Tourism in Sri Lanka: Human Rights Due Diligence of Tour Operators in Post-Conflict Areas

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War and dictatorships or military regimes leave behind societies that are torn apart and harbour great risk of discrimination and repression. A company not wishing to be an accessory to or play a part in human rights violations must assume human rights due diligence with great commitment and special care, beyond the requirements of previous certificates. That is the conclusion drawn from a recent study on tourism and human rights in Sri Lanka by the Society for Threatened Peoples Switzerland. Reflecting the insights of this new study, the present discussion paper provides tour operators with an incentive for elaborating specific measures in their human rights due diligence in post-conflict areas.

The facts provided by the new study by the Society for Threatened Peoples (STP), Switzerland “Dark Clouds over the Sunshine Paradise. Tourism and Human Rights in Sri Lanka” contrast strongly with images of Sri Lanka the holiday paradise: The traditional fishermen – a must for the photo album of any Sri Lanka traveller – are being ousted from their traditional fishing sites, where hotels now reside. New resorts deny hundreds of fishermen access to the sea. Mangrove forests protecting the coast against erosion as well as providing women and children with fishing grounds for shrimps and prawns are cut down to make way for new tourism complexes. Thus the livelihood of fishermen and their families is seriously threatened. In the new tourism zones, land is grabbed and the residents are resettled, more often than not with insufficient warning or compensation. Only a few people in the environment of the new tourism resorts are able to make a living from the emergent tourism. The majority of hotel employees are recruited from other Sri Lankan regions and local fishermen are hardly ever chosen as suppliers for the hotels. Research in the three newly developed tourism zones, Kalpitiya, Kuchaveli and Passikudah, illustrate impressively how the basic rights to development, adequate living standards, and participation of the native population have been ignored and violated over the course of the massive tourism boom in Sri Lanka.

The fieldwork for the study was conducted by multi-ethnic teams. In its report, the STP describes tourism for the first time from the perspective of the disadvantaged and oppressed minorities. The study therefore offers an opportunity to use the specific example of Sri Lanka to highlight particular traits of tourism development in post-conflict areas and to issue first key parameters of how tour operators should assume human rights responsibility in this context. Within the scope of the multi-stakeholder initiative "Roundtable Human Rights in Tourism", we aim to implement and deepen these insights in dialogue with tourism business enterprises.
1 Tourism boom - at what cost?

The results of the new study on Sri Lanka are typical of many regions where tourism was in decline for extended periods due to armed conflicts – and then flourished once the conflict is officially resolved. Tourism is often one of the first sectors to prosper in former conflict areas. Similar developments can be observed in areas hit by natural disasters, as research in the tsunami-afflicted regions of Asia shows. Similarly, countries that open up after long years of dictatorial rule often experience a tourism boom with similar risks, as the tourism-related "sector-wide impact assessment" of Myanmar has proven (www.humanrights.dk/projects/myanmar-centre-responsible-business). These tourism booms can certainly be attributed to the curiosity and increasing demand of travellers. But it is ignited in the first place by the intense government support of this particular sector that promises foreign exchange, new investments, and jobs. Governments tend to use the booming of tourism to signal a "return to normality" to the international community and often start to promote this sector long before any serious process of reconciliation, compensation, and comprehensive reconstruction has been initiated:

- Thus, after the bloody end of 26 years of civil war, the Sri Lankan government presented an ambitious tourism strategy to simultaneously stimulate tourism as its key industry and spearhead of the country’s economic development, and also to revamp Sri Lanka’s battered international image. And tourism is booming: whereas in 2008 Sri Lanka registered around 440,000 international visitors, in 2013 the number reached almost 1.3 million.

- In this post-conflict tourism boom, harmful developments that are characteristic of tourism promotion in the aftermath of a tsunami are continued and aggravated. The flood waves hitting the coasts of Sri Lanka in 2004 claimed the lives of 35,000 people and left half a million homeless. The subsequent reconstruction of the traumatised and civil war-stricken country was advanced hastily with considerable sums of aid money. The government established a new coastal zone protection plan with fishing villages often rebuilt several kilometres away from the seacoast and fishing grounds. These regulations continue to threaten the livelihood of local coastal communities to this day. However, the coastal protection regulations seem in the meantime to have been watered down and are obviously not applied to new tourism developments.

