



THE UNTAPPED TRADE AND INVESTMENT POTENTIAL OF THE BUSINESS AND HUMAN RIGHTS AGENDA IN SRI LANKA

November 2021

The implementation of the United Nations Guiding Principles on Business and Human Rights would present Sri Lanka with an opportunity to secure greater access to export markets, attract more foreign direct investment and make greater progress towards sustainable development.

RESPONSIBLE BUSINESS AND THE TERMS OF A POST-COVID GLOBAL ECONOMY

The COVID-19 pandemic has had an enormous impact on Sri Lanka's economy.¹ To recover quickly, economists stress that increased levels of international trade and foreign direct investment will be required. The implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) can give greater visibility to Sri Lanka's responsible business profile, attracting the attention of international business partners and advancing trade and investment.

As the COVID-19 emergency response period draws to a close, international investors will return to Sri Lanka looking for growth opportunities. But in the post-pandemic ethos, the parameters will have likely changed. Consumer demand for responsible business practices has crystalized. Globalization is under scrutiny as never before. Today, States are reviewing the national security implications of long tail supply chains on the availability of strategic materials and products. And shareholders and consumers are weighing the impact of far-flung business operations on climate change and labor rights, putting values before price when making purchases.

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The [UN Guiding Principles] are a great opportunity for Sri Lankan enterprises to learn and adopt globally accepted best practices on ethical business reporting. There are so many businesses in Sri Lanka that are committed to responsible practices. An internationally recognized framework can increase their visibility and open opportunities to expand into new markets.

Amanda Kiessel, Cofounder, Good Market

For the reasons detailed below, Sri Lanka can better leverage the UNGPs as a means to send a positive message on trade and investment in the country. Implementation of the UNGPs, would reinforce Sri Lanka's image as an attractive, low risk setting to do business,² thereby enhancing trade and investment flows.

In fact, many enterprises in the apparel, tourism and agriculture sectors of Sri Lanka are already dedicated to responsible business practices. The success of their businesses demonstrates that respect for human rights in business operations need not come at the expense of jobs and value generation. As this issue brief demonstrates, Sri Lanka's business sector is primed to support government policy in furtherance of the UNGPs.

The UNGPs are widely regarded as the world's most authoritative, normative framework governing responsible business conduct in the world today. Organized under three pillars, the UNGPs articulate:

- 1. THE STATE'S DUTY TO PROTECT HUMAN RIGHTS IN BUSINESS OPERATIONS;**
- 2. BUSINESS OBLIGATIONS TO RESPECT HUMAN RIGHTS AND;**
- 3. THE RESPONSIBILITIES OF BOTH TO PROVIDE REMEDY FOR THOSE WHO HAVE BEEN HARMED.**

Importantly, the UNGPs call for policy coherence between regulatory, legal and economic policy frameworks.

VISTAS OF PROSPERITY AND SPLENDOUR – SRI LANKA'S PLANS FOR SUSTAINABLE GROWTH

In December 2019, the Government of Sri Lanka outlined its vision and plan for the country in an election manifesto entitled Vistas of Prosperity and Splendour,³ which has since been translated into the country's National Policy Framework.⁴ The National Policy Framework is focused on making sustainability gains in the agriculture, fisheries, tourism, apparel and construction sectors. The National Policy Framework also addresses the needs of the country's micro, small and medium-sized enterprises (MSMEs).⁵

The National Policy Framework benefits from the integration of the 2030 Agenda on Sustainable Development and the corresponding Sustainable Development Goals (SDGs). For the reasons described in various sections below, the government's endorsement of the UNGPs would also enhance the effectiveness the National Policy Framework, serving as a platform for discussions on sustainability challenges and reform.

