

DEVELOPMENT PROJECTS: BETTER REGULATIONS FOR BETTER OUTCOMES

A look into Environmental Impact Assessment

Presented by:



Uween Jayasinha



Mathisha Arangala

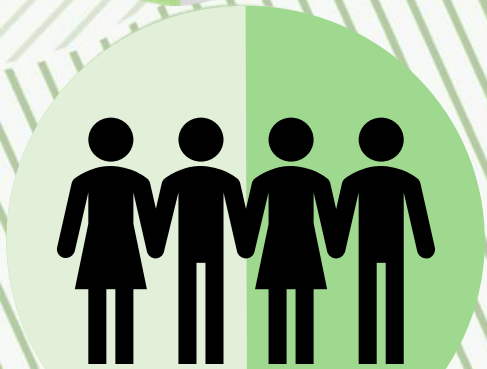
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Better Regulations for Better Outcomes:

A look into Environmental Impact Assessments (EIAs) Regulatory Framework





Structure

- 1 What is an EIA?
- 2 Why are EIA's important?
- 3 Who is involved in an EIA?
- 4 What are Sri Lanka's EIA laws?
- 5 Why is the importance of access to information and participation?
- 6 What are the gaps and weaknesses in Sri Lanka's EIA laws?

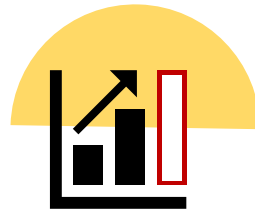


What is an EIA?

The process of;



identifying,



predicting,



evaluating and



mitigating

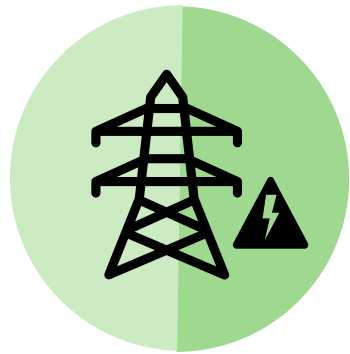
the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made.

- International Association for Impact Assessment



Why are EIA's important?

A case study on the Uma Oya Multi-Purpose Development Project



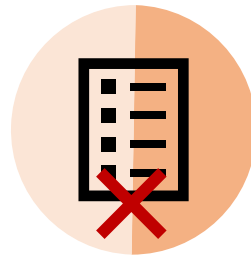
Uma Oya Power Plant
Puhulpola Dam
Dyraaba Dam



The views of experts, environmentalists, & communities were ignored



No impact assessment of tunneling, impacts on underground water sources



No exploration of viable alternatives to destructive methods

- ⚠️ Drying up of 3,000 wells
- ⚠️ Drying up of 45 underground water sources
- ⚠️ Destabilisation of soil by tunneling
- ⚠️ 2,200 acres of agricultural lands destroyed

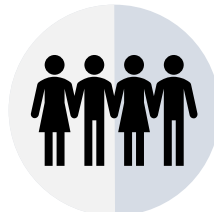
Who is involved in an EIA?



