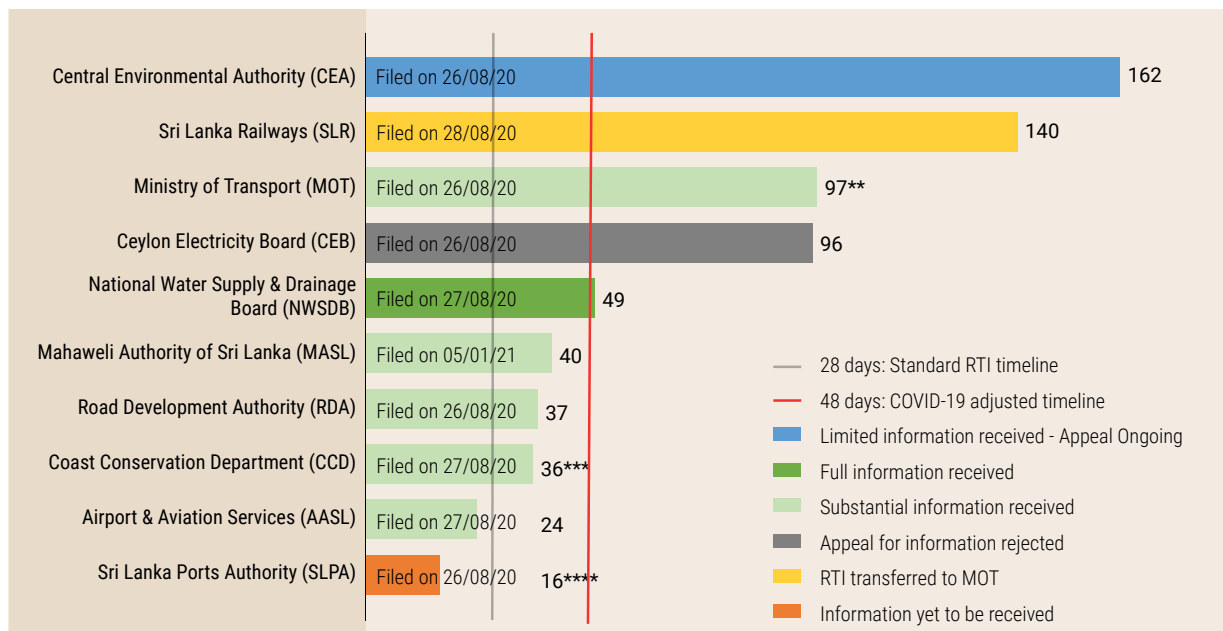
and, 2) do public authorities not maintain vital records pertaining to the construction and implementation of development projects that incur substantial public funds?

These findings were further confirmed by stakeholders, including environmental lawyers and grassroots level civil society actors. According to these stakeholders, while a degree of public dissemination of information can be expected in the early stages of projects (through awareness building meetings etc.), such information disclosure is not generally sustained throughout the EIA process.<sup>33</sup> The only key document that is routinely made available to the public is the EIA report, as public inspection of the EIA report is mandatory.<sup>34</sup> The disclosure of other documents, such as the TOR and pre-feasibility reports, is ad-hoc and inconsistent. There are times these documents are disclosed as part of the EIA report for certain projects, for example, as annexures of the report. However, the general disclosure of such documents is not common practice, and would vary depending on external factors, such as the nature of the project, the public authorities involved, and the political context.<sup>35</sup>

### 3.1.3 Accessing information via the RTI Act takes longer than the time prescribed by the law.

Although the RTI Act allows the public to request access to information in the possession of government agencies, delays by such agencies in complying to such requests undermine the overall effectiveness of the RTI Act. The RTI Act sets out timeframes within which public authorities must disclose information in response to a request made by the public. These timeframes generally contemplate disclosure after a period of 28 working days (public authorities are allowed up to 14 days to make a decision on the request, and a further 14 days to disclose the information).<sup>36</sup> Exhibit 2 details the timelines of the RTI applications made by Verité Research, while also taking into consideration the exigencies caused by the COVID-19 pandemic.

