

Recommendations on the National Environmental (Amendment) Bill 2026 Prior to Parliamentary Debate

We, the undersigned, write to you regarding the National Environmental (Amendment) Bill gazetted on 22 April 2026.

We wish to be clear at the outset: we welcome this Bill as a long-overdue effort to strengthen Sri Lanka's environmental governance. The introduction of Strategic Environmental Assessment, hazardous waste licensing, wetland conservation provisions, and significantly increased penalties for environmental violations represent meaningful progress on gaps that civil society has documented for decades. We acknowledge this effort and the intent behind it.

We write because the Bill, in its current form, contains provisions that will undermine the very communities it is meant to protect, concentrate unchecked power in executive institutions without adequate judicial or community oversight, and fail to meet Sri Lanka's obligations under international human rights and climate frameworks. We raise these concerns in the spirit of constructive engagement, and because we believe that addressing them will strengthen rather than weaken the legislation's ability to deliver lasting environmental protection for all of Sri Lanka's communities and for the future generations.

We respectfully urge you and the Cabinet to ensure the following recommendations are incorporated before the Bill proceeds to parliamentary debate and enactment.

Part I: Community Rights and Free, Prior and Informed Consent

The Bill currently contains no requirement for governments and developers to obtain communities' informed consent or the communities right to withhold informed consent before decisions are made that will affect their lands, waters, and livelihoods. The right to free, prior and informed consent is inseparable from the right to full, timely, and accurate information, including the nature and scope of proposed decisions, all potential environmental and livelihood risks, available alternatives, and the legal and financial interests of the proposing party. Consent that is not grounded in complete and accessible disclosure is not consent in any legally or ethically meaningful sense."

Across every new regulatory regime introduced by this Bill, communities are nowhere constituted as rights-holders in these processes. Their agreement is not required. Their existing relationships with land and water are not recognised. Their knowledge is not sought.

This is a structural exclusion, embedded in the architecture of the Bill itself, that will determine how this law operates in practice.

The international legal framework governing these rights is well established and directly applicable to Sri Lanka's obligations. Article 19 of the UN Declaration on the Rights of Indigenous Peoples, which Sri Lanka endorsed in 2007, requires states to consult and cooperate in good faith with indigenous peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. Articles 26, 27, and 32 of UNDRIP further require that states ensure indigenous peoples' rights to their lands, territories, and resources are recognised and protected, and that development affecting those rights requires free, prior and informed consent, including the right to withhold it.

The ICJ Advisory Opinion on Climate Change Obligations, delivered on 23 July 2025, affirmed that procedural rights, the right to information, the right to participate, and the right to effective remedy are binding legal requirements under customary international law, not aspirational standards. Sri Lanka was an active participant in those proceedings, presenting oral arguments before the Court in December 2024. The standard the Opinion establishes is one Sri Lanka itself helped to shape. This Bill should reflect it.

Recommendation 1: Introduce a mandatory Free, Prior and Informed Consent requirement

All decisions under this Bill that will materially affect the lands, waters, livelihoods, or cultural practices of communities, including but not limited to wetland declarations under section 23MM, site clearance approvals under section 23A(2A), hazardous waste facility licensing under section 23F, and project approvals under section 23BB, must be human rights based and require documented evidence of free, prior and informed consent from affected communities before the decision is made.

This requirement should be defined in the Bill itself, not left to regulation, and should include clear guidance on what constitutes meaningful consent as distinct from notification or consultation.

Recommendation 2: Strengthen the public participation mechanism in the SEA provisions

The current public participation provisions require only that the Authority, under section 23KK(6), 'have regard to' public comments. Section 23KK(5) governs notification only and sets no participation standard at all.

We recommend that this standard be replaced with a requirement that the Authority and the relevant Government institution must justify, in writing and in accessible language, how each substantive community concern has been addressed, and where recommendations have not been incorporated, why not. This written justification should be publicly available and subject to judicial review.

Recommendation 3: Reform the notification mechanism for community participation

Newspaper publication in Sinhala, Tamil and English is insufficient as a notification mechanism for diverse communities in Sri Lanka. The Bill must require direct community-level notification through local government structures, community organisations, and where relevant, through Tamil and Sinhala language materials distributed at the community level. Participation deadlines must be long enough to allow communities to organise, seek advice, and respond meaningfully.

Recommendation 4: Recognise Customary, Traditional, and Indigenous Rights

The Bill contains no reference to customary land use, customary fishing rights, traditional ecological knowledge, indigenous territorial rights, or community-based natural resource governance. Every regulatory regime is constructed around the model of a formal actor with a state-issued licence or permit. This renders invisible the relationships between communities and their environments that have developed over generations, including relationships that predate the Sri Lankan state itself and that have no formal legal document attesting to them.

Sri Lanka voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. That Declaration recognises the right of indigenous peoples to own, use, develop, and control their lands, territories, and resources, and to maintain, control, protect, and develop their cultural heritage and traditional knowledge. The Bill as drafted is inconsistent with these commitments. The Vedda community's relationship with forest and water resources, Tamil fishing communities' relationships with coastal and marine environments, and Malayaha Tamil communities' relationships with highland land and water systems all fall within the scope of rights the Declaration protects. None are acknowledged in this Bill.

We recommend that the Bill explicitly recognise existing customary, traditional, and indigenous rights as a factor that all licensing, declaration, and approval decisions must take into account. No licence, permit, declaration, or approval should result in the restriction, displacement, or criminalisation of existing customary or indigenous use without prior recognition of those rights, good-faith negotiation with the rights-holding community, and documented community agreement. We further recommend that the Bill establish a mechanism for communities to register and have formally recognised their

customary and traditional resource use relationships, so that these relationships are visible to regulatory decision-makers before, not after, decisions are made.

