



## POLICY BRIEF

# BUSINESS & HUMAN RIGHTS IN ENVIRONMENTAL MANAGEMENT

A Civil Society Organization perspective

February 2021

CENTRE FOR ENVIRONMENTAL JUSTICE

Supported by





A project supported by UNDP- Sri Lanka

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## **ABBREVIATIONS**

BSL-	Biodiversity Sri Lanka
CEJ-	Centre for Environmental Justice
CSO-	Civil Society Organization
ILO-	International Labour Organization
UNDP-	United Nations Development Programme
UNGPs-	United Nations Guiding Principles on Business and Human Rights

## CONTENTS

EXECUTIVE SUMMARY.....	7
KEY MESSAGES.....	9
INTRODUCTION .....	11
SRI LANKA'S ECONOMIC OUTLOOK THROUGH AN ENVIRONMENTAL LENS.....	13
THE BUSINESS CASE.....	15
POLICY DRIVERS.....	16
OPPORTUNITIES FOR CHANGE .....	17
POLICY RECOMMENDATIONS.....	19
RECOMMENDED POLICY ACTION .....	20
RESPONSIBILITY AND AUTHORITY RECOMMENDATIONS .....	22
REFERENCES.....	24

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## **EXECUTIVE SUMMARY**

Compared to many countries in the Asian region, Sri Lanka is emerging as a place for ethical businesses and is more advanced in the manner its businesses respond to social and environmental sustainability. Many of the leading businesses in Sri Lanka and even some of the medium sized ones are already engaging in integrating human rights considerations into their policy making.

Recent consultations have demonstrated that increasingly businesses are committing to developing an organizational culture which designs and implements a policy in line with internationally recognized human rights declarations that seek to address human rights abuses, improving human rights performance by referencing and implementing key international principles such as the UNGPs on Business and Human Rights, as well as relevant international conventions and standards.

Climate change and environmental degradation directly and indirectly interferes with the enjoyment of all human rights, including the right to life, and access to housing, water and sanitation, food, health, development, and an adequate standard of living. Ensuring sustainable development for all requires effectively addressing climate change through an internationally coordinated response. By taking into consideration human rights and environmental principles such as solidarity, transparency, participation, access to information, accountability, remedies, the precautionary principle, equality, and equity.

The implementation of the Paris Agreement and the 2030 Agenda for Sustainable Development, combined with the increasing engagement of the Human Rights Council, through a novel lens, presents a unique opportunity for developing and implementing ambitious public policies and business practices that integrate both human rights and environmental considerations at the national and international level.

All businesses have a responsibility to prevent and address the negative impacts of their actions on the environment. As such, the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises call for business responsibility to respect human rights and environmental rights includes the responsibility to identify, prevent, mitigate, and account for impacts related to climate change. Similarly, States should ensure that their own business activities, including activities conducted in partnership with the private

sector, contribute to mitigating climate change while respecting human rights, and ensuring effective remedies for climate and human rights abuses.

Corporate respect for human rights needs to start from the top. Businesses that make the greatest headway and are successful tend to have senior leadership actively advocating against human rights issues caused as a result of business activities. Businesses should engage with a wide range of stakeholders in order to identify their priorities, including those most likely to be impacted. Effective stakeholder engagement is critical. Of equal importance is undertaking due diligence and enabling remediation mechanisms. On the positive side, many in the business community are now shifting their focus on the need to integrate human rights principles in to their activities.

There is indicative demand for supporting businesses, in the provision of B&HR training and education, particularly for small business. In addition, support is required in the process of building internal awareness of the business case for human rights, the need to transparently communicate business progress and develop grievance mechanisms. Policy recommendations, suggested policy actions and responsibilities have been outlined.