TRADE, INVESTMENT AND RESPONSIBLE BUSINESS PRACTICES

International Trade

Sri Lanka has faced economic challenges in recent years due to the instability of the global economy and the unique features of the country's current account imbalance.⁶ Many analysts and economists argue that increasing exports (as opposed to reducing imports) is the most effective way for Sri Lanka to reduce any account deficits and stabilize the economy.⁷

The European Union (EU) and the United States (US) account for nearly 60 percent of Sri Lanka's total exports by value. Preferential trade access to the European Union and the United States under their respective Generalized System of Preference (GSP) schemes contribute significantly to the Sri Lankan economy. Benefits amounted to \$2.7 billion in 2019, an increase of 4 percent from 2018.⁸

During the COVID-19 pandemic period, both the EU and the US maintained strong commitments on responsible business. In 2021, the US showed a willingness to stop Asian imports made with forced labor from entering its markets. Germany and Norway passed legislation mandating that companies in their jurisdiction conduct human rights due diligence. In 2020, the European Commission embarked in earnest on a proposed Directive on mandatory environmental and human rights due diligence.

Consumers in Sri Lanka's important export markets in the US and EU are demanding more action from their governments to address human rights and climate change related challenges.⁹ In the aftermath of COVID-19, consumers are demanding action from businesses, holding them to account for social and environmental impacts from their operations and supply chain partners.¹⁰ Furthermore, the world's biggest brands and investors recognize that human rights are an important consideration for their continued relevance and the sustainability of their businesses over the long term.¹¹

Foreign Direct Investment

Foreign direct investment (FDI) will be critical to facilitate productivity increases through capital and technical transfers. A considerable portion of FDI received to date involves large-scale infrastructure projects and low-value-added sectors that arguably provide limited enhancements to long-term export competitiveness.¹²

Adding to these concerns is the fierce level of competition among Sri Lanka's neighbours to attract FDI. Analysts suggest that Sri Lanka may require structural and property reforms to better compete with its Asian neighbours and improve its ease-of-doing-business perceptions.¹³

The adoption of the UNGPs through a National Action Plan (NAP) on Business and Human Rights would highlight expectations of the business community, complement Sri Lanka's reform framework and set the country apart from regional competitors (Principle 2). As a national, multistakeholder process designed to reduce risks of human rights abuses in business operations, a NAP on business and human rights would send an important signal to international investors seeking responsible finance opportunities.

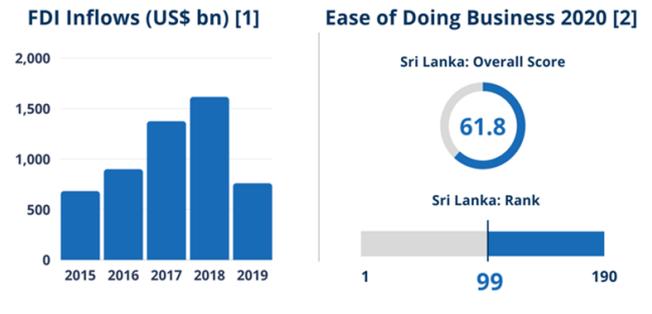
GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UNGPs call on States to recognize their role in protecting human rights in business operations. This implies that States should, among other things, review risks to human rights to identify gaps in legislation and in the enforcement of laws protecting labour, land, women's and Indigenous Peoples' rights. (Principle 3a). The UNGPs also call on States to ensure policy coherence between departments and agencies that shape business practices. (Principle 8).

Governments in Asia understand the strategic importance of attaching themselves to these growing trends and have begun to align with the Guiding Principles by adopting NAPs on business and human rights, including in Thailand (2019), Japan (2020) and Pakistan (2021). NAPs are currently in development in India, Indonesia, Malaysia and Mongolia.¹⁴ NAPs enable these countries to identify and prioritize reforms and to signal to the international community that they are taking responsible business seriously.



Climate and social justice activists are pushing the clothing industry to take better care of people and the planet.¹⁵



Selected Ease of Doing Business Indicators 2020 [2]

	Starting a Business	Registering Property	Paying Taxes	Trading Across Borders	Enforcing Contracts
Score	88.2	51.9	59.8	73.3	41.2
Rank	85	138	142	96	164

FOUR SECTORS: RESPONSIBLE BUSINESS PRACTICES IN SRI LANKA

Some export facing sectors in Sri Lanka have benefited substantially from their alignment with internationally recognized responsible business practices. For Sri Lanka to fully leverage the country's international trade and investment potential, it might reflect on the approaches of its apparel, tourism and agricultural enterprises. More attention too, should be paid to the needs and successes of the country's Micro, Small and Medium-sized Enterprises (MSMEs).

