REPORT ON THE SRI LANKA NATIONAL DIALOGUE ON RESPONSIBLE BUSINESS AND HUMAN RIGHTS

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Report on the Sri Lanka National Dialogue on Responsible Business and Human Rights

Faiza Effendi – Deputy Resident Representative, UNDP Sri Lanka

Deepika Udagama – Chairperson, Human Rights Commission (HRC) of Sri Lanka

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Introduction

On 7 October 2019, in Colombo, UNDP Sri Lanka organized the inaugural Responsible Business and Human Rights National Dialogue in close cooperation with the Human Rights Commission of Sri Lanka, and the National Global Compact Network. In attendance were 10 representatives from CSOs, 30 business representatives, and 15 officers from govt and multilateral organizations. The following report provides a detailed account of the conversations that took place during this dialogue, as a means of measuring where Sri Lanka’s business community is with regards to its understanding of the UN Guiding Principles on Business and Human Rights (UNGPs), and where it might go in pursuit of greater alignment. In this way, the inaugural National Dialogue and this report serves as a baseline for which future progress against the framework of the UNGPs can be measured.

The UNGPs are the world’s most authoritative, normative framework for addressing adverse business impacts on human rights conditions. The UNGPs, divided into three Pillars, outline the roles for States and companies to prevent, address and remedy human rights abuses committed in the course of business operations. The UNGPs do not impose new legal obligations, but instead acts as a restatement of many of the human rights obligations a State has already undertaken or is subject to under international law.

As a global organization, UNDP aspires for sustainable development—eradicating poverty, reducing inequality, promoting peace and prosperity, protecting the planet—in all regions. Our focus on Business and Human Rights goes to the heart of the organization’s efforts to assist States in reaching their goals under the 2030 Agenda for Sustainable Development, including SDGs 5, 8, 10 and 16. Initiatives that build partnerships between business and government can also enhance policy coherence around sustainable development, described in SDG 17 as key to reaching all goals.

With a presence in 23 countries across Asia-Pacific, UNDP supports implementation of the UNGP on a truly regional scale. Seizing on the momentum in particular sub-regions, UNDP Asia-Pacific has been engaged in Business and Human Rights since 2015, facilitating regional exchanges of best practices, and through the establishment of regional awareness raising and advocacy efforts. UNDP is assisting regional and national institutions and networks to play their respective roles and functions in furtherance of the UNGP.

Welcome Address / Introduction to UNDP and Responsible Business and Human Rights in Sri Lanka

Faiza Effendi, Deputy Resident Representative, UNDP

The UNDP Sri Lanka, Deputy Resident Representative, Faiza Effendi, provided opening remarks, outlining the context in which the UN Guiding Principles of Business and Human Rights (UNGPs) have been launched. She emphasized that governments must strengthen systems to protect human rights and monitor progress. In that regard, Ms. Effendi noted that, “The Guiding Principles on Business and Human Rights offers an easy-to-follow blueprint for governments and businesses to follow. The “protect, respect and remedy” framework, at the heart of the Guiding Principles, is in fact recognized as a means for the implementation of the 2030 Agenda.” She added further, that the effectiveness of governments efforts is enhanced through an integrated set of actions at the national level and by collaborative efforts between both the public and private sector.

PILLARS OF THE UN GUIDING PRINCIPLES

Pillar I: clarifies the legal duty of States to protect individuals from adverse corporate related human rights impacts and outlines a set of operational principles through which States should implement this duty;

Pillar II: identifies the responsibility of business enterprises to respect human rights and delineates a due diligence process through which companies should give effect to this responsibility;

Pillar III: stresses and specifies the need to ensure better access to remedy for victims as a joint responsibility of States and business enterprises.
As Ms. Effendi further explained, UNDP is uniquely placed to support the implementation of the UNGPs based on UNDP’s longstanding cooperation with governments and civil society on challenging policy questions and experience strengthening the rule of law and access to justice. The Deputy Resident Representative finished her remarks by stating that, “Today we are laying the foundation of a process that enables stakeholders to explore mechanisms for mainstreaming the Guiding Principles on Business and Human Rights in order to promote sustainable businesses which have a positive influence on the lives of the people and their communities.”