## KEY MESSAGES

- #. Reputitional risk associated with non-compliance and not accepting responsibility to respect human rights and associated environmental impacts is becoming increasingly more important despite being difficult to assign tangible value to.
- #. International dialogue and mechanisms in place such as the Paris Agreement and the UNGPs present a unique opportunity for developing and implementing ambitious public policies and business practices that integrate both human rights and environmental considerations at the national and international level.
- #. Effective stakeholder engagement is crucial for businesses to identify human rights abuses resulting from inefficient environmental management.
- #. To combat the influences of climate impacts on business and human rights issues, the country needs to move towards putting a price on carbon, shifting the tax burden from income to carbon, and from taxpayers to polluters.
- #. Businesses should set science-based targets throughout their operations to align with limiting global warming to well below 2°C above pre-industrial levels and pursuing efforts towards 1.5°C, with efforts towards net-zero greenhouse gas emissions by 2050, as indicated in the Paris Agreement.
- #. There is indicative demand for supporting businesses, in the provision of B&HR training especially in the context of mitigating and adapting to climate risks and in the reduction of environmental risks arising as a consequence of their operations, particularly for small businesses.



## **INTRODUCTION**

As globalization has accelerated around the world, it has become increasingly clear that businesses –whether local or multinational, publicly, or privately operated – have impacts on human rights, both positive and negative. Significant risks to human rights have today arguably become a leading indicator of risks to business, be they operational, financial, reputational, legal or in staff recruitment and retention. Research illustrates the increasing likelihood and scale of conflicts with local communities, when natural resources, agricultural or construction projects impact their health and livelihoods. When businesses fail to provide decent jobs, be they buyers or suppliers, they accrue costs in staff turnover and training, lost productivity, and other risks to their business.

Recent work has illustrated that reputational risk is one of the more challenging costs for businesses to measure. Yet with the growing prevalence of news stories and campaigns related to human rights impacts as a result of business operations and across supply chains, it has become more relevant for businesses to address. Government procurements and export credit agencies have also started to strengthen requirements for human rights due diligence in their own assessment processes. Meanwhile, in recent times, many businesses, financiers, and investors use service providers to screen their operations and projects in the context of their history with human rights abuses, using this information as part of their own due diligence.

Additionally, the past year has been a challenge on almost every possible front as the COVID- 19 pandemic has devastated lives, livelihoods, and economies. But the pandemic has not slowed down climate change and environmental risks, which present an ever-growing threat to people’s health, jobs and safety. The stakes could not be higher; science shows that temperatures are in record-breaking territory, greenhouse gas levels are mounting, sea levels are rising, and natural disasters are becoming more frequent and destructive. As the world confronts the pandemic and embarks on the long-awaited pathway to recovery, there is also a growing recognition that this recovery must be built on a new foundation of a green and sustainable economy, that supports decent jobs and prosperity for all, reduces emissions, and builds resilience. Leaders must take this into account and make urgent choices now, to tackle the climate crisis and steer their countries towards achieving better health, a safer society and more sustainable economic growth for their populations.

The 17 [Sustainable Development Goals](#), agreed by the United Nations in 2015, address the environmental, economic, and social challenges that the world needs to overcome by 2030 to ensure a sustainable future. [SDG 13](#) calls on countries to ‘take urgent action to combat climate change and its impacts’, by implementing commitments to the [UN Framework Convention on Climate Change](#), as well as by improving public awareness of the need for Climate Action. Crucially, SDG 13 also calls on countries to integrate effective Climate Action measures into national policies.

## **SRI LANKA'S ECONOMIC OUTLOOK THROUGH AN ENVIRONMENTAL LENS**

Sri Lanka is a middle-income emerging market, and despite setbacks, is one of the fastest growing economies in the Asian region. Its new economic strategies have the capability of bringing out the true potential of the country as a source for exports of diverse commercial and industrial interest and making it a priority focus for international trade. Early this year, the Export Development Board (EDB) set an ambitious, yet achievable target of US \$ 18.5 billion worth of exports for 2020. However, considering the unprecedented disruptions to the global economy and trade due to the COVID 19 pandemic, the EDB revised its 2020 exports forecast by a hefty 42% to US \$ 10.75 billion. However, the FDI landscape remains fiercely competitive, both globally and regionally in South and South East Asia. To ensure Sri Lanka's continued attractiveness to FDI, the country needs a stable macro- economic environment and the assurance of a predictable investment climate for investors which is quite critical.