Apparel Sector

The apparel sector in Sri Lanka contributes more than 46 percent of the national exports¹⁶. The sector is also well regarded internationally for its labor practices and environmental safeguards. The sector is Sri Lanka's largest industrial employer, engaging nearly 600,000 people, most of whom are women.¹⁷ One of the sector's strengths is its decentralized economic geography: Factories are operating in rural or underdeveloped regions, including the Northern and Eastern Provinces. New factories have been established after the civil war ended, creating economic growth centres that have helped the country to move into a middle-income status.¹⁸

The responsible business practices of manufacturers in the Sri Lankan apparel sector have been a core source of its competitive advantage over regional competitors, enabling them to enjoy strategic partner status with leading apparel and footwear brands.¹⁹

In 2006, the apparel sector launched the Garments Without Guilt campaign, becoming the first in the world to champion the cause of ethical labour practices while pushing for the design of people and environment friendly factories.²⁰ Sri Lanka's apparel industry now houses some of the worlds' most acclaimed eco-garment factories.²¹



We tell other manufacturers in other countries that they should go to Sri Lanka to see how it's done.

Rob Sinclair, President, Supply Chain Solutions, Li & Fung Group (Hinrich Foundation, 2018)

To ensure responsible business standards cascade down through the apparel supply chain, especially to the many MSME suppliers, the Joint Apparel Association Forum launched a certification process²² that enables certified companies to promote themselves as responsible businesses. This status improves the public perception of the sector, especially global perceptions, which has resulted in greater global demand for Sri Lankan-made apparel.



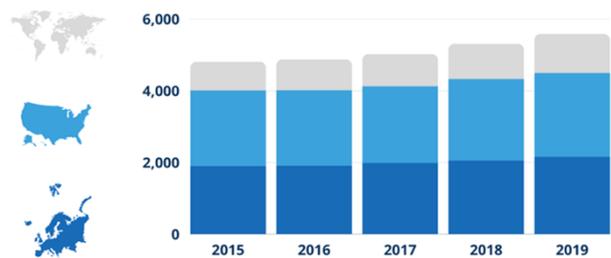
LEED Platinum certified Brandix Eco Centre factory in Seeduwa, Sri Lanka.²³

Indeed, Sri Lankans have enjoyed relatively high labour standards²⁴ in the apparel sector and do not face the same human rights risk profile that arguably prevails in other countries. Among the risks common to the garment industry include: inability to access a living wage, confined and insecure living spaces, restrictions on unionizing, and a lack of social security.²⁵

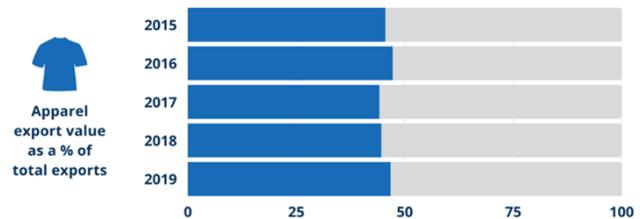
However, Sri Lanka's apparel sector faces significant headwinds going forward. The COVID-19 pandemic period, defined by reduced or cancelled orders, has hit the sector especially hard.²⁶ The sector has also faced heavy criticism for its treatment of workers, especially in the free trade zones, during the first year of the crisis.²⁷

Apparel Export Industry Performance

Apparel Exports Value by Destination (US\$ mn)



Apparel Exports as a Share of Total Exports



Source: Sri Lanka Export Development Board, 2020.²⁸

Growth in the sector has slowed considerably, though there is a recent uptick in production in some sub-sectors.²⁹ Many large apparel exporters are reportedly looking to other countries to set up new factories in anticipation of increasing demand.³⁰ Some Sri Lankan industry leaders have suggested that non-compliance with international human rights obligations poses a competitive risk to Sri Lankan apparel brands, because it would have a direct impact on concessionary access to the European Union and United States markets via GSP+ schemes.