Officials



Independent stakeholders



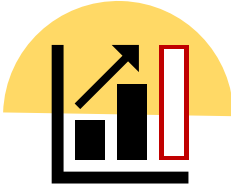
General public



Developer



Identifying



Predicting



Evaluating



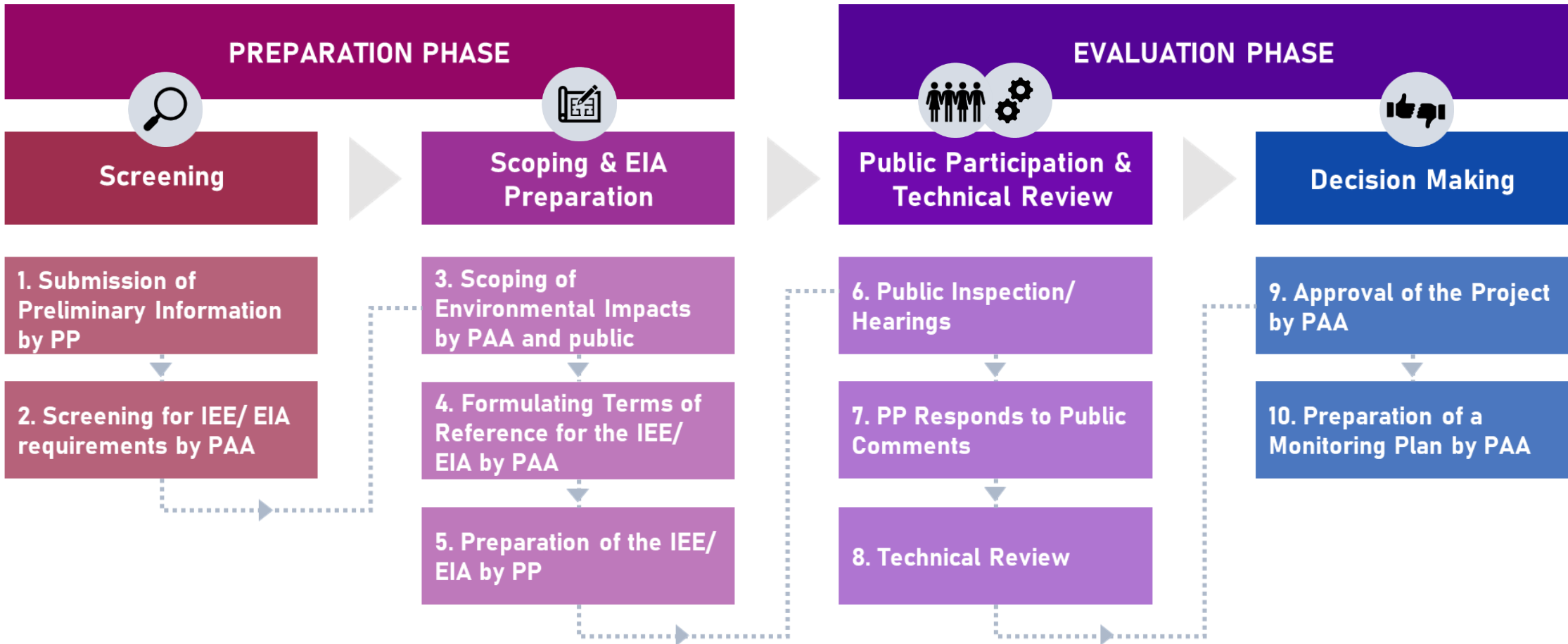
Impact Assessment with mitigatory measures and alternatives



What are Sri Lanka's EIA Laws?

Law	EIA Requirement
National Environmental Act	Projects set out by the Minister based on magnitude and location
Coastal Conservation Act	Projects carried out in the coastal zone
Flora & Fauna Protection Act	Projects within 1-mile of any national park
North-Western Province Environmental Statute	Selected projects to be implemented in the North-Western Province

What is the standard EIA process in Sri Lanka?



Why is access to information & public participation in EIA important?

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.

- Principle 10 of the 1992 Rio Declaration






Environment Impact Assessments Regulatory Framework

Gaps & Weaknesses






Gaps and Weaknesses

Limited availability and access to information

-  i. Non-disclosure of information
-  ii. Lack of summarized and digestible forms of information
-  iii. Non-disclosure of inspection information

Limited opportunities for public engagement

-  i. Scoping meetings are not open to the public
-  ii. Lack of public hearings
-  iii. No administrative grievance redressing mechanism

Gaps and Weaknesses

Limited availability and access to information



1. Non-disclosure of information



Officials



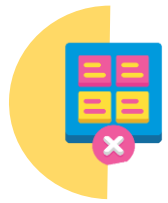
Developer



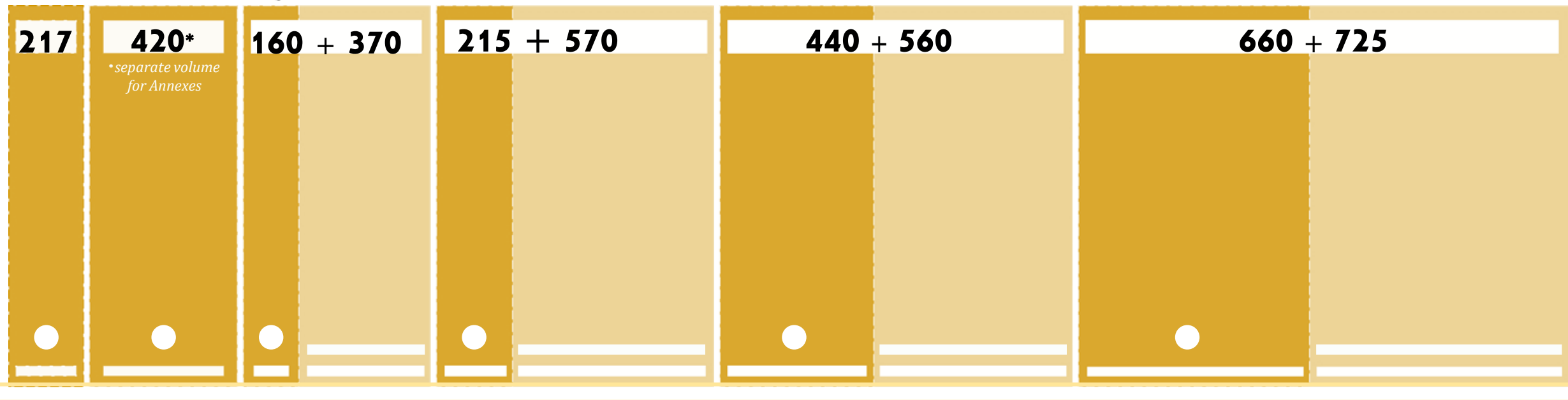
General public



2. Lack of summarized and digestible forms of information



Environment Impact Assessment Reports
Number of pages (Report + Annexes)