Whilst areas such as a competitive tax regime, safe and stable living and working conditions are important, investors are becoming increasingly risk averse. Many progressive international businesses today will look to locations and seek business partnerships with organizations that can ensure transparency of their operations and their supply chains, and need tangible guarantees that they are free of unacceptable practices including workplace safety, child labour, forced labour and sexual abuse, violence, and harassment of women in supply chains, unregulated environmental pollution etc.

As an island State, Sri Lanka faces the threat of rising sea levels, floods, landslides, prolonged dry spells, and other recurrent natural disasters which cause destruction, displacement and economic loss. According to the [World Bank](#), Sri Lanka on average experiences 313 million dollars in economic losses to disasters. This increasing recognition of Sri Lanka's vulnerability to climate change has ranked Sri Lanka 6<sup>th</sup> on exposure to extreme weather events in the [2020 Global Climate Risk index](#) of the organization 'German Watch. The Government of Sri Lanka, in its national policy framework ("Vistas of Prosperity and Splendor 2020") has included several measures, notably a key policy on Sustainable Environmental Management, which aims to integrate the SDGs fully into the framework.

Enhancing resilience to climate change disasters and strengthening environmental management is one of the main objectives of the [United Nations' Strategic Plan in Sri Lanka](#). Several UN Agencies are already working with the Government of Sri Lanka to implement a wide range of programmes, focused on areas including Sustainable Technologies, lowering Greenhouse Gas emissions, Sustainable Water and Land Management, and Disaster Risk Management and Climate Change Adaptation.

The UN has supported the [National Adaptation Plan for Climate Change Impacts 2016-2025](#) in Sri Lanka, which has been prepared in line with the broad set of guidelines set forth by the UNFCCC. The Adaptation Plan has helped outline a methodological framework through which Sri Lanka is set firmly on the path to becoming a resilient, vibrant, and sustainable country, and which provides a solid foundation with which information management, technological development, policy and governance, coordination and resource mobilization can be strengthened.

## **A Change in Policy, a Change in Sustainable Investment**

In the present context, Sri Lanka needs to stay ahead of the curve and have a greater competitive edge. The country's FDI potential and efforts to attract new investments will be further reinforced if businesses in-country are positioned as being aligned to an internationally accepted business and human rights framework such as the UNGPs on Business and Human Rights. The country will have a strategic advantage and will be able to achieve the vision of the Government to 'make Sri Lanka the most preferred destination for sustainable investment in Asia'. Growing investor pressure and regulations with international markets demand compliance and are clear in their intent that their suppliers must adhere to ethical standards as a condition of working with them and maintain that any abuse of these standards will not be tolerated. The stakes remain high and cannot be ignored if Sri Lanka is to achieve its development goals and targets.

Compared to many countries in the Asian region, Sri Lanka is emerging as a place for ethical businesses and is more advanced in the manner its businesses respond to social and environmentally sustainability. Many of the leading businesses in Sri Lanka and even some of the medium sized enterprises are already engaging in integrating human rights considerations into their policy making. Some already have internal policy statements on human rights.

## **THE BUSINESS CASE**

Today, ethical, sustainability savvy investors look for long-term prospects and they are the type that Sri Lanka should attempt to attract. Such investors prefer sustainable investments rather than a lucrative business which gets shut down due to human rights violations or corruption. Therefore, the Government of Sri Lanka has the responsibility to create a level- playing field where unethical businesses cannot undercut ethical ones merely for short-term gains. An increasing number of business agreements, free trade agreements and other international partnerships signed to-date include clauses of international human rights conventions, making them law.