As multinational entities with closely integrated supply chains, large apparel exporters can move manufacturing offshore to mitigate the risk of Sri Lanka losing preferential access to its key export markets. However, the approximately 700 small and medium-sized enterprises (SMEs)³¹ in the apparel sector do not have this option.

United Nations Guiding Principles on Business and Human Rights

The UNGPs ask governments to consider the following actions, among others, to protect human rights in business operations. According to the UNGPs, governments should:

1. Set out clear expectations and provide effective guidance to businesses on how to respect human rights throughout their operations in every country and context in which they operate. Principle 2.
2. Enforce laws that require businesses to respect human rights and creating a regulatory environment to assess effectiveness in preventing violations. Principles 3a and 3c.
3. Encourage businesses to communicate how they are addressing their human rights risks and impacts. Principle 3d.
4. Ensure that government departments, agencies and other State-based institutions that shape business practices are aware of and observe human rights obligations when fulfilling their respective mandates. Principle 8.

In this context, the UNGPs might be employed in Sri Lanka to address issues related to the treatment of workers in the apparel industry, whether working in free trade zones or otherwise (Principle 3b). The UNGPs might also provide a framework from which to launch a conversation on the State's role in providing guidance on responsible business (Principle 3c) more generally. Given strong labor conditions, the government might further promote the country's approaches in global markets, by requiring companies to report or communicate on their human rights impacts (Principle 3d).

Tourism

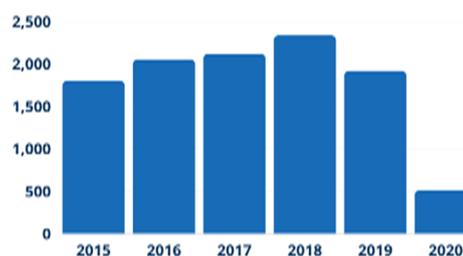
The tourism sector has been driving job creation in Sri Lanka since the end of the civil war in 2009, contributing to reductions in poverty and inequality while making positive impacts on the agricultural, health and education sectors. Tourism is Sri Lanka's third-largest foreign exchange earner, after the apparel sector and overseas workers' remittances. Tourism impacts more than 400,000 people directly and indirectly³² contributing to the incomes of youth, women, minorities, Indigenous Peoples and other marginalized groups. Tourism has also stimulated infrastructure and public service development in rural areas.³³

Investments in sustainable tourism might also help Sri Lanka bounce back from the April 2019 terrorist bombings and travel restrictions related to the COVID-19 pandemic.³⁴

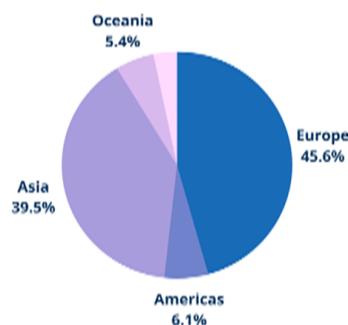
According to studies, sustainable tourism increases competitiveness, enhances customer loyalty and sustains long-term profitability.³⁵ As the tourism sector strategizes for revival in the post-COVID-19 pandemic period, Sri Lanka can seize an opportunity to rebrand the country as a global destination for sustainable tourism.³⁶

Tourist Arrivals

Tourist Arrivals in Sri Lanka ('000s)



2019 Tourist Arrivals by Region of Origin



Source: Sri Lanka Tourism Development Authority.³⁷

In August 2020, the Tourism Strategic Action Plan 2020–2022 was launched to streamline the industry, in line with the National Policy Framework and adjusting for the post-COVID-19 realities.³⁸ Several activities planned allude to the strategy, with the intent of “fostering a people-centric, technology-driven and sustainable tourism sector from the grass-root level to achieve overall economic development in the long run”.³⁹

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As tourism will likely take a while to return to normalcy, there is an opportunity for us to strategically plan on how we will grow responsibly and sustainably.