Southern Express -way Extension Port City Supplementary EIA New Kelaniya Bridge Light Railway Transit Lakvijaya Power Plant (Phase I) Moragakanda Agriculture Development



2. Lack of summarized and digestible forms of information



Environment Impact Assessment Reports TECHNICAL CONTENT

As discussed in both guidelines, noise levels from the LRT would relatively have a constant in magnitude when a train passes by. Average noise level (LAeq) metric represents the equivalent continuous noise level over a specific time period. However, as discussed in the Australian guideline, LAeq metric by itself is not an adequate predictor of the potential noise level that may disturb people. Thus, it is proposed to also use LAmax to addresses the maximum noise level due to individual pass-by events and to account for the potential disturbance from such individual events (NSW EPA, 2013). Based on these guidelines, a noise standard for this project is set as Table 4.4.

Potentially affected group:



General public

2. Lack of summarized and digestible forms of information



Environment Impact Assessment Reports TECHNICAL CONTENT

- ❑ The groundwater level of the surrounding area will rise relative to the water level in the reservoir. The hydraulic gradient will change from place to place and will be controlled by the hydrogeological conditions of the area. Water level of the buffer zone will fluctuate according to the water level of the reservoir. A high head difference will be created at the area between upstream and down stream.
- ❑ The groundwater storage in the subsurface and overburden will be considerably increased. Higher storage is expected in the rocks that have fractured and fissured formations e.g., crystalline limestone and feldspathic quartzite formations.
- ❑ The chemical weathering within the reservoir area will increase due to the presence of water. Therefore in the long run, mica deposits will be weathered and this will produce loose formations.

Potentially affected group:



Farmers

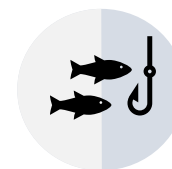
2. Lack of summarized and digestible forms of information



Environment Impact Assessment Reports TECHNICAL CONTENT

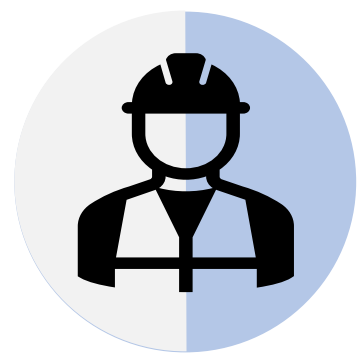
Boats and barges used for transporting jetty construction materials will release fugitive quantities of grease, oils and diesels to the coastal waters. The number of vessels employed in the construction of the jetty will be fewer than 10. In comparison, some 1,600, or more, motorised fishing boats traverse the Kalpitiya Peninsula off-shore waters daily during the fishing season (data from the District Fisheries Extension Officer, Puttalam). The motorised boats are fitted with two-stroke engines, which invariably release gasoline and oils to the water. Although the construction vessels may release some fugitive hydrocarbons, the amounts released will be small in comparison to the total cumulative emissions from the present vessel traffic. There are no data on the total concentration of hydrocarbons in the coastal waters. The proposed base-line water quality monitoring programme will integrate measurements of total hydrocarbons, at the site of the jetty construction and at sites up- and down-stream of the construction site. Particular attention will be paid to the water quality at the southern area of Talawila Reef.

Potentially affected group:

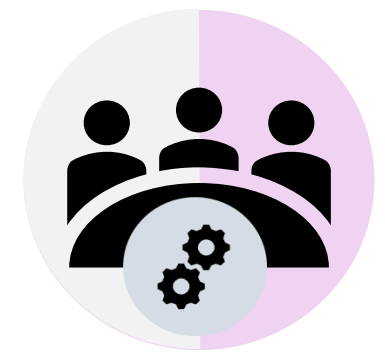


Fishing communities

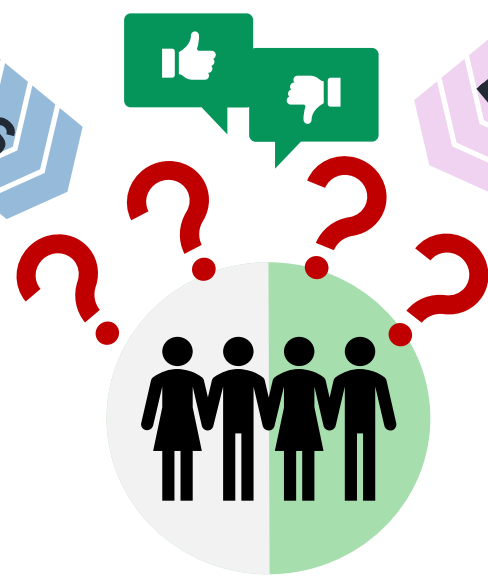
3. Non-disclosure of inspection information