**Exhibit 2:** Time taken\* to receive a final response to the Right to Information applications (No. of working days)



\* The time it took for the institution to either 1) notify Verité Research of the release of information, 2) transfer the RTI request to another institution, 3) reject the information as of 30 April 2021

\*\*Partial information was received 30 days after the request, the decision to disclose the balance information was conveyed after 97 days.

\*\*\* Partial information was received 20 days after the request, the decision to disclose the balance information was conveyed after 36 days.

\*\*\*\* While the SLPA agreed to provide in writing that the information is available within 16 days, Verité Research could not collect the information due to the exorbitant price requested to release the information. (SLPA requested a payment of a fee of USD 2 per side for the certified copies of information to be obtained as opposed to the LKR 2 per page charged by other institutions).

On average, public authorities took at least 60 working days (approximately three months) to respond with a decision to provide information. Only five public institutions responded with a decision to provide information within the 48 working days (timeframe adjusted for COVID-19 delays). One institution (CEA) provided limited information, within the stipulated timeframe, however, the appeal to this institution with respect to the limited information disclosure is still pending even after 162 working days (refer Exhibit 2). Four institutions took over 80 working days (four months) to respond, with two of these institutions either transferring or rejecting the RTI Applications. The excessive periods of time taken to disclose information that is already compiled and should have been available in any event, can seriously discourage the public from meaningfully engaging in the EIA process. Such delays further emphasise the importance of such information being made available online proactively.

**3.1.4 The cost of accessing information via the RTI Act can be prohibitively high.**

The RTI Act allows public institutions to charge administrative fees for photocopying documents containing information. The regulations passed under the RTI Act prescribe a standard photocopying rate of LKR 2.00 per side of a A4 page. The regulations also allow public institutions to continue operating any fee schedule that was already in existence prior to the RTI Act.<sup>37</sup>

Verité Research submitted RTI applications to 10 public institutions for this study. Of the 10 public institutions, copying fees were levied by five institutions: Road Development Authority (RDA), Mahaweli Authority of Sri Lanka (MASL), Airport and Aviation Services Limited (AASL), Central Environmental Authority (CEA), and Sri Lanka Ports Authority (SLPA).

While the RDA, MASL, AASL, and the CEA all charged copying fees at a maximum rate of LKR 2.00 per side, Verité Research was informed by the SLPA that they charge at a ‘Tariff’ rate of USD 2.00 per side (LKR 398 per side) for the same information. (Refer Annex 2 for the SLPA Circular on fees to be charged on RTI information)

**Table 3 – Cost of disclosure for RTI requests**

Prescribed copying rate per side of an A4 page	SLPA copying rate per side (Rate of USD 2 adjusted to LKR at the exchange rate of LKR 199.5 per USD as of end May 2021)	Copying rate per side of an A4 page of other public agencies
LKR 2.00	LKR 398	LKR 2.00 or less

*Source: Right to Information Commission Rules of 2017, published in Extraordinary Gazette No. 2004/66, issued in 03 February 2017, Rule 4; SLPA; RDA; MASL; AASL*

It is understood that charging a fee to cover costs of copying is justifiable, particularly where a large volume of information is requested to be disclosed. However, the fee schedule adopted by the SLPA is exorbitant, and compels the public to incur a significant cost to access crucial documents. The adoption of such an exorbitant fee schedule by the SLPA is implicit of two ulterior motives: 1) the SLPA intends to profit from the public exercise of the right to information, and 2) the SLPA intends to create a price wall that dissuades the public from accessing information.

The adoption of such price walls by public institutions serves as a further restriction to accessing information, particularly bulk information and data, as it entails bearing a substantial financial cost.