Hiran Cooray, Chairman, Jetwing Symphony

Any renewed Tourism Strategic Action Plan would benefit from a review of human rights risks facing workers and communities. Among the most salient risks include exploitation of children as sex workers⁴⁰ and rights abuses linked to environmental degradation.⁴¹ The tourism sector also faces accusations of land rights abuses, which could have links to unaddressed human rights concerns.⁴² Communal violence targeting minorities has in the past affected the country's tourism brand and image.



The Sri Lankan Government [should lead with] a national action plan to position the country as a sustainable and ethical tourism destination and to attract FDI to develop the sector.

**M. Shanthikumar, Director,
Sri Lanka Tourism Authority**

Some reports suggest at least half of the tourism industry consists of informal service providers, such as accommodation, transport and guide services.⁴³ The Chairwoman of the Sri Lanka Tourism Development Authority reports that the figure could be as high as 90 percent. In the absence of a social security net the pandemic restrictions hit the informal sector particularly hard.⁴⁴ The prevalence of the informal sector also adds challenges in terms of enforcing labour laws, enabling statutory contributions, and providing for access to remedy.

The Sri Lankan government might employ the UNGPs to serve as a platform to address risks across the tourism industry (Principle 2). The UNGPs might also provide an entry point for discussions of legislative reform and enforcement of child protection laws, while enabling conversations on social welfare provision for informal workers in the tourism sector's supply chain (Principle 2).

Agriculture

Once recognized as the "Granary of the East", Sri Lanka's agriculture sector has in recent years struggled with low productivity, inefficient use of water and land resources and high post-harvest losses. Even while employing a quarter of the labour force, the sector only contributes 7 percent to the country's GDP.⁴⁵ Around 80 percent of the country's annual food production is attributed to nearly 1.7 million smallholder farmers who cultivate on average less than 2 hectares.⁴⁶

Compounding these challenges is the rate of the country's deforestation, attributed to the conversions of forests to large scale plantations.⁴⁷ Increasing deforestation puts the livelihood of smallholder farmers at risk through enhanced soil erosion and biodiversity loss.⁴⁸

Recognizing the challenges facing Sri Lanka's agriculture sector and in particular, smallholder farmers, Sri Lankan social enterprise and private sector actors are providing technical support and opportunities to smallholder farmers to secure and sustain their livelihoods. Based on a model of producer groups, in which smallholder farmers are organized into collectives, these organizations are helping to create end-to-end value chains that recognize, respect and leverage the values and knowledge of smallholder farmers.⁴⁹

The government's National Policy Framework recognizes the need to protect forests, setting ambitious targets for their preservation. A rights-focused approach would help ensure that small holders enjoy the right to participate in the implementation of government-sponsored development projects that might impact on land and forest assets. Conducting human rights due diligence (HRDD) might further highlight challenges and risks facing small holder farmers.

Agriculture Sector at a Glance

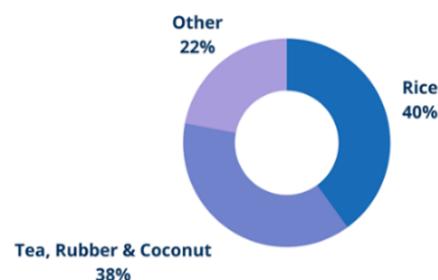
Labour Force in Agriculture Sector [1]



Agriculture Sector GDP Contribution [1]



Crop Distribution [2]