Developer



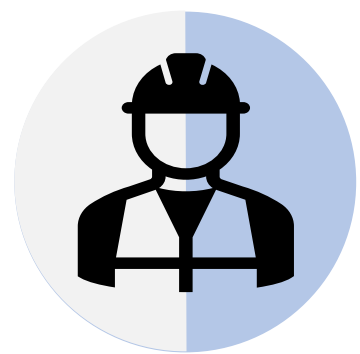
Technical evaluation committee



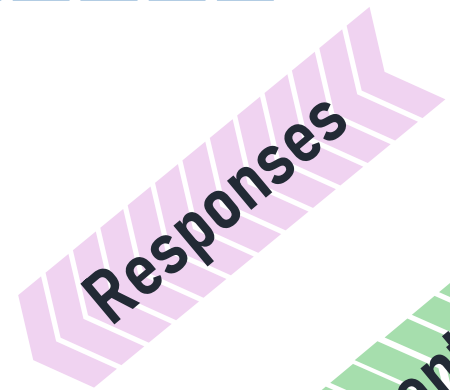
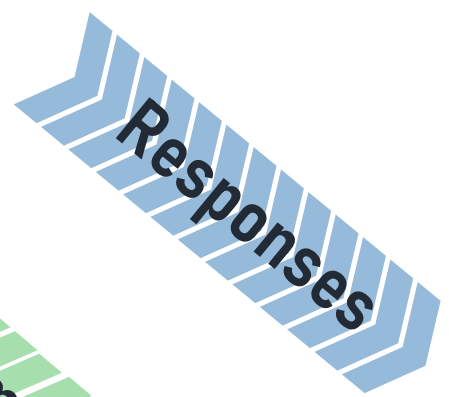
General public



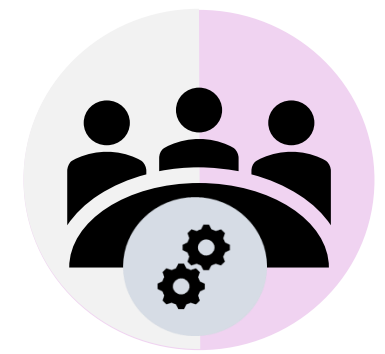
3. Non-disclosure of inspection information



Developer



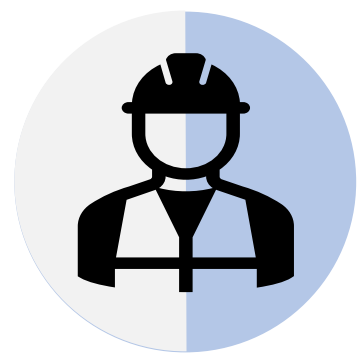
General public



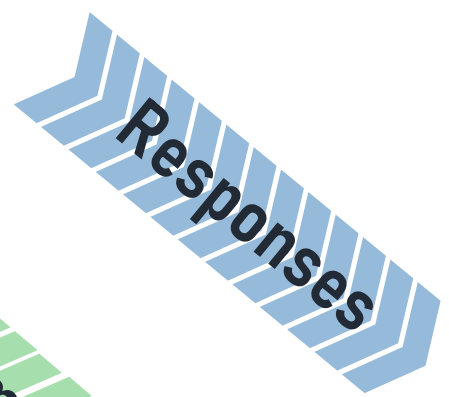
Technical evaluation committee



3. Non-disclosure of inspection information



Developer



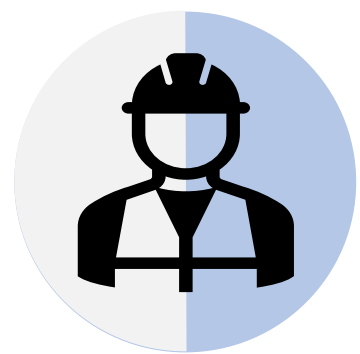
General public



Technical evaluation committee



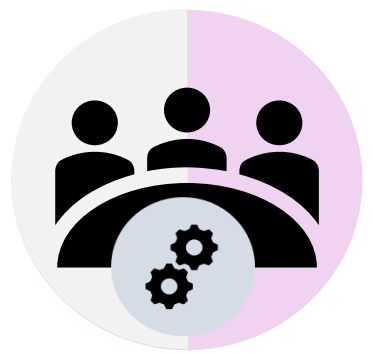
3. Non-disclosure of inspection information