**Guest Speaker**

**Chairperson Deepika Udagama, Human Rights Commission (HRC) of Sri Lanka**

The Chairperson began her remarks by acknowledging that in Sri Lanka the link between Human Rights and Business is new. She acknowledged that at the same time that the BHR conversation has been happening for decades in Sri Lanka under different guises.

Decades ago, CSOs pushed the UN to address business abuses of human rights. They highlighted a simple fact of life: business has an impact on society. Initial work conducted by the “The Sub-Commission on the Promotion and Protection of Human Rights,” was criticized by business as too radical. Later, the UNGPs won the endorsement of the business community. Thereafter, in 2011, the UNGPs enjoyed universal adoption by the Human Rights Council.

The Chairperson explained that at the HRC of Sri Lanka, other human rights issues have received much more attention than those related to business operations. “We have focused primarily on protecting vulnerable communities in the context of civil war,” she explained. “Increasingly, however, complainants are coming to us about business practices impacting them,” she noted. The Chairperson offered examples. Due to a lack of regulation, disciplinary practices and admissions practices have led to abuses in private school settings. Following the events of 21 April, a child was reportedly expelled from school due to his or her religious background. Hospitals are now increasingly dominated by private sector service providers. There are increased claims of discriminatory practices at these hospitals. Environmental pollution is also allegedly impacting on the health of the people, leading to infringements of the right to clean air and water.

The Chairperson noted that HRC’s mandate is limited to the fundamental rights in the constitutions. “We do not have a mandate to address private sector behavior,” she explained. “What we do is to go after the regulatory authorities to draw their attention to the issues. But some sectors are not properly regulated in the first place,” she noted.

Chairperson Udagama also noted that the business sector is bound by labor regulations and environmental standards, so firms are often perplexed when the Chairperson calls on them to address issues. “Business ask us, ‘why are you talking to us about human rights? We are about wealth and job creation.’ Our answer is that any enterprise must be for the public good,” she explained.

The Chairperson stated that the Business and Human Rights agenda could be a win-win situation. “Good business practices have reaped benefits for businesses. This is what the evidence suggests when we look at the things happening at the international level,” she explained.

The Chairperson noted that Business and Human Rights is not philanthropy, but instead allows partners to work towards respecting international human rights standards which are recognized by the Sri Lankan Constitution as well. She ended her remarks by stating that, “We need to be very candid about our positions. We are here to create a positive engagement with partners.”

**Keynote Address**

**Dr. Surya Deva, Member of the UN Working Group on Business and Human Rights**

Following remarks from Chairperson Deepika, Dr. Surya Deva, Member of the UN Working Group on Business and Human Rights provided his keynote address via video link.

Dr. Deva explained first that the Business and Human Rights (BHR) agenda is about, “businesses making profit with principles.” He noted that it helps that these principles are rooted in rights which are universally acceptable so that there is clarity of what is required. Dr. Deva explained further that the fundamental difference between CSR and BHR is that, “CSR is about how business may spend its money. BHR is about how business makes its money.” He offered the example of a company polluting a river that children play in, but then giving money to maintain a school. The CSR does not offset its responsibility not to abuse the human right to clean water. Human rights should be integrated in all business operations.
Dr. Deva asked, “How do we move towards BHR in Sri Lanka?”

Two points of understanding are required he suggested. First, BHR is here to stay. International trends are all moving in the same direction. All of the world’s most pressing issues are connected to BHR including climate change, migrant worker rights, tax evasion, and conflict.

Many countries including in South Asia are moving ahead. The South Asia Forum on Business and Human Rights in Delhi brought together stakeholders around the region. In India a zero draft of the Business and Human Rights agenda is moving forward. In Nepal the government is developing a chapter on BHR in its Human Rights National Action Plan (NAP). Pakistan and Bangladesh are not far behind. There is thus, “no reason for Sri Lanka to fall behind,” according to Dr. Deva.