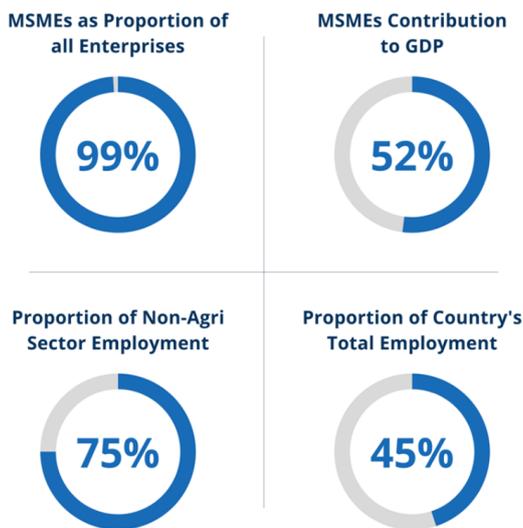


A NAP on Business and Human Rights centred on the UNGPs, might provide further impetus to discuss policy development and coherence between departments, agencies and other State-based institutions on land rights, human rights and environmental risks that small-holders

face (Principle 8). Furthermore, promoting the uptake of HRDD among collectives, industry associations and larger agribusiness concerns would assist in preventing abuses from taking place (Principles 11-17).

MSME Sector

In Sri Lanka, Micro, Small and Medium-sized Enterprises, (MSMEs) have not yet harnessed the full potential of engagement with the global economy.⁵⁰ Slightly more than 3,000 MSMEs are registered as exporters, contributing to less than 5 percent of Sri Lanka's exports. In comparison, MSMEs in other Asian countries contribute an average of 30 percent to national exports.⁵¹



Source: Ministry of Industry and Commerce, Sri Lanka.⁵²

The National Policy Framework for SME Development, recognizes the potential of the MSMEs to diversify Sri Lanka's exports into new, non-traditional export goods. The MSME sector could potentially increase Sri Lanka's trade volumes under the EU's GSP+ system of preferences.

MSME's are often assumed to have a lighter environmental and social footprint than larger firms. Though more data is required, there is anecdotal evidence that many MSMEs in Sri Lanka profile themselves as responsible business actors. The MSME sector also provides opportunities for some of Sri Lanka's most vulnerable communities, including rural women and unskilled labour migrants. The sector is largely informal, with 45 percent micro enterprises and 11 percent of SMEs unregistered. Women-led MSMEs face gender discrimination and struggle to access financing and market opportunities. The COVID-19 pandemic has made these challenges more acute.⁵³

Although suffering great losses as a result of the pandemic, the MSME sector has remained agile and resilient, even ensuring to a great extent that their communities and

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A large number of micro and small enterprises in Sri Lanka function on values that are closely aligned with doing good for the people and planet. However, as many of them operate outside formal structures, their capacity to do good often goes unnoticed and therefore we aren't maximising their potential to appeal to the emerging ethical consumer demand in export markets. A model such as the BHR framework, for as long as it doesn't add more red tape, will be welcome as it will help to bring structure and formally recognise the good practices in the sector already.

**Vikum Rajapakse, Director,
Kantala Pvt. Ltd**

the environment were protected during the lockdown periods.⁵⁴ In a 2020 survey, 84 percent of MSME proprietors said they had not reduced staff salaries as a result of the pandemic.⁵⁵

The UNGPs might be further leveraged to benefit MSME participation in global markets by ensuring that issues facing MSME development challenges are addressed in a systematic and coherent manner. (Principle 8). A NAP on Business and Human Rights would provide recognition of the challenges the sector faces, including discrimination against women or minority entrepreneurs and suppliers to larger firms. A NAP could spotlight the special needs of MSMEs encouraging more focus from international investors and buyers.

NEXT STEPS

This issue brief is based largely on the views of 27 influential individuals and specialists (see acknowledgements) on responsible business topics. Among other things, they were asked how the UN Guiding Principles on Business and Human Rights could be leveraged to reduce risks and stoke economic growth.

All respondents agreed that upholding labour rights and protecting the environment are central to the identity and reputation of their companies. Further, that these features have made them strategic suppliers to global brands. The UNGPs were considered by many, to be a unique opportunity to further profile Sri Lanka's responsible business practices to an international audience. Similarly, representatives from the MSME sector agreed that the UNGPs and similar frameworks were important to understand best practices on responsible business, which would open access to premium markets in Europe and North America.