- The government’s Tourism Strategy 2011–2016 was equipped with progressive guidelines for sound social and environmental development, as is expected of any tourism master plan today. However, current research proves that these regulations are not being observed. In the prevailing climate of fear and repression, over the past years under an increasingly autocratic government, local communities and civil society actors have not been in any position to demand ecological and social standards for tourism development.

- Investors in tourism projects are provided with generous incentives: leasing contracts for land use and permits for building new tourism projects are often allocated by the government or the army without transparency and irrespective of existing regulations.

- The tourism boom is accompanied by an increasing presence of the armed forces in tourism, similar to the situation in Egypt or Burma where the same phenomenon can be observed. Above and beyond security tasks, the armed forces in Sri Lanka grab land for new tourism complexes and even become tourism players themselves by acting as managers of hotels or golf courses, by offering excursions and domestic flights, and running shops at tourist destinations. In this way, they compete with the locals and deprive them of important sources of income.

- The oppression of ethnic and religious minorities – Tamils, Muslims, and Christians – continues to prevail after the end of war. The population in the new tourism zones, especially in the remote rural and coastal areas in the North and Northeast of Sri Lanka, is afflicted by poverty as well as ethnic and religious discrimination. It lacks the power to take a stand against the arbitrariness of government and armed forces and to assert its rights in tourism.
Freedom of speech and press are restricted in Sri Lanka – media representatives and human rights defenders are being massively intimidated and threatened. The research for the STP study thus also required the implementation of special safety measures for informants and research teams.

In this difficult post-conflict context, population groups who are already disadvantaged and vulnerable must be given a chance for fair participation in the new economic upswing and tourism boom. If that is not the case and they experience instead even more violations of their rights, having no opportunity to resist or react to the negative impacts inflicted upon them, then this clearly harbours the risk of new friction and conflict. And this may also put the current tourism boom at substantial risk.

2 Human rights responsibility of tour operators

In 2013 more than 85,000 German and around 20,000 Swiss travellers visited Sri Lanka. Thus Germany and Switzerland contribute considerably to the Sri Lankan tourism sector. On the German travel market around 50 tour operators and on the Swiss market around 20 tour operators offer vacations in Sri Lanka.

In view of the human rights violations documented in the study "Dark Clouds over the Sunshine Paradise. Tourism and Human Rights in Sri Lanka", it is crucial that the tourism industry in today's post-conflict Sri Lanka observes its human rights due diligence.

As established in the United Nations Guiding Principles on Business and Human Rights (UNGPs) from 2011, business enterprises – wherever they operate – have the responsibility to respect human rights by putting in place policies and processes appropriate to their size and circumstances, including:

- A policy commitment to meet their responsibility to respect human rights;
- A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights along their entire value chain;
- Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute;
- Evaluate the effectiveness of their measures and account for how they address their human rights impact.

Specific clues on how tour operators can ensure their human rights due diligence are provided by the "Round Table Human Rights in Tourism" with a practical management guideline and online training (www.menschenrechte-im-tourismus.net/en/startseite.html)

Our on-going monitoring of the tourism sector shows that the industry as a whole has so far not sufficiently realised that an effective and sustainable development of tourism – and thus of their business too – requires their own commitment to human rights and social responsibility. Some tour operators have already initiated a human rights policy in their companies. And more and more tourism businesses are at least taking measures to protect the environment and climate, and increasingly are tackling social issues such as the protection of children against...
sexual exploitation or measures for fair labour conditions. Some of them also require local and regional procurement from their partners, thus increasing local added value and the income of peasants, fishermen or craftsmen in tourism. Thus, in Sri Lanka too, several tourism enterprises are already striving towards more environmentally friendly and socially responsible economic activities.

It was not the purpose of the STP study to review the commitments of tour operators or local tourism businesses to human rights or social and ecological standards. Indeed it is not the case to call to account those tour operators who already take measures to achieve social and ecological standards whereas those who do nothing to the respect human rights and do not assume ecological and social responsibility would de facto drop out of review and thus remain virtually unassailable.