The country [Sri Lanka] will have a strategic advantage and will be able to achieve the vision of the Government to 'make Sri Lanka the most preferred destination for sustainable investment in Asia'.

## **POLICY DRIVER**

One of the most significant changes in the human rights debate of the 21st century, is the increased recognition of the link between business and human rights. In the past, human rights were the responsibility of governments, not the private sector. However, now the onus is on both. The UNGPs— a set of voluntary guidelines to enable business enterprises to act with due diligence and develop the necessary management systems, policies, and processes to a reasonable extent, as well as effectively prevent and address any adverse human rights impacts that may be detected in supply chains. Based on recent discussions held with a diverse range of businesses in Sri Lanka operating both nationally and internationally, it is found that these have achieved widespread acceptance among stakeholders.

A significant driver is the increasing scrutiny from the media, trade unions and civil society, campaigners – particularly for consumer-facing businesses that are arguably most exposed to brand damage and loss of market share. Social media has given people a channel to make their voices heard more loudly and clearly than ever before. ‘Naming and shaming’ businesses that violate rights related to social and environmental sustainability and the resulting negative attention can damage critical relationships with investors, workforces, and local communities. Furthermore, labour and trade unions are increasing their attention on human rights issues and on labour rights.

Very often, accounting systems fail to capture the bottom-line costs that come with poor human rights performance, but there are examples from business that clearly demonstrates how significant they can be. These are invariably in the form of reputational, financial, operational, or even legal risks. Threats to human rights are also a threat to business. The wider international community—including business itself—has agreed that business has a responsibility to respect human rights. It cannot be ‘business as usual’.

## **OPPORTUNITIES FOR CHANGE**

Recent consultations conducted by the Centre for Environmental Justice and Biodiversity Sri Lanka have demonstrated that increasingly businesses are committing to developing an organizational culture which implements support for the internationally recognized human rights declarations that seek to avoid human rights abuses resulting from ineffective environmental management, improving human rights performance by referencing and implementing key international principles such as the UNGPs on Business and Human Rights, as well as relevant international conventions and standards such as those of the International Labor Organization (ILO).

### **Encouraging top-down commitment**

From our consultations, it became evident that corporate respect for human rights needs to start from the top. Successful businesses tend to have senior leadership actively involved in bettering their environmental and social footprint. There needs to be internal understanding of the UNGPs and what potential human rights risks exist throughout all aspects of the business, followed by buy-in from top management to ensure that the business's human rights responsibilities are fully met. If there is a lack of management commitment, business representatives were quite certain that other people and departments in the business will not be aware of their responsibilities to avoid environmental degradation and uphold human rights.

### **Effective stakeholder engagement**

It is important to reflect on the key priority areas of any business – where are the greatest human rights risks resulting from environmental activities is where action should be focused. Businesses need to make sure to engage with a wide range of stakeholders to identify their priorities, including those most likely to be impacted. Effective stakeholder engagement is critical to this regard.

### **Public commitment to uphold human rights**

Not all businesses have a publicly available B&HR statement, particularly one arising from environmental management that, among other things, draws on external and internal expertise in its formulation. The statement or policy should also be communicated internally to all personnel as well as externally to business partners and other relevant stakeholders.

## **Undertaking due diligence**

Of importance is a due diligence checklist/strategy and a remediation process in place in the event of a complaint or grievance. It was learnt that many larger businesses have many relevant tools and processes already in place – but may not necessarily be looking at it through a human rights lens. Businesses need to keep in mind that the simple existence of a policy does not mean very much on its own; what matters is its content and how it is implemented.

## **Private sector interest**

On the positive side, many in the business community are more focused than ever on the need to integrate human rights principles into their activities. For example, businesses in the hospitality and construction sectors have joined the fight against habitat destruction and pollution control. Businesses in the garment industry are actively engaged in improving poor labour conditions in global supply chains and eliminating their discharge of hazardous chemicals; agriculture and food related businesses are working to permanently eliminate child labour and forced labour, and businesses in the information technology (IT) sector are engaged in improving working conditions in their supplier factories.