Developer



General public



Technical evaluation committee

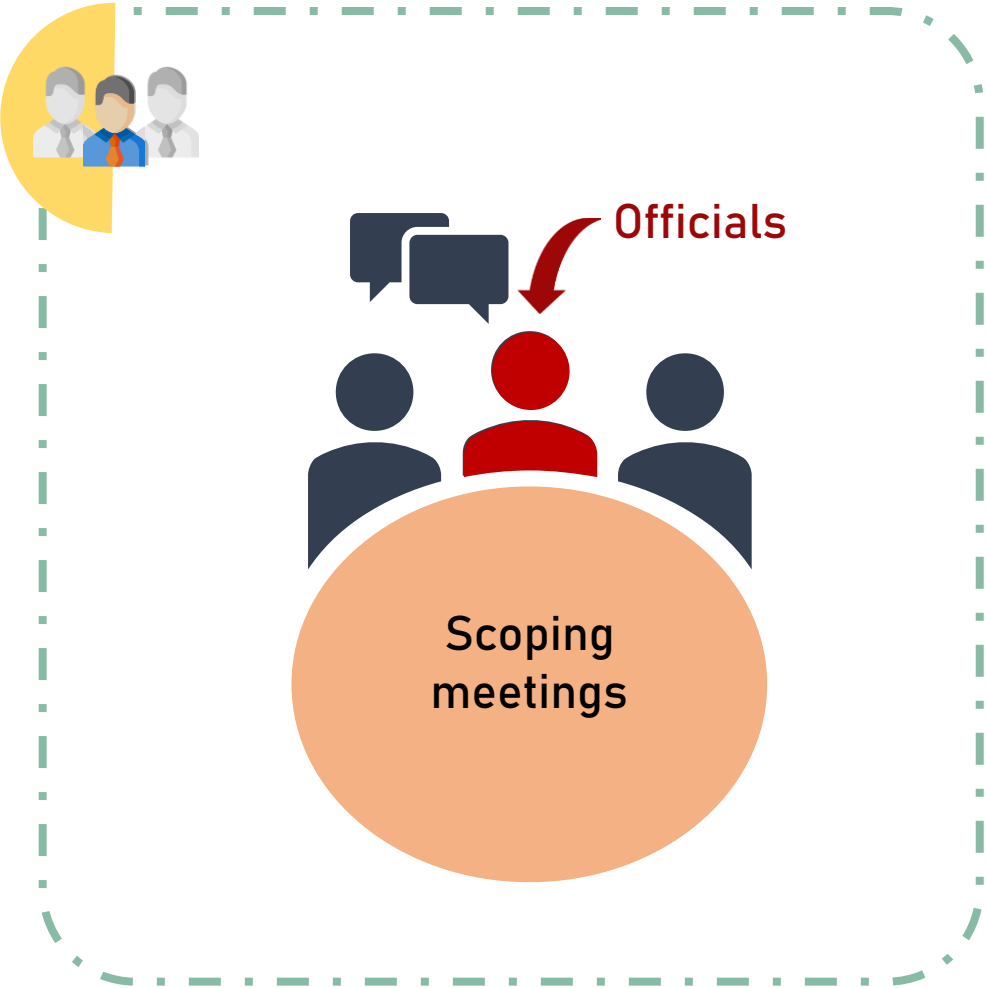


Gaps and Weaknesses

Limited opportunities for public engagement



1. Scoping meetings are not open (only by invitation)



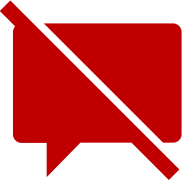
2. Public hearings are not held



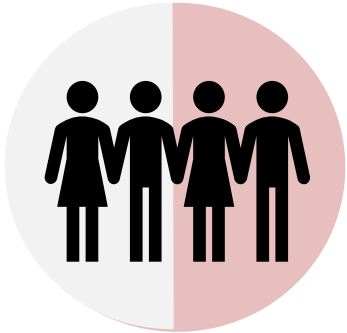
Officials



Experts

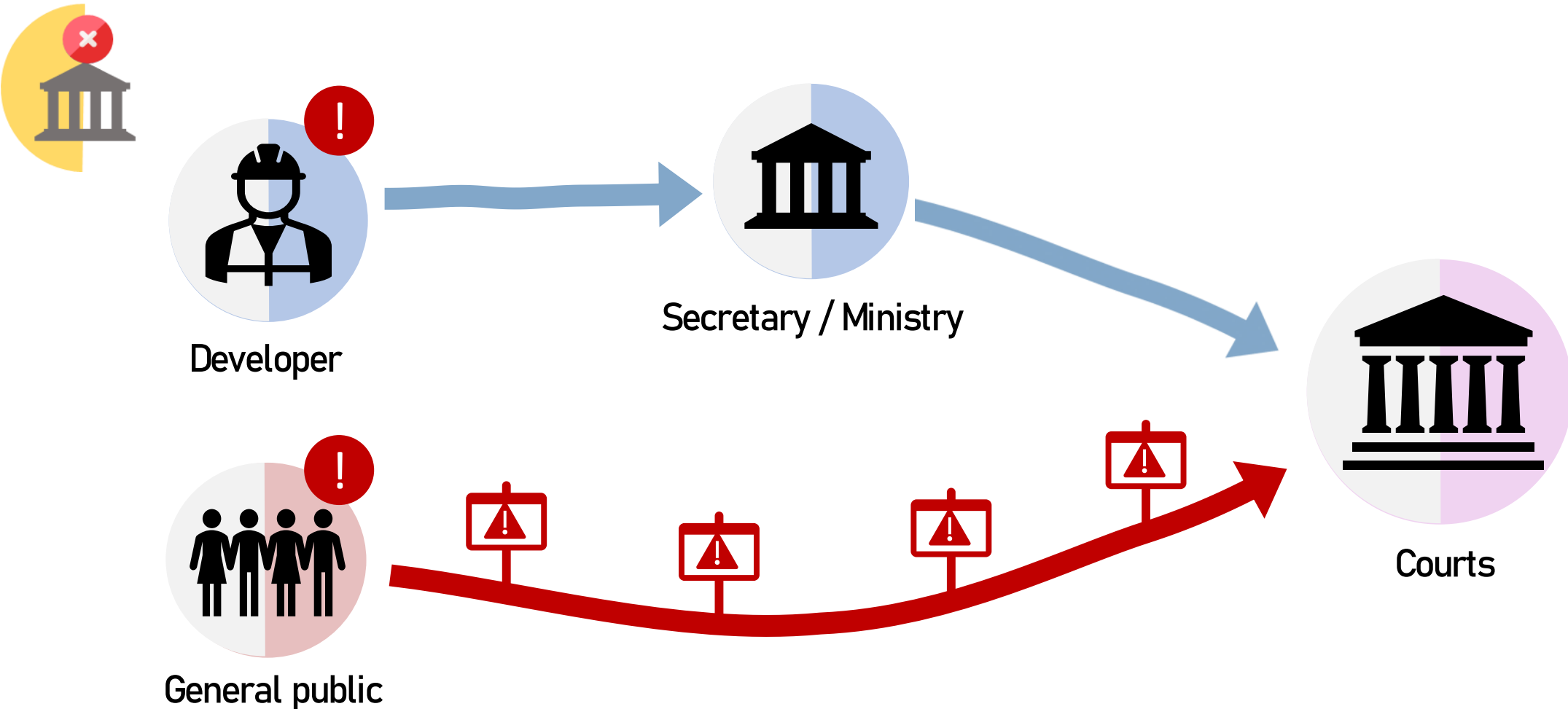


CSOs



General public

3. No administrative grievance redressing mechanism



What are the benefits of public participation in EIA?

- Enables independent input to counter any vested interests of the developer/government
- Incorporates local and indigenous knowledge
- Manages the expectations of stakeholders
- Reduces community tensions by addressing suspicions and uncertainties
- Creates a sense of legitimacy that can prevent later opposition



Reduces:

Possibility of unforeseen environmental consequences

Need for later adjustments due to unforeseen consequences

Possibility of costly delays due to public opposition at a later stage

OPPORTUNITIES TO PROTECT PUBLIC INTEREST IN PUBLIC INFRASTRUCTURE

Review of Regulatory Frameworks in Sri Lanka

The complete report can be accessed
through:

www.veriteresearch.org/publication



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Environment Impact Assessments Regulatory Framework

Ease of accessing information in practice

Findings from Verité Research Study on information disclosure



Methodology | Assessing the ease of accessing information in practice

List of projects

CHINA

1. Puttalam Coal Power Plant (2005)
2. Hambantota Port (2007)
3. Mattala Airport (2010)
4. Moragahakanda Agricultural Development project (2012)
5. Matara Beliatta Railway (2013)
6. Ext. Expressway Matara to Mattala (2014)

JAPAN

1. Southern Highway II (2008)
2. Kandy City Wastewater project (2010)
3. Greater Colombo Urban Transport Development (GCUTD) 2 (Outer Circular Highway) (2008)
4. New Kelani Bridge (2014)

List of documents

1. Terms of Reference that outlines the boundaries of the EIA
2. EIA Report (for proactive disclosure) / Notifications calling for public inspection of the EIA report (for reactive disclosure)
3. Public comments on the EIA report
4. Response by the project proponent to the public comments
5. Formal approval from the project approving authority*
6. Public notification of the approval
7. Environment Management Plan (EMP)/ Environment Management Action Plan (EMAP)
8. Monitoring reports

*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.