## 4. CONCLUSION

The findings of this research brief point to serious gaps in the disclosure of information relating to EIAs in Sri Lanka both in law and in practice. The public's limited access to vital information identified in this brief has three adverse outcomes on effective and meaningful public participation. First, the difficulties encountered in accessing information itself can disincentivise public engagement. Second, the public will have to rely on information obtained through informal sources, which can negatively impact the effectiveness of public engagement.<sup>38</sup> Gaps of this nature will imbue any concerned citizen with a sense of disillusionment, as such citizens would not feel empowered to engage with EIA processes without sufficient data and information. Third, the resulting lack of confidence in a formal process can push the public to take alternative paths that are outside the law to resolve or highlight environmental issues and concerns. Such alternative measures can be disruptive and cause delays, which come at a cost that may ultimately have to be borne by the public in the case of public projects. The overall consequence of these outcomes is that public participation in the EIA becomes a mere "window dressing" exercise that fails to achieve the key objective of meaningfully integrating the public into the development process.

Environmental governance necessitates the inclusion of public participation for two reasons: 1) to ensure that the public can influence matters pertaining to the environment, which is the common heritage of the public, and 2) to ensure that decisions that affect the environment are arrived at through processes that are transparent and accountable. However, the weak provisions within the current EIA framework in Sri Lanka on information disclosure and the difficulties encountered in accessing information in practice, undermines the ability of the public to meaningfully engage with the EIA process. It is these gaps that have eroded the public's confidence in the process and facilitated the current trend of public protests against development projects. This is a consequence of the public's experience of being increasingly alienated from the development and sustainability discourse.

As Sri Lanka forays into the 21<sup>st</sup> Century, and more development projects are likely to be implemented, the formulation of more robust EIA frameworks is an imperative to ensuring sustainability and the protection of the environment.

**ANNEX 1: LIST OF THE SELECTED 10 PROJECTS**

No.	Project	Year of initial funding	Foreign lender	Project proponent (PP)	Project approving agency (PAA) <sup>2</sup>	Requirement of an EIA	Proactive disclosure online (As per online checks carried out in September 2020) <sup>3</sup>							Reactive disclosure offline (As per RTIs filed in August 2020 and December 2020)								
							TOR	EIA Report	Public comments on the EIA/R	Response by the PP to public comments	Formal approval from the PAA	Public notification of approval	EMP/ EMAP	Monitoring reports	TOR	Notification calling for inspection the EIA/R	Public comments on the EIA/R	Response by the PP to public comments	Formal approval from PAA	Public notification of approval	EMP/ EMAP	Monitoring reports
1	Puttalam Coal Power Plant	2005	Exim China	CEB	CCD/ NWPC	✓	✗ <sup>4</sup>	✗ <sup>4</sup>	✗	✗	✗	N/A <sup>6</sup>	✗	✗	✓	✗	✗	✗	✓ <sup>7</sup>	N/A <sup>6</sup>	✗	✗
2	Hambantota Port	2007	Exim China	SLPA	CCD	✓	✗	✗	✗	✗	✗	N/A <sup>6</sup>	✗	✗	✓	✓ <sup>8</sup>	✓ <sup>8</sup>	✗	✓ <sup>7,8</sup>	N/A <sup>6</sup>	✗	✗
3	Southern Highway II	2008	Japan	RDA	CEA	✓	✗	✗	✗	✗	✗	✓	✓	✗	✗	✗	✗	✓	✗	✗	✓	
4	Kandy City Wastewater project	2010	Japan	NWSDB	CEA	✓	✗	✗	✗	✗	✗	✗	✗	✓	✗	✓	✓	✓	✗	✓	✓	
5	Mattala Airport	2010	Exim China	AASL	CEA	✓	✗	✗	✗	✗	✗	✗	✗	✓	✗	✓	✗	✓ <sup>7</sup>	✗	✓	✗	
6	GCUTD 2 (Outer Circular Highway)	2008	Japan	RDA	CEA	✓	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗	✓ <sup>7</sup>	✗	✗	✓	
7	Moragahakanda Agricultural Development project	2012	China Development Bank Corporation	MASL	MOA/ CEA	✓	✗	✗ <sup>5</sup>	✗	✗	✗ <sup>5</sup>	✗	✗	✗	✗	✗	✓	✗	✓	✗	✓	✓