Next steps to ensure a reduction in human rights risks, and greater visibility for Sri Lankan responsible business practices might include the following:

1. RAISE AWARENESS OF THE UNGPS

There is a need for wider awareness and deeper understanding of the UNGPs among policy makers, business leaders and civil society. Greater awareness will allow more businesses including MSMEs to adopt and refine practices that meet international standards. Further, greater understanding among policy makers will ensure consistency in policies that shape business behavior. Enhanced awareness among civil society actors and business leaders will ensure transparency in any policy making processes that may lead to the formal adoption of the UNGPs.

2. ADOPT HRDD PRACTICES AS ARTICULATED IN THE UNGPS

The adoption of HRDD practices will ensure Sri Lanka businesses prevent and mitigate human rights risks in their operations and supply chains. Moreover, the wide adoption of HRDD may be increasingly required of European business partners as new legislation takes shape mandating HRDD among European businesses and their suppliers. Where Sri Lanka fully embraces new expectations on managing human rights risks, it may raise its profile substantially relative to regional competitors.

3. DEVELOP A NAP ON BUSINESS AND HUMAN RIGHTS

The government should consider a multistakeholder process to develop a NAP on Business and Human Rights.

The NAP development process would provide a platform for discussions on a wide range of business impacts on human rights, while highlighting progress already made. The NAP process, built on the three pillars of the UNGPs, would provide an accessible framework defining the differentiated but complementary roles of the State and business. Best practices can be shared by countries in Asia currently vested in NAP development or implementation processes, including India, Indonesia, Japan, Malaysia, Mongolia, Pakistan and Thailand.

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3. Aritha Wickremasinghe, Director and General Counsel, TWCorp (Pvt) Ltd, Former Counsel at National Agency for Public-Private Partnership
4. Azam Bakeer Makar, Partnerships and Development Finance Specialist at the United Nations Resident Coordinator's Office in Sri Lanka, Former Network Representative and Director – Global Compact Network Sri Lanka, Former Assistant Vice President Business Development & Head of Sustainability at Aitken Spence.
5. Simrin Singh, Director at ILO Country Office for Sri Lanka and the Maldives
6. Thomas Kring, Chief Technical Advisor, ILO Country Office for Sri Lanka and the Maldives
7. Khairul Islam, Marketing and Value Chain Specialist, ILO Country Office for Sri Lanka and the Maldives
8. Rathika de Silva, Network Representative and Executive Director, UN Global Compact Network Sri Lanka, former Country Head, DNV GL-SL, VP Holcim SL
9. Manjula de Silva, CEO, Ceylon Chamber of Commerce
10. Shiran Fernando, Chief Economist, Ceylon Chamber of Commerce
11. Jayani Ratnayake, Economist EIU, Ceylon Chamber of Commerce
12. John Wilson, Managing Partner, John Wilson Partners, Board Member, European Chamber of Commerce
13. Shirendra Lawrence, Board Member, American Chamber of Commerce and Executive Director, MAS Holdings (Private) Ltd
14. Siddharth Amalean, Head of Sustainable Business, MAS Capital (Pvt) Ltd
15. Thanuja Jayawardena - Head of Women Go Beyond, MAS Holdings (Pvt) Ltd
16. M. Shanthikumar, Director, Sri Lanka Tourism Authority
17. Prasanna Hettiarachchi, Founder and Managing Director, Saaraketha Holdings
18. Kanchana Nanayakkara, Head of Human Resources, Jetwing Hotels
19. Charitha Abeyratne, Founder and CEO of Saraii Village
20. Amanda Kiessel, Board Member, Social Enterprise World Forum & Co-Founder, Good Market (GTE) Ltd
21. Achala Samaradiwakara, Co-Founder and Managing Director, Good Market (GTE) Ltd
22. Vikum Rajapakse, MD & Co-Founder, Kantala (Pvt) Ltd
23. Deshika Elapata, Research Assistant - South Asia Democratic Forum
24. Dhananath Fernando, Chief Operations Officer, Advocata Institute
25. Erinch Sahan, Executive Director, World Fair Trade Organization
26. Dr Lalith Welemadage, CEO, Lanka Social Ventures
27. Avinash Hettiarachchi, Engagement Manager, Stax Inc.

ENDNOTES

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