Key Findings

The analysis revealed **three key findings** in the actual level of disclosure of EIA information/ documents:

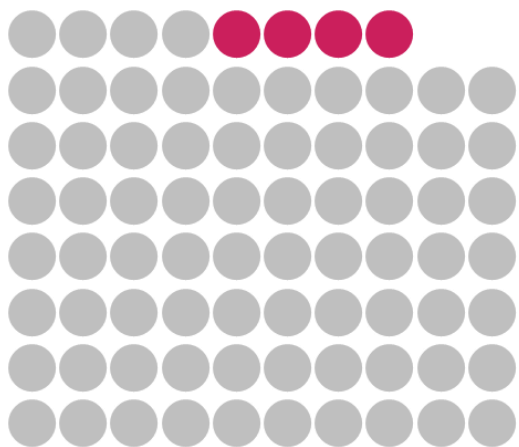
1. Lack of disclosure of information
 - a) The accessibility of information online is low
 - b) Half of the information requested via RTI was undisclosed
2. Accessing information via RTI Act takes longer than the time prescribed by law
3. The cost of accessing information via RTI Act can be prohibitively high



1. Lack of disclosure of information

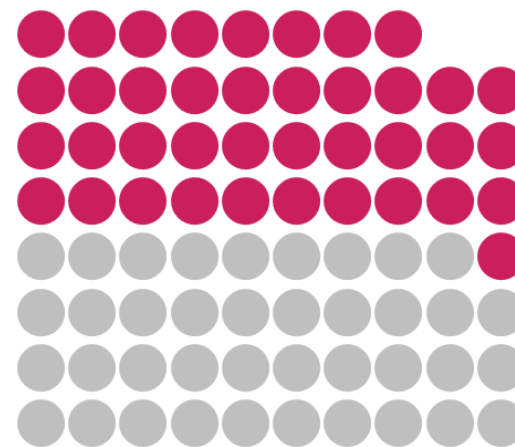
The level of disclosure of 78 documents were assessed for the selected 10 infrastructure projects*

a. The accessibility of information online is low**



Of the 78 documents assessed **only 4** documents were found online

b. Half of the information requested via RTI was undisclosed***



Of the 78 documents requested through RTIs filed with the relevant authorities **only 39** documents were provided.

*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)



1. Lack of disclosure of information

72% of the information which was not disclosed via RTI were key documents that were critical to verifying the level of public engagement during the project cycle.