The second point of understanding is to acknowledge that, “Governments are seemingly attracted to the notion that we must focus on economic development first and then human rights later. But this approach leads to structural problems and inequality." We should also understand that BHR is connected to the SDGs, he counseled, “All of the SDGs are connected to human rights.”

Dr. Deva suggested that the BHR agenda in Sri Lanka is so important because of how it relates to the country’s post-conflict status. Dr. Deva explained that, “when human rights are ignored, then peace cannot endure. Human rights must be integrated in whatever we do. This benefits the whole of society in the long run.”

The way forward for the government can be remembered by the acronym, ABC. Dr. Deva explained that: 1) “A” stood for Awareness raising; 2) “B” for Building capacity and; 3) “C” for Collaboration. On this third point, Dr. Deva clarified that working together does not mean we ignore human rights because they are inconvenient or make us feel uncomfortable. “The collaboration is for the common good: to promote the respect for human rights.”

Dr. Deva also encouraged all organizations to work on outreach activities occurring outside of Sri Lanka. The government should also make a public commitment to implementing the UNGPs. Once the commitment is made, the government should start drafting a National Action Plan (NAP). In this particular context, the guidance from the UNGPs is useful. Importantly, all stakeholders should be consulted throughout the country. The issues are different in different areas of the country, he offered.
Regional Initiatives on Responsible Business and Human Rights

Harpreet Kaur, Business and Human Rights Specialist, UNDP Bangkok Regional Hub

The Business and Human Rights Specialist for South Asia, Dr. Harpreet Kaur, at UNDP Bangkok Regional Hub began her remarks by noting that the business sector is driving the global economy, including in what were once public sector industries. “The business sector is becoming much more influential on social issues,” she noted.

Dr. Kaur then outlined some fundamental principles of the UNGPs including that the UNGPs cover all businesses no matter what their size or annual revenues. “The UNGPs do not ask us to develop new laws or ratify another convention. The UNGPs are a framework for leveraging these laws to ensure protection in the context of business operations,” she explained. Dr. Kaur also noted that Sri Lanka has ratified all the main UN Human Rights Conventions and that these conventions are reflected in the country’s Constitution. Thus, Sri Lanka is already vested in the issues. “The UNGPs are not asking for a new commitment,” she concluded, “the government is already committed.”

Dr. Kaur explained further that Thailand is the region’s leader on Business and Human Rights but further noted that the country’s NAP has taken at least 2 years to develop. The country developed a baseline using a multi-stakeholder model before proceeding to drafting. India is conducting a national baseline assessment, and a consultation on a zero draft. But a question often arises during these consultations, how many issues is enough? How many geographies do we need to cover? This is a matter for each country to decide after baselines are conducted. Prioritization of human rights risks will be required.

In the middle of next year, a NAP on Business and Human Rights will likely emerge out of India. It was noted that progress was being made too in Indonesia, Malaysia and Pakistan.

Dr. Kaur concluded her presentation by emphasizing the growing number of compliance regulations including the UK and Australian Modern Slavery Act and France’s duty of vigilance law. She concluded by noting that India’s former Voluntary National Guidelines on Responsible Business Conduct no longer accommodates the word “voluntary” in its new iteration. These changes in the regulatory landscape are indicative of the trend towards greater respect by business of human rights, as noted earlier by Dr. Deva.

Case Studies and Panel Discussion

The discussion on Panel 1 began with remarks from the moderator, Ms. Tharuka Dissanaike, Policy and Design Specialist Environment, UNDP. Ms. Dissanaike noted that the environmental debate goes back to 1972 when UN committees explored the impacts of economic development on the environment. In the early 1970s the issue gained sudden and important attention but was still confined to subject matter experts and activists. Today, sustainable development and environmental conservation has been mainstreamed. “We all feel it,” she noted, “That is what is different.”

The right of people to clean air and clean water are matters of first instance, but also what about the right of the next generation to experience nature that we are using up today? Does nature have a right to exist?