No.	Project	Year of initial funding	Foreign lender	Project proponent (PP) <sup>1</sup>	Project approving agency (PAA) <sup>2</sup>	Requirement of an EIA	Proactive disclosure online (As per online checks carried out in September 2020) <sup>3</sup>							Reactive disclosure offline (As per RTIs filed in August 2020 and December 2020)								
							TOR	EIA Report	Public comments on the EIAR	Response by the PP to public comments	Formal approval from the PAA	Public notification of approval	EMP/ EMAP	Monitoring reports	TOR	Notification calling for inspection the EIAR	Public comments on the EIAR	Response by the PP to public comments	Formal approval from PAA	Public notification of approval	EMP/ EMAP	Monitoring reports
8	Matara Beliata Railway	2013	Exim China	MOT	CEA	✓	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓	✗	✓	✗	✓	✓
9	Ext. Expressway Matara to Mattala	2014	Exim China	RDA	CEA	✓	✗	✗	✗	✗	✗	✗	✗	✗	✓	✓	✗	✗	✓ <sup>7</sup>	✗	✓	✓
10	New Kelani Bridge	2014	Japan	RDA	CEA	✓	✓	✓	✗	✗	✗	✗	✗	✗	✓	✓	✗	✗	✓ <sup>7</sup>	✗	✗	✓

1. SLPA (Sri Lanka Ports Authority); CEB (Ceylon Electricity Board); RDA (Road Development Authority); MOT (Ministry of Transport); NWSDB (National Water Supply and Drainage Board); AASL (Airport and Aviation Services (Sri Lanka) Limited); MASL (Mahaweli Authority of Sri Lanka)
2. CEA (Central Environment Authority); CCD (Coast Conservation Department); NWPC (North Western Provincial Council); MOA (Ministry of Agriculture)
3. The websites of the following agencies were referred for online disclosure: Ministry of Ports and Shipping (MoPS): [www.portmin.gov.lk](http://www.portmin.gov.lk) / Sri Lanka Ports Authority (SLPA): [www.slpa.lk](http://www.slpa.lk); Ministry of Power (MoP): [www.powermin.gov.lk](http://www.powermin.gov.lk) / Ceylon Electricity Board (CEB): [www.ceb.lk](http://www.ceb.lk); Ministry of Highways (MoH): [www.mohsl.gov.lk](http://www.mohsl.gov.lk) / Road Development Authority (RDA): [www.rda.gov.lk](http://www.rda.gov.lk); Ministry of Transport (MoT): [www.transport.gov.lk](http://www.transport.gov.lk) / Sri Lanka Railways (SLR): [www.railway.gov.lk](http://www.railway.gov.lk); Ministry of Water Supply (MoWS): [www.mcpws.gov.lk](http://www.mcpws.gov.lk) / National Water Supply and Drainage Board (NWSDB): [www.waterboard.lk](http://www.waterboard.lk); Ministry of Tourism and Civil Aviation (MoTCA): [www.tourismmin.gov.lk](http://www.tourismmin.gov.lk) / Civil Aviation Authority (CAA): [www.caa.lk](http://www.caa.lk) / Airport and Aviation Services (Sri Lanka) Limited (AASL): [www.airport.lk](http://www.airport.lk); Mahaweli Authority of Sri Lanka (MASL): [www.mahaweli.gov.lk](http://www.mahaweli.gov.lk); Central Environment Authority: [www.cea.lk](http://www.cea.lk) & [www.cea.nsf.ac.lk](http://www.cea.nsf.ac.lk) (CEA Repository); Coast Conservation Department: [www.coastal.gov.lk](http://www.coastal.gov.lk); North Western Provincial Council (NWPC): [www.nw.gov.lk/nwp/](http://www.nw.gov.lk/nwp/); Ministry of Agriculture (MOA): [www.agrimin.gov.lk/web/index.php/en](http://www.agrimin.gov.lk/web/index.php/en)
4. This information was received from third parties rather than from the relevant agencies through the RTI.
5. These documents were found in the lending agency website.
6. This document is not required for projects under the purview of the CCD as it is not a requirement of the CCA.
7. This information was received through an RTI filed with the relevant authorities prior to this study.
8. This information was received from the CCD rather than the SLPA. While the SLPA agreed to provide the information, due to the exorbitant price requested to release the information, it was not obtained by Verité Research. (SLPA requested a payment of a fee of USD 2 per side for the certified copies of information to be obtained as opposed to the LKR 2 per page charged by other institutions).