3 Specific demands for the human rights due diligence of tour operators in the Sri Lankan post-conflict context

The STP report discloses that human rights violations occur both within and in the surrounding areas of three selected resorts offered by German and Swiss tour operators. These also include tour operators who have been awarded sustainability certificates or have taken measures to respect human rights. This may be a sobering insight but above all it reveals that existing CSR (Corporate Social Responsibility) procedures and credentials such as sustainability certificates in tourism do not meet the specific demands required for the respect of human rights in post-conflict areas. Economic activities in post-conflict contexts require specific further-reaching measures of corporate human rights due diligence. Tour operators who are clearly committed to human rights and sustainability, who have firmly embedded their efforts into management structures and bear external reviews with credible certification and transparent reporting have already initiated significant steps in this process. They have developed business structures and operations that allow particular responsibility to be exercised in delicate human rights issues.

Guiding Principle 23 of the UNGPs firmly establishes that particularly in areas where a state only poorly protects human rights, or even violates them, businesses must not benefit and reduce their proper standards, but instead seek ways to honour the international standards on human rights. Business enterprises active in conflict areas must be aware that their business activities make them potential accomplices in the crimes of regimes who deny human rights, and thus run the risk of serious legal and reputational consequences. In such contexts business enterprises should prove that they are able to assume responsibility in respecting human rights, and in doing so do, avoid aggravating existing conflicts. For this purpose they should consult, beyond their business relations, independent experts from civil society and human rights organisations for further cooperation regarding the respect of human rights (www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). On the human rights responsibility of business enterprises in conflict areas, see also the explanation of Rachel Davis, former member of John Ruggie’s core legal advisory team who helped develop the UN Guiding Principles on Business and Human Rights: www.icrc.org/eng/assets/files/review/2012/irrc-887-davis.pdf)
For providers of tours to Sri Lanka this means specifically:

3.1) "Do no harm": committing to conflict-sensitive strategies

Operators offering tours in post-conflict areas must be aware of the part they play in the fragile context of human rights. They should commit to the principle of doing no harm because inadvertent action could further aggravate existing conflicts. They should prevent human rights abuse in their business environment proactively and exert their influence in remedying any violation of rights of local inhabitants.

3.2) Proceeding from context: from context analysis to the assessment of possible human rights risks of business activities

Assessing the impacts of business activities on human rights in a post-conflict context requires a careful analysis of the conflict and the current situation:

- What caused the conflict? How was the conflict fought? Who were the conflicting parties and what were their motives? How was the conflict resolved? What is the state of reconstruction?
- Who has suffered and continues to suffer most from this conflict? Which population groups are discriminated against in the process and which are especially vulnerable? Has a process of reconciliation and compensation been initiated involving the equal rights of the conflicting parties?

In 2009 Sri Lankan government forces concluded the war against the Liberation Tigers of Tamil Eelam (LTTE) – the military arm of the Tamil resistance movement – with a final offensive that, according to the United Nations, claimed the lives of 40,000 to 70,000 people. So far the Sri Lankan government has vehemently opposed any motions of the United Nations Human Rights Council for an independent investigation of war crimes. A serious reconciliation and compensation process is not in sight. After so many years of civil war, the restoration of Sri Lanka will take time. According to the World Bank, after long periods of war countries need at least 15 and sometimes up to 30 years until they can establish a working government.

Important matters that need further clarification:

- Who are my business partners and what is their position in the context of the conflict?
- Where in my business environment are the risks that could ignite unresolved conflicts?
- Where do I obtain information? Does this information take the discriminated population groups into account?

In the context of post-conflict Sri Lanka, it must be assumed that the majority of German and Swiss tour operators cooperate with local agencies and tourism providers who conduct their businesses under the hegemony of the ruling government and victorious army – whose view of the conflict they share. Hence, to assess the situation in the post-conflict
area for a context analysis, it is important to consult other authorities (Federal Foreign Office, DEZA, BMZ etc.) as additional sources of information, as well as international and local human rights organisations.

3.3) Conflict sensitive risk assessment: taking into account the human rights risks in the post-conflict context in assessing the business environment

- Given the discrimination against population groups in the post-conflict zones, appropriate and careful research is required that includes all conflict parties. This will enable an effective assessment of the risks of human right abuses involved in the business’s own activities.
- In doing so, special attention must be given to violation of the rights of the discriminated ethnic and religious minorities as well as those of particularly vulnerable population groups, such as women and children.
- Within the scope of research and interviews, it must be ensured that informants are protected and will not be subjected to risks of repression.