We must also look at what the 2030 Agenda for Sustainable Development brings to the table. We will need to look at developing new models of growth that integrates environmental concerns.

Center of Environmental Justice, Hemantha Withanage

Mr. Withanage, began his presentation by exploring the history of BHR, noting that the topic is not novel. “When we started learning about Bhopal way back, everyone was shocked at how thousands of people could die in minutes. This was also true of the Minamata Bay poisoning, Three-Mile Island and Fukushima: big industrial disasters get our attention,” he noted.

Unfortunately, “regular, every day or routine pollution does not generate as much anger or concern in part because people do not believe they have rights to stop it,” he suggested. Poverty itself is somehow understood to be indelibly connected to environmental disasters and the other way around, he noted.

The Minamata poisoning was a continuous accident, with mercury being poured into Minamata Bay for years at a time. Today successive generations and even the fourth generation are still suffering from the Minamata disease. The Minamata Convention on Mercury has taken mercury out of production – but it took years. “We are talking about human rights abuses going untreated and unacknowledged for years, for many, many years until a Convention was signed,” Mr. Withanage noted. What are the implications for the BHR agenda or efforts at an international treaty on BHR?
It was noted that, “We are still fighting the burning of forests in Indonesia and Malaysia. Thailand and Singapore people are also suffering from the resulting haze. But despite four countries are being effected we are still unable to address the burning.” The challenges the BHR and sustainable development field faces will not suddenly be addressed because we have the UNGPs, he noted.

Perhaps, there has to be a radical new approach, involving the identification of the rights of nature, Mr. Withanage suggested. “We have never established the right of nature in Asia. Only in Ecuador do mountains and rivers have rights. NZ declared their river as a living river.” What are the implications? Mr. Withanage concluded by imploring us to look at our rights and the rights of nature as a joint responsibility.

**Macksons Paints, Lanka Ltd.** Rajith Liyanaarachi, Deputy General Manager, Research and Development

The Deputy Director noted that his journey integrating responsible business practices begins with the importation and export of lead-free paints. He credited the Center for Environmental Justice (CEJ) for demanding that all production of lead-based paints stop. CEJ and paint manufacturers had a discussion about the need to following international standards. CEJ played a leadership role in pushing the government to adopt international standards, while Mackson’s Paints sought to comply with international certification process. To raise awareness of the dangers posed by lead paint to children, Mackson’s started the National Lead-Poisoning Week.

**Aitken Spence.** Rishard Preena, Head of Sustainability Operations

Mr. Preena began by admitting that communities around their Heritance property at Kandalama were not happy with the opening or expansion of their facilities. Large protests were organized to protect communities from the corrupting influence of tourism and to protect water resources. According to Mr. Preena, “All that resistance was a blessing of Kandalama – We emerged as the first company to conduct a proper EIA and we won numerous awards for the practice that we employed.”

Staffing for the tourism industry is important. Aitken Spence is working to increase more female worker participation for business reasons. “Looking at the guests that are coming in, single female travelers are coming in so we need to show that we walk the talk,” he noted.

**Nations Trust Bank.** Adheesha Perera, Manager Sustainability

Nations Trust Bank is working to ensure environmental rights and responsibilities by following Sri Lanka’s Sustainable Banking Principles. Eighteen out of 32 banks have committed to uphold 11 principles. The bank also leverages the Environmental and Social Risk Management System which helps the bank avoid lending to projects that do harm.
The steps involve real information gathering; the approach is not a mere tick boxing approach common to auditing exercises. The bank also invests in actual investigations. Data and research shared by conservation partners also informs decisions. The bank also invests in capacity building of staff to ensure decisions are made according to our principles.

Information needs to come from environmental organizations that are working in environmentally sensitive areas. According to Mr. Perara, “We take partnerships seriously.” The bank also educates SMEs and entrepreneurs to understand climate risks, and new environmental laws.” A lesson learned: Banks need to engage SMEs early in the financing discussion. As he explained, “The thing is that business get financing from banks, thus they have their plans already set. So this is why it’s important to engage with SMEs on environmental issues early in the financing stage.”