## ANNEX 2: SLPA CIRCULAR ON FEES TO BE CHARGED ON RTI INFORMATION

### SRI LANKA PORTS AUTHORITY

**The Managing Director**

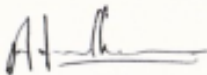
#### To regularise Right to Information Act, No. 12 of 2016

This refers to your minute on 31<sup>st</sup> May 2017 on the request made by Information committee regarding charges to be recovered when handing over information to a requested party.

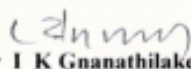
Tariff committee deeply discussed and came to a conclusion that Tariff item 60.06 of the SLPA Tariff should be applied for this purpose ..

<u>Tariff Item</u>	<u>Description</u>	<u>Rate in US \$ per copy (One Side)</u>
60.06	Certified copies of SLPADocuments	2.00


It is also noted that information committee should request a separate activity code for this purpose. So that revenue earned for providing information can be separated please.

  
**Capt. A Hewawitharana**  
 Actg. Harbour Master

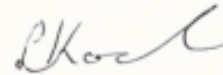
  
**Miss. K K. Gunawardane** 22/06  
 Chief Finance Manager

  
**Mr I K Gnanathilake**  
 Chief Operations Manager

  
**Mrs. G.Z. Miskin**  
 Dy.Chief Operations Manager

  
**Mr Chitral Jayawarna**  
 Senior Manager (Mark. & B/D)

  
**Mr: E.G.S.Dinendra De Silva**  
 Electrical Engineer

  
**Mrs. L.L. Kodagoda**  
 Senior Manager (F/R/PT/ST & Nav)

29 -Jun-17

Source: Document received from the Sri Lanka Ports Authority as a response to a Verité Research RTI application