3.4) Consistent actions: systematically addressing violations of the rights of discriminated population groups in a post-conflict context

Advocate the rights of discriminated population groups in direct business relations:

- Within the frame of contracts with local partners, a supplier code of conduct should ensure the essential facts regarding human rights due diligence. The supplier code of conduct should contain the following measures:
  - Employment on fair conditions and equal opportunities for people from discriminated population groups in recruitment procedures. Due to the lack of possibilities for gaining a more comprehensive insight into labour and recruitment conditions in tourism companies, the research conducted by STP has only provided first indications of discrimination of ethnic and religious minorities. Special attention is therefore required in this respect.
  - Intentionally promote the employment of residents from the vicinity of the tourism resorts and, if necessary, support their qualification.
  - Guarantee the purchase of local products (fish, agricultural produce, artisan craftwork, and souvenirs from the neighbourhood around the resorts) so as to systematically increase local added value.
  - Bring home to business partners (local travel agencies, hotels, providers of tourist excursions, transport, etc.) the fact that human rights violations will not be tolerated – and not by the tourists either. Thus, for instance, discriminatory employment or procurement terms should be remedied. Likewise, the banishing of fishermen from resort beaches must be condemned in no uncertain terms, and a solution found that would secure their access to fishing grounds. If no agreement can be reached regarding the human rights due diligence, new business partners need to be sought.
  - It is imperative to clarify the partners’ strategies for respecting human rights before entering into new business relations (e.g. with local travel agencies, hotels, providers of tourist excursions, transport companies).
  - Tourists must be informed about the culture and living conditions of the locals in the context of fragile human rights. In doing so, stereotypes should be avoided that attribute ethnic and religious minorities with insinuations cemented even further in the civil war. Travel information should portray the multi-ethnic and multi-religious formation of the Sri Lankan population and give representatives of minorities equal opportunities to have their say. Moreover, companies should report transparently on their efforts in protecting the rights of the local population and provide tourists with specific tips on how they too can respect the human rights of the local population.
Seeking dialogue with disadvantaged population groups and establishing grievance mechanisms:

- Try to actively establish contact with defenders of human rights and the civil society representatives of disadvantaged population groups and communities, whose rights are being violated over the course of tourism development: their views and demands should be acknowledged and serve as a basis for developing measures in operative management. Only those tour operators who are informed about the concerns of the people immediately affected by tourism development are able to demand changes of conduct from their business partners, and also to jointly campaign with civil society actors for the rights of the local population to be respected.

- In this context tour operators shall advance the establishment of effective grievance mechanisms, which are all the more important since the state does not fulfil its duty in protecting human rights.

3.5) Child protection: safeguarding against exploitation

The research-team of the STP-study could not cover the specific topic of the protection of children against exploitation in tourism. Sri Lanka, however, is notorious as a destination for tourists seeking sex with children. Child sex tourism flourished in particular during the civil war era when the holiday sector collapsed. Due to the poverty of large sections of the population and the poor educational system, it is to be expected that children and young people work in the tourist industry without sufficient protection against exploitation of labour and/or sexual abuse. According to Sri Lankan child protection organisations, there are no actual surveys available. Thus, the demand that tourism providers operating in Sri Lanka ratify and actually implement the “The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism” (www.thecode.org/who-have-signed) is imperative. Another essential is the cooperation with local children’s rights organisations because young victims of exploitation and sexual abuse in tourism run the risk of being criminalised themselves. Moreover, children’s rights organisations are also subject to intimidation and repression (www.ecpatsrilanka.org).

4 Additional demands and measures

In its report “Dark Clouds over the Sunshine Paradise. Tourism and Human Rights in Sri Lanka” STP makes detailed demands on governments and the tourism industry which we support. Though in our comments we focus primarily on the specific demands of human rights due diligence on tour operators from the source markets, we also recognize important and further reaching demands on other actors, which emphasize and supplement the demands of the STP.