## **Climate action**

To combat the influences of climate impacts on business and human rights issues, the country needs to move towards putting a price on carbon, shifting the tax burden from income to carbon, and from taxpayers to polluters. The goal of carbon neutrality must be integrated into all economic and fiscal policies and decisions, with funding flow to greening the economy, resilience, adaptation, and transitioning programmes. All public and private financial flows must be aligned with the Paris Agreement and the Sustainable Development Goals. Multilateral, regional, and national development institutions, and private banks, must all commit to align their lending to the global net zero objective and businesses need to adjust their business models – and investors need to demand information from businesses on the resilience of those models.

## **POLICY RECOMMENDATIONS**

The recent surveys conducted by CEJ and BSL through virtual consultations and the administering of a B&HR questionnaire has provided useful insights into the ground reality of awareness among Sri Lanka's private sector. The diversity of participants in terms of geography, industry sector and size of businesses indicated the global nature of engagement on human rights by business.

There is indicative demand for supporting businesses, in the provision of B&HR training especially in the context of mitigating and adapting to climate risks and in the reduction of environmental degradation arising because of their operations, particularly for small businesses. In addition, support is required in the process of building internal awareness of the business case for human rights in environmental management, the need to transparently communicate business progress, and developing grievance mechanisms. Additionally, there may be demand for the creation of learning materials which document good practices. Particularly those highlighting approaches to internal and external communications and reporting on human rights highlighting the link of human rights and the environment and establishing complaints mechanisms to disseminate among businesses for the benefit of peer-learning. Specific training and support could be tailored to the unique needs of smaller businesses with an emphasis on the creation of a Code of Conduct for business and human rights in environmental management.

Moreover, further emphasis could be placed on the dissemination of tools to support businesses in mapping their human rights risks in the context of mitigating and adapting to climate risks and in the reduction of environmental degradation at a geographical and sector level and in supporting businesses in understanding their indirect human rights impacts. The survey has demonstrated, and is testament to, the clear interest of business and reach of business associations and networks to stimulate interest in the topic. Therefore, approaches that leverage business associations and networks to disseminate support and continue awareness raising activities towards the implementation of corporate responsibility to respect human rights in environmental management will be of integral strategic value.

## RECOMMENDED POLICY ACTIONS

- #. Actively promote a National Action Plan on Business and Human Rights for Sri Lanka, complementing the country's ambitious development agenda and reducing business-related risks and rights violations. The Plan should set out clearly the expectations that all business enterprises respect human rights throughout their operations and prevent among others mitigating adverse impacts related to climate change and environmental degradation.
- #. Undertake concerted campaigns to advance respect for human rights through value chains in line with the UNGPs, highlighting the contribution this will make to uplifting affected communities enabling them to enjoy the benefits of development, calling on all businesses, large and small, to make this a reality, and urge investors, stock exchanges and other key agents of change to play their role.
- #. Promote the concept of joint action and accountability platforms as a critical and innovative form of partnership to address specific human rights challenges. These should place social dialogue front and center wherever workers' human rights are concerned. They should include and empower smaller businesses across value chains to act on human rights as part of their own responsibility to respect human rights and within a holistic approach to addressing persistent and systemic problems.
- #. Lobby the Government to introduce human rights due diligence into its procurement policies and practices, and where applicable into their development finance and export credit practices, as an essential means to incentivize and reward businesses that act with respect for human rights and meet their own state duty to protect human rights. Additionally, states should take steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, including in the context of climate change. For instance, state-owned enterprises could employ strict sustainability requirements in their procurement contracts.
- #. Lobby businesses to conduct voluntary due diligence and meaningful stakeholder engagement with those affected, implement the results of their impact assessments, and take appropriate action, including assigning responsibility for addressing such impacts to the appropriate level and function within the business enterprise. Furthermore, businesses should track the effectiveness of their human rights response using qualitative and

quantitative indicators and feedback from stakeholders, as well as report publicly as to how they address their human rights impacts. Human rights due diligence must address the adverse climate change-related human rights impacts and environmental impacts that the business enterprise may cause or contribute to through its own activities, or which may be causally linked to its operations, products, or services by its business relationships.