Responding to questions, Mr. Perera noted that environmental impact is both a reputational and credit risk. “So, our environmental checks are mostly out of self-interest. If there is a disruption to the operations of our clients, then it impacts our long-term business sustainability as well.”

The IFC has been doing a significant amount of work on environmental rights, he noted. All banks in Sri Lanka are drawing inspiration from the IFC guidance. Please visit for more information: Sustainablebanking.lk.

Questions:
Panelists were asked a series of questions about gender inclusion policies. As an example: “The conversation is always about diversity but not on inclusion. Bringing in more policies - there is no inclusion. Who are these women, where are they coming from? I like the case studies but what are the lessons learned you would share with companies? What not to do, when issues are raised by CSOs, are there things that you will not do?”

The representative from Aitken Spence noted that less than 10% of the workforce is female. But female travelers are coming in fast. Thus, the company is changing fast, but it faces significant cultural obstacles. “The garments industry has managed this effectively and we draw our inspiration from them. We communicate our security policies to communities, noting that 45% of employees come from with 2 miles of the Heritance property,” he explained. “We bring the families into the property. We show them what the daughters and mothers will be doing on a day to day basis. Not every female employee can travel back to their homes after their shifts. We show community members that we provide proper, safe facilities,” offered Mr. Preena. Female employees tend to be more loyal if they feel comfortable and women are being promoted quickly, he suggested.

The representative of CEJ reflected on the power of community engagement. He offered that Aitken Spence was criticized for building at Kandalama. “But we had a public hearing. And we saw that concerns were addressed, and that changes of approaches were adopted.” Reflecting too, on other engagements he noted that there was a huge amount of lead in the samples provided by paint providers and producers; well above the international standards. “No business argued against our efforts at CEJ for heightened standards. Everyone just sought information about what needed to be done. Fights today, he suggested are “mostly against government-led projects and not business. Government projects are not doing their part to ensure EIA. The world has changed a lot,” he concluded.

Panel Discussion 2: Best Practices within the Private Sector

Rathika De Silva, Network Representative, UNGC Sri Lanka, began his moderator’s remarks by highlighting the difficulties that Sri Lanka suffered over the last 13 years. “Unlike the nations around us,” he noted, “we suffered a civil war that we thought we would never end. But our economy continued to function for us – businesses kept on going. They were courageous enough to take the nation forward.” He concluded that, “today, those business continue to contribute significantly to the country’s well-being.”

The representative noted that the country or businesses, or both would be on a “long journey when you undertake a subject of business and human rights. We know stakeholder expectations are changing. We know that they know their human rights.” To talk in detail about protect and respect and remedy, many companies fit within this framework already. “There are many that started the journey a decade or more ago,” he concluded.

Jetwing, Kanchana Nanayakkara

Kanchana Nanayakkara, representative from Jetwing Hotels offered a review of its many CSR projects, including providing underprivileged children access to its swimming pools. The company is also sourcing all its food except beef from Sri Lanka and encouraging small scale suppliers to take their offerings to another level. Renewable energy is also important to the company.
Selyn, Seylna Peiris

Women have issues that need to be accommodated by companies, explained Seylna Peiris. Companies need to push the boundaries to ensure that women have the safety net to come back to work. The biggest challenges for Selyn, a garment manufacturing company, is production gaps due to capacity. She noted that sometimes men blame women for capacity shortcomings. As she explained, “One manager noted, ‘if you want efficiency don’t take on women with problems.’” In her reply she retorted, “The problem is not women, it is you, production manager!” Businesses need to be creative in helping women succeed she concluded. Ms. Peiris also highlighted the importance of ensuring women are in roles of leadership, as this is one way to ensure that other women have equal access to opportunities in the workplace.

Ceylon Biscuits Limited, Samitha Perera

Hope cookies, a brand of Ceylon Biscuits, employs intellectually challenged workers in making cookies. These workers also take part in day to day activities and special activities. It gives people pride, Samitha Perera noted. “We do a lot of spending on sports too,” he offered. Mr. Perera also provided a video, which depicted the positive impact the Hope Initiative has had on the lives of the children as told by their parents. “They were grateful for this initiative that has given children with special need the access to gainful employment and the opportunity to live a normal life,” Mr. Perera concluded.