4.1) Clear political requirements for businesses regarding compliance with human rights due diligence

In today’s globalised world it is essential that all business enterprises – including domestic tour operators – assume human rights due diligence along the same parameters in their entire business activities. In view of the tourism-related human rights abuses in Sri Lanka
documented in the STP study, politicians from all countries – in particular Switzerland, Germany and the European Union, where major international tourism corporations are headquartered – are called upon to ensure that tourism suppliers, wherever they operate, can be held accountable at the headquarters of their parent company for [not] respecting human rights. It is owing to pressure from civil society that in Switzerland and various other European countries a binding corporate due diligence is now being increasingly discussed. By developing national action plans for the implementation of the UN Guiding Principles on Business and Human Rights, legal regulations are being seriously considered by parliaments and governments. Like the Society for Threatened Peoples Switzerland, the arbeitskreis tourismus & entwicklung (Working Group on Tourism and Development) also participates in the wide-ranging alliance of civil society organisations who are now launching in Switzerland the Federal popular initiative “for responsible corporations – for the protection of people and environment”, which aims at the legal adoption of corporate human rights due diligence.

4.2) Tourism as a topic in the political dialogue

In consideration of the findings of the STP study, it is essential that Swiss and German governments and authorities – and also those of other important tourism source markets – introduce the issue of human rights in tourism in their on-going political dialogue with Sri Lanka. Tourism must not be idealised uncritically as a bringer of peace and an engine for development. Instead, the human rights risks and ensuing conflict potential must be clearly addressed in the political dialogue – and the promotion of ventures adjusted accordingly.

4.3) Adequate survey of the human rights situation in tourism

A sector-wide impact assessment (SWIA) of tourism, similar to the one carried out for the first time in 2014 by the Danish Institute for Human Rights in cooperation with Myanmar Centre for Responsible Business for Burma/Myanmar, would be useful for a more comprehensive assessment of the respect of human rights in Sri Lankan tourism and other fragile human rights contexts. Independent human rights institutions in Switzerland and Germany should assume and carry out this task in close cooperation with human rights and civil society organisations from the destination countries and with tourism-critical organisations from the source markets.

4.4) To include special human rights due diligence for business enterprises in post-conflict contexts in existing criteria catalogues on corporate responsibility and sustainability certifications

With the adoption of the UN Guiding Principles on Business and Human Rights, corporate respect for human rights has been introduced into the EU and OECD guidelines for corporate responsibility and into the leading certification systems of the tourism industry. But the provisions do not go far enough in accounting for the particular corporate human rights due diligence in fragile post-conflict contexts. International agencies and certification systems with claims to international validity are called upon to tighten their criteria regarding the special human rights responsibility of corporations operating in post-conflict contexts with fragile human rights.

4.5) Last but not least, travellers too have a responsibility

According to various polls the awareness among tourists of responsible tourism has notably increased during recent years. Tourists are attaching more and more importance to the observance of human rights, fair labour conditions and the protection of the environment in bookings, and there is an increasing expectation for tourism providers to guarantee this.
Travelling into post-conflict areas requires tourists to behave appropriately:

- Careful travel preparations include being well informed of the origins and consequences of the conflict.
- The choice of a tour operator who is committed to respecting human rights and who has taken specific corporate measures in this respect. Should a deal not provide enough specific information, the provider should be asked specifically about the respect of the rights of discriminated minorities and benefits of tourism for them, and how fair labour conditions and the participation of local residents are guaranteed.
- While travelling, tourists should conduct themselves in a manner that respects human rights: they should not participate in sightseeing tours that are degrading for the locals; pictures should not be taken that invade the privacy of the locals; child workers should be respected and attention paid to their particular situation; suspicion of children being sexually exploited should be reported to reliable agencies (www.stopchildsex-tourism.ch/web/en/) and local suppliers and products should be chosen that support local income and benefit the disadvantaged.

5 Now is the time for a clear commitment to the respect of human rights

The presidential elections in early 2015 promise a new start for Sri Lanka: with surprising clarity the population voted out president Mahinda Rajapaksa, who, together with his family clan, has up to now also been in control of the tourism industry. By electing Maithripala Sirisena they made a clear vote to renounce the autocratic nepotism of the Rajapaksa regime. Despite some fears, the Rajapaksa regime did not oppose the decision of the vote. To what extent the regime change in Sri Lanka also means a change for the oppressed ethnic and religious minorities and respect for their rights remains to be seen. But there is hope. “We have a new president,” the Tamils from the little shop next-door told us happily the day after. This new political setting makes it even more important that international tour operators now clearly commit to the respect of human rights as a prerequisite for sustainable and peaceful development in Sri Lanka.
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