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

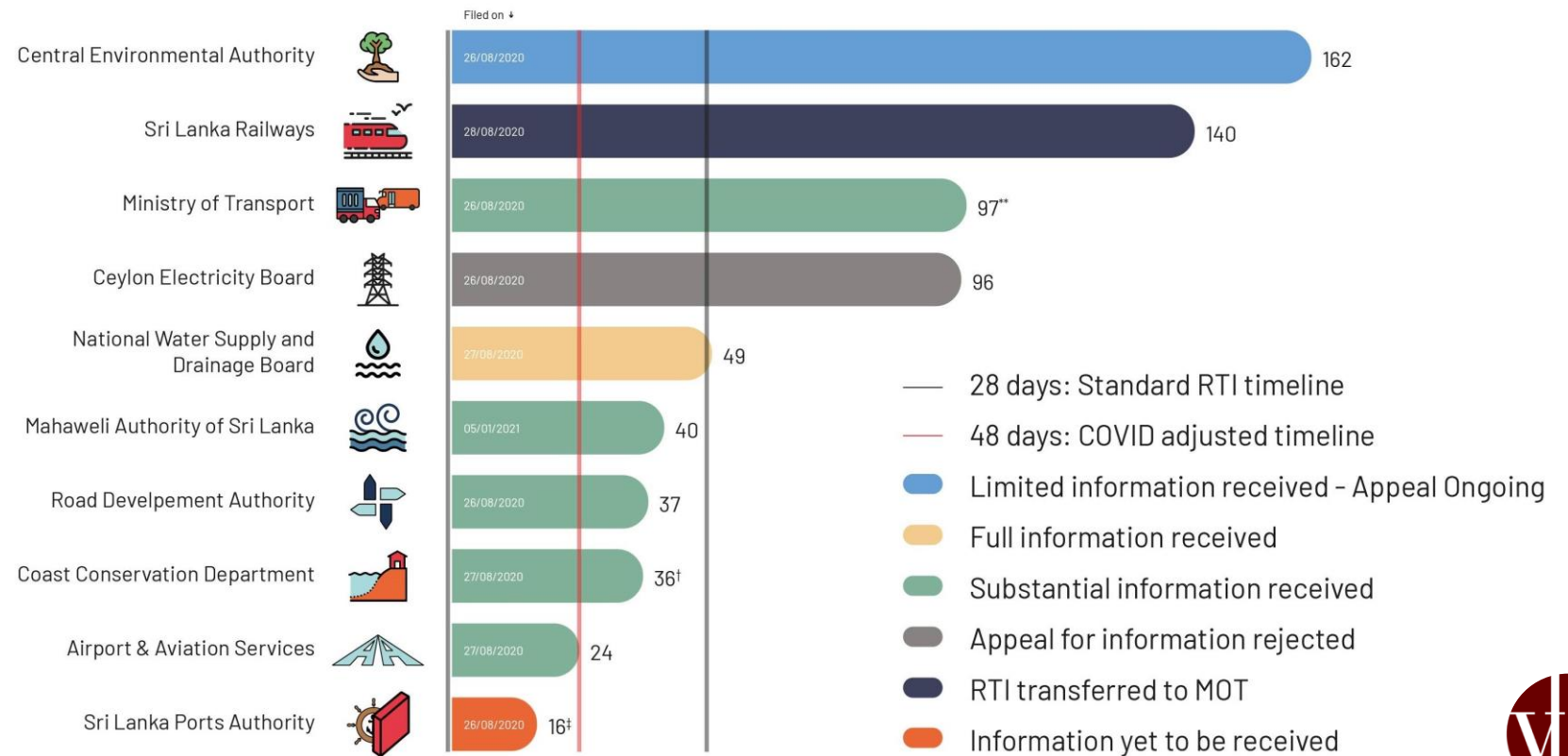


2. Accessing information via RTI Act takes longer than the time prescribed by law

Excessive time taken to provide information via RTI can seriously discourage the public from meaningfully engaging in the EIA process

On average, public authorities took **at least 60 working days (approx. three months)** to respond with a decision to provide information

Time taken to receive a final response to the Right to Information applications



*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

3. The cost of accessing information via RTI Act can be prohibitively high

Exorbitant fees undermines public ability to access vital information

Rate per side of an A4 page

Rs. 2

Prescribed by the RTI ACT

Rs. 2

Rate charged by other public agencies

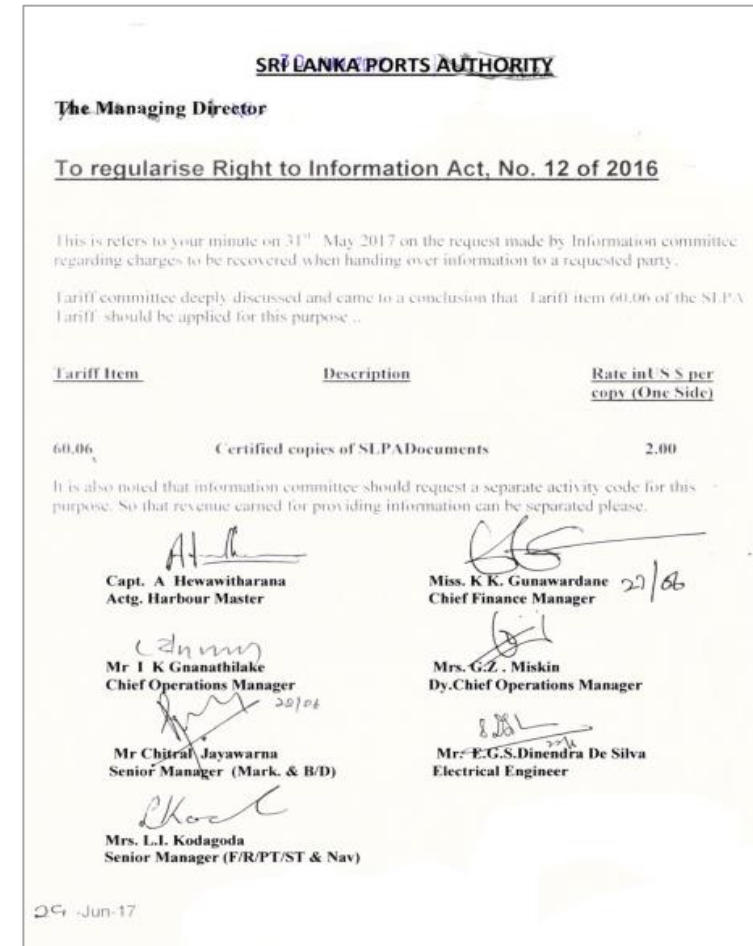
Rs. 398



Rate charged by SLPA*

* Rate of USD 2 adjusted to LKR at exchange rate of LKR 199.5 per USD as of end May 2021

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



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



**Ease of
accessing
information in
practice**

Conclusion



Limited access to information undermines meaningful public participation in development projects

- Disincentivise public engagement
- Compel public to rely on informal access to information that may not be reliable
- Reduce the effectiveness of public engagement
- Reduce the public confidence in the EIA process



- Public Participation in the EIA process become a mere “window dressing” exercise
- Failure to achieve the key objective of meaningfully integrating public into the development process

W(H)ITER ENVIRONMENTAL GOVERNANCE?

Limited access to information undermines
meaningful public participation in
development projects

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