Kelani Valley Plantations, Roshan Rajadurai, Managing Director

The tea industry is the only one where workers work, live and die in the same place, according to Roshan Rajadurai. The company cares for up to 150,000 people. Maternity and reproductive rights are provided, and vaccinations for children. In the plantations, the women are the key drivers of family life – they work, they clean house, and they act as caregiver. The woman in the family is often the last to eat. On plantations, stunting is higher than the rest of the country. For this reason the company started an awareness programme on nutrition. “We have done things little by little to better women’s health,” he noted. “A plucker is our most valuable asset.”

Yet, women suffer health and domestic violence. When they leave, their children suffer neglect and violence. The men take additional earnings from their wives and spend it on alcohol.

MAS Garments, Thanuja Jayawardena

The garment industry is labor intensive and sometimes located in rural areas. MAS has 53 facilities in 16 countries; 70% of their working population is female. Ms. Jayawardena noted, that when women come into the workplace there are specific challenges for them as they leave the home. There are social cultural obstacles. “So for us,” she explained, “it’s about going beyond compliance.” MAS Garments thus deploys leadership programs, invests in technical capacity and soft skills development, trains women in financial management. Women’s health is significant to keeping women on the job, including sexual and reproductive health rights. She noted that child care is the main reason why women stay, though only a minority of factories have child care centers. Anti-harassment measures are also important as well as ensuring vendors have a code of conduct. They company conducts audits and maintains robust grievance handing and reporting platforms. “It’s not enough to have an anti-discrimination policy,” she
noted. “We have to look at the way we work. And have accessibility and innovations. We need to look at whether there are ways to take the opportunities up,” she concluded.

A question was posed by a trade union representative. He noted correctly that the UNGPs recognizes the ILO Core Conventions as a pillar of rights that businesses must respect. Freedom of association and collective bargaining is a basic right, he noted. The trade unionist asked, “How many of your factories have unions?”

Panelists responded that the union is not the only way to express their grievances. Pluckers participate with management without unions for example. Other business representative noted that they have alternative dispute mechanisms to address grievances. Another business representative suggested that the company does not bar efforts to create unions, but there has not been a movement yet.

Another company noted that, “we allow unions but most of the time the unions are connected to political parties. They are not really focused on workers’ needs. Unions are owned by political parties and carry out the work of the political party,” he explained.

A comment was offered on gender. A CSO representative noted that women have a hard time being promoted to the kankarni level. Also, there are rising reports of children that are abused by caregivers. Unfortunately, women are forced to do all the care work. Engaging with men is also important. We know that garment factories are safe but at the home there is domestic violence.

The respondent noted that more and more women are being promoted to the Kankarni position. But that a “hundred year legacy is hard to overcome.”

Panel Discussion: The Way Forward

During this final, full session, the moderators Chandrika Karunaratna, and Sean Lees, Business and Human Rights Specialist for UNDP Bangkok Regional Hub, facilitated discussion with business leaders and Chairperson Udagama. The Chairperson suggested developing a task force to chart next steps, while Mr. Lees noted that time was of the essence as regional competitors were already well on their way towards becoming responsible business leaders. Ms. Rohini Nanayakkara highlighted the importance of internalizing values of human rights in all levels of the workforce in private sector.

Concluding Remarks

Robert Juhkam, Resident Representative, UNDP Sri Lanka

The UNDP Resident Representative, Robert Juhkam offered closing remarks. He noted that UNDP is looking forward to building on the momentum gathered at the National Dialogue in pursuing a collaborative approach to expanding the Business & Human Rights agenda in Sri Lanka. “It is indeed heartening to note the interest this topic has generated across multiple sectors,” he observed. UNDP stands committed to support government, private sector and the general public – to identify mechanisms to promote business & human rights in Sri Lanka whilst recognizing national and sectoral priorities.