## END NOTES

1. Website of Sundaytimes, 'Silent sentinel mired in controversy', 14 February 2021, at: <http://www.sundaytimes.lk/210214/plus/silent-sentinel-mired-in-controversy-432115.html> [Last accessed on 19 May 2021].
2. Website of News First, 'Protest against environmental destruction in Colombo', 19 March 2021, at: <https://www.newsfirst.lk/2021/03/19/protest-against-environmental-destruction-in-colombo/>. [Last accessed on 19 May 2021].
3. It is reported that altering the original path of the Central Expressway to protect the *Crudia Zeylanica* flora would cost an additional LKR 8 billion in public funds.  
Website of Daily Mirror, 'Protecting 'Crudia Zeylanica' tree in Central expressway Additional cost of Rs.8 Bn if original plan altered', 06 March 2021 at [http://www.dailymirror.lk/print/front\\_page/Protecting-Crudia-Zeylanica-tree-in-Central-expressway-Additional-cost-of-Rs-8-Bn-if-original-pla/238-207126](http://www.dailymirror.lk/print/front_page/Protecting-Crudia-Zeylanica-tree-in-Central-expressway-Additional-cost-of-Rs-8-Bn-if-original-pla/238-207126). [Last accessed on 19 May 2021]
4. SOAS University of London, 'Unit 1 Introduction to Environmental Impact Assessment (EIA)', 2021, at [https://www.soas.ac.uk/cedep-demos/000\\_P507\\_EA\\_K3736-Demo/unit1/page\\_08.htm](https://www.soas.ac.uk/cedep-demos/000_P507_EA_K3736-Demo/unit1/page_08.htm). [Last accessed on 19 May 2021]
5. T.C. Dougherty, A.W. Hall 'Environmental impact assessment of irrigation and drainage projects: Chapter 3', HR Wallingford, United Kingdom, 1995, at <http://www.fao.org/3/V8350E/v8350e06.htm> [Last accessed on 19 May 2021]
6. Asian Development Bank, 'Environment Assessment Guidelines', December 2003, at <https://www.adb.org/sites/default/files/institutional-document/32635/files/environmental-assessment-guidelines.pdf> [Last accessed on 19 May 2021]
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8. Benson Ochieng, 'Implementing Principle 10 and the Bali Guidelines in Africa', February 2015, at <https://wedocs.unep.org/bitstream/handle/20.500.11822/13890/Issue%20Paper%20on%20P10%20and%20Bali%20Guidelines%20in%20Africa.pdf> [Last accessed on 19 May 2021]
9. International Association on Impact Assessment, 'Public Participation: International Best Practice Principles', August 2006, at <https://www.iaia.org/uploads/pdf/SP4.pdf> [Last accessed on 10 April 2021].
10. P.K. Dara, T.B. Reddy and K.T. Gelaye, 'Public Participation in Environmental Impact Assessment – Legal Framework', 5 International Journal of Research – Granthaalayah' 270 (2015), at [http://granthaalayah.com/Articles/Vol5Iss5/26\\_IJRG17\\_A05\\_316.pdf](http://granthaalayah.com/Articles/Vol5Iss5/26_IJRG17_A05_316.pdf) [Last accessed on 19 May 2021], p. 273.
11. National Environment Act No. 47 of 1980 [NEA], at <http://www.cea.lk/web/images/pdf/acts/act47-80.pdf> as amended by Act No. 56 of 1988, at <http://www.cea.lk/web/images/pdf/acts/act56-88.pdf> [Last accessed on 13 November 2020].
12. Order dated 18 June 1993 made under 23Z of the NEA as published in Gazette Extraordinary No. 772/22, at <http://www.cea.lk/web/images/pdf/eiaregulations/reg772-22.pdf>, as amended by Order dated 27 October 1999 as published in Gazette Extraordinary No. 1104/22, at <http://www.cea.lk/web/images/pdf/eiaregulations/reg1104-22.pdf> [Last accessed on 13 November 2020].
13. National Environmental (Procedure for Approval of Projects) Regulations No. 01 of 1993, made under Section 23CC of the NEA as published in Gazette Extraordinary No. 772/22, at <http://www.cea.lk/web/images/pdf/eiaregulations/reg772-22.pdf> [Last accessed on 13 November 2020].
14. See generally, Section 3, 4 and 5, Coast Conservation Act No. 57 of 1981 [CCA], at <http://extwprlegs1.fao.org/docs/pdf/srl5289original.pdf> [Last accessed on 12 April 2021].
15. Section 42 of the CCA defines 'coastal zone' as 'that area lying within a limit of three hundred metres landwards of the Mean High Water line and a limit of two kilometres seawards of the Mean Low Water line and in the case of rivers, streams, lagoons, or any other body of water connected to the sea either permanently or periodically, the landward boundary shall extend to a limit of two kilometres measured perpendicular to the straight base line drawn between the natural entrance points thereof and shall include the waters of such rivers, streams and lagoons or any other body of water so connected to the sea.'