- #. Support and promote better human rights disclosure by the private sector in line with the UNGPs, such as by using the UNGP or other Reporting Frameworks, to motivate improved human rights performance and as a vehicle for more meaningful dialogue with investors and other stakeholders.
- #. In the context of climate change, businesses should continuously assess how their environmental and climate impacts may lead to human rights harms. Impact assessments should prioritize the most severe human rights risks and focus on the impacts on individuals and groups at heightened risk of vulnerability and marginalization. This process should include meaningful consultation with potentially affected stakeholders, including indigenous peoples and local communities. If it is not possible to sufficiently engage with all relevant stakeholders, businesses should consider reasonable alternatives such as consulting credible, independent expert resources, including environmental human rights defenders and civil society.
- #. Support research into effective ways to assess how well businesses are implementing respect for human rights, recognizing the need for more meaningful metrics than many of those available today as well as more insightful qualitative indicators where metrics prove inadequate.

## RESPONSIBILITY AND AUTHORITY RECOMMENDATIONS

- #. **The Government of Sri Lanka** has the obligation to guarantee all persons the right to access to information, including climate-and environment related information. **The Ministry of Environment** should set out mandatory climate disclosure and reporting obligations for businesses through environmental, and other laws and regulations, as appropriate.
  
- #. **UNDP** to lead the process, with renewed discourses about formalizing a set of national voluntary guidelines – leading to the development of a National Action Plan for Sri Lanka on Business and Human Rights in environmental management with adherence to the UNGPs that will enable both government and businesses to make clear what responsible businesses should look like.
  
- #. **The Department of Labour and the Central Environmental Authority**– the responsible Government bodies dedicated to rectifying business-related human rights violations. Establishing a specific Business and Human Rights in environmental management framework will be an ideal way forward.
  
- #. **Businesses** must interact with the Climate Change Secretariat to secure guidelines to set science- based targets throughout their operations to align with limiting global warming to well below 2°C above pre-industrial levels and pursuing efforts towards 1.5°C, with efforts towards net-zero greenhouse gas emissions by 2050, as indicated in the Paris Agreement.
  
- #. Networks such as the **Ceylon Chamber of Commerce or Biodiversity Sri Lanka**, that work exclusively with business to establish checks and balances, not only for businesses operating within Sri Lanka, but also for Sri Lankan businesses operating outside of Sri Lanka through subsidiaries or joint ventures. By conforming to a business and human rights framework, it would mean the mitigation of reputational, operational, and legal risks that impact on wealth generation, job creation, and growth in trade and investment.

- #. **The role of the CSOs, press and civil society-** Environmental human rights defenders are essential allies in climate action. Limitations on civic space undermine the crucial advocacy of defenders, which in turn can pave the way for short-sighted and harmful actions. Press, civil society, and other human rights defenders should not be obstructed, and they should be empowered and protected from threats, reprisals and harassment by business, state, and other actors.
  
- #. **Scientific Organizations-** An enabling environment must be created for investments in technologies that support a climate resilient future whilst ensuring that the benefits of these technologies are physically available, economically affordable, and widely deployable without discrimination.

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Centre for Environmental Justice is a public interest environmental organisation established in 2004. CEJ promotes good governance, environmental justice and environmental democracy. CEJ engage environmental litigation and environmental advocacy through law and science. CEJ also works on chemical governance, Forests governance, climate change, international environmental negotiations, single use plastics, genetically modified foods and supports community environmental struggles.

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