16. Section 16, CCA as amended by Act No. 49 of 2011, at <http://extwprlegs1.fao.org/docs/pdf/srl5289.pdf> [Last accessed on 12 April 2021].
17. Section 9A, Flora and Fauna Protection Ordinance, as amended by Act No. 22 of 2009 [FFPO].
18. Section 2, North Western Province Environmental Statute No. 12 of 1990 [NWPES].
19. Section 2 read with Section 9, NWPES.
20. See findings in *Gunathilake v. Hon. Maithripala Sirisena and Others*, S.C. (F.R.) 226/2006, S.C. Minutes of 18 May 2009.
21. Regulation 11, NER; Section 16(2C), CCA; Section 9A(3), FFPO; Section 44(2), NWPES.
22. Section 6 and Section 12, Philippines Department of Environment and Natural Resources Administrative Order No. 2017-15 ['Philippines Public Participation Guidelines'], 02 May 2017, at <https://www.informea.org/sites/default/files/legislation/DENR%20Administrative%20Order%2015%202017%20%28Guidelines%20on%20Public%20Participation%20under%20the%20Philippine%20Environmental%20Impact%20System%29.pdf> [Last accessed on 12 April 2021]. See also, Philippines Department of Environment and Natural Resources, Revised Procedural Manual for DENR Administrative Order No. 30 Series of 2003 ['Philippines Procedural Manual'], at <http://eia.emb.gov.ph/wp-content/uploads/2016/06/Revised-Procedural-Manual-DAO-03-30.pdf> [Last accessed on 12 April 2021], p. 18.
23. Section 6, Philippines Public Participation Guidelines; Regulation 17(2), The Environmental (Impact Assessment and Audit) Regulations of Kenya, 2003 ['Kenya Regulations'], at <https://eregulations.invest.go.ke/media/Revised%20EIA%20Regulations.pdf> [Last accessed on 12 April 2021].
24. Regulation 29, Kenya Regulations.
25. Regulation 23(1), Kenya Regulations.
26. Section 6.2, Section 8.2, Section 11.2, and Section 12, Philippines Public Participation Guidelines.
27. United Nations Environment Programme, 'Assessing Environmental Impacts- A Global Review of Legislation', Nairobi, Kenya, 2018 at <https://www.unep.org/resources/assessment/assessing-environmental-impacts-global-review-legislation> [Last accessed on 12 April 2021].
28. Verité Research sought to investigate the proactive and reactive disclosure of information in relation to 12 large-scale foreign funded development projects funded by China (6) and Japan (6). However, according to the authorities, EIAs were required to be conducted for only 10 of these 12 projects. An EIA was not required for following two projects funded by Japan: 1) Bandaranaike International Airport Expansion Terminal II, and 2) Kalu Ganga Water Supply Expansion Project.
29. The availability of the 'Notification calling for inspection of the EIAR' was assessed in the reactive disclosure study while the 'EIA report' was assessed in the proactive disclosure study. This is because the 'Notification calling for inspection of the EIAR' may have been taken down from the authorities' websites after the period of public comment was over. Thus, it was deemed unfair to assess the online availability of this particular document. In contrast, the online availability of the EIA report is relevant for enabling subsequent inspections, even after the period for comment has closed. In any case, the EIA reports are available for the public to access at the CEA library.
30. The 'Public notification of the approval' is not applicable for the two projects under the purview of the CCD as it is not a requirement of the CCA.

31. For example, Regulation 8 of Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 requires that the EIA report has to be made available in electronic and paper formats. Also, the Philippines Public Participation Guidelines requires several key documents in the EIA process to be published on official websites.
32. See, Website of the Central Environmental Authority, 'CEA e-Repository', at [http://www.cea.lk/web/?option=com\\_content&view=article&layout=edit&id=895](http://www.cea.lk/web/?option=com_content&view=article&layout=edit&id=895). [Last accessed on 12 April 2021].
33. Interview with Key Informant.
34. Ibid.
35. Ibid.
36. Section 25(1), Right to Information Act No. 12 of 2016.
37. Right to Information Commission Rules of 2017, published in Extraordinary Gazette No. 2004/66, issued in 03 February 2017, Rule 4
38. Interview with Key Informant.