Recommendation 5: Define "affected community" and distinguish community participation rights from commercial actor participation

The Bill uses the phrase "any member of the public" as its participatory subject across all consultation mechanisms. This treats a company with a legal team and a woman in a rural fishing community as equivalent participants in a thirty-day comment process. They are not equivalent, and this silence will consistently advantage the actor with greater resources and institutional access.

We recommend that the Bill introduce a definition of "affected community" that recognises people whose livelihoods, residences, cultural practices, or customary resource use are directly connected to the environment under consideration. Participation rights, notification obligations, and consultation requirements should be specifically calibrated to ensure that affected communities have meaningful and prioritised access to decision-making processes that cannot be crowded out by commercial submissions. This definition should include, without being limited to, fishing communities, plantation communities, post-war resettlement communities, communities with customary land and water use relationships, and women-headed households dependent on natural resources.

Recommendation 6: Amend the wetland declaration provisions to prevent dispossession

Section 23MM empowers the Minister to declare wetlands by Gazette Order, after which activities within those wetlands require Director-General approval. Violations carry fines of up to Rs. 10 million and imprisonment. There is no prior consultation requirement, no recognition of existing use rights, and no transitional mechanism for communities whose livelihoods are located within declared areas.

We recommend that wetland declarations be preceded by a mandatory community mapping and consultation process, that existing livelihood activities be documented and protected during any transition period, that communities dependent on declared wetlands be formally represented in governance of those wetlands, and that no criminal penalty be applicable to existing livelihood activities during any transition period.

Furthermore, section 23PP(1)(b) requires any person convicted of an offence within a declared wetland to restore the wetland to the satisfaction of the Director-General. This provision, applied without recognition of existing use rights, could compel communities to

dismantle livelihood infrastructure built and maintained over generations. We recommend that this restoration requirement explicitly exempt existing customary and traditional livelihood structures from its scope.

Recommendation 7: Integrate climate change into the SEA framework

The Strategic Environmental Assessment provisions must be amended to require that all SEA reports include an assessment of climate resilience, climate risk, and alignment with Sri Lanka's Nationally Determined Contributions and any national adaptation frameworks. A policy, strategy, plan or programme that would increase climate vulnerability in already-exposed communities or that conflicts with Sri Lanka's international climate commitments should be required to demonstrate how it addresses these conflicts, not merely that it has considered them.

Furthermore, while Clause 33 provides for the assessment and recovery of damages from responsible parties under section 24CA, the definition of recoverable harm is limited to immediate, physically assessable environmental damage. This is insufficient in a context where communities are experiencing compounding losses from climate change that are not attributable to a single identifiable act of pollution or environmental harm. We recommend that the Bill's damage assessment framework be broadened to include climate-related loss and damage, recognising that harm to communities, livelihoods, and ecosystems can accumulate over time and across events in ways that a single-incident assessment model cannot capture.

Recommendation 8: Remove the emergency exemption from SEA requirements or narrow it significantly

The provision to section 23KK(1) exempts policies prepared in response to national security concerns or national emergencies from SEA requirements. Post-disaster reconstruction programmes, including those following climate events, will fall within this exemption. These are exactly the programmes most likely to reshape coastal territories, alter livelihood geographies, and introduce built environment features that permanently affect communities without their agreement. We recommend that this exemption be narrowed to genuine acute security emergencies, with a defined time limit, and that reconstruction programmes following climate or environmental disasters be explicitly excluded from the exemption and made subject to expedited SEA with mandatory community consultation.

Recommendation 9: Create a pathway for affected communities to access environmental remediation funds

The damage assessment and recovery mechanism in section 24CA creates a fund credited with damage recovery sums and wastewater fees, to be maintained for "affected

ecosystems and affected parties." Affected parties are not defined. There is no community access mechanism, no participatory governance of the fund, and no connection to climate-attributable harm.

We recommend that the fund established under section 5 and credited under sections 23FG and 24CA be governed by a body that includes community representatives, and that the fund be explicitly accessible to communities that have suffered environmental and climate harm, including through a simplified claims process that does not require litigation.

Recommendation 9A: Remove consumers from the Extended Producer Responsibility framework

Section 23QQ(2) and (3) establish an Extended Producer Responsibility mechanism that places responsibility for the life cycle management of goods and products on importers, manufacturers, vendors, handlers, and consumers. The inclusion of consumers in this framework is inconsistent with the foundational principle of Extended Producer Responsibility, which exists precisely to shift the burden of end-of-life product management away from individuals and communities and onto the entities that design, produce, and profit from those products.

Consumers, particularly low-income consumers with no meaningful ability to influence product design, packaging, or disposal infrastructure, should not bear legal or financial responsibility under an EPR mechanism. Their inclusion creates the conditions for enforcement against individuals and households for the consequences of industrial and commercial decisions they had no part in making.

We recommend that the definition of responsible parties under section 23QQ be amended to remove consumers, and that responsibility under the EPR mechanism be confined to importers, manufacturers, vendors, and handlers, the actors with actual capacity to alter product design, packaging, and disposal systems.

Part III: Gender and Intersectionality

The Bill does not address gender, caste, or disability. This has material consequences for how its provisions will operate in practice.

Environmental harm does not fall equally on all people. Tamil fishing women, Malayaha Tamil women in plantation communities, Muslim women in coastal villages, and women across Sri Lanka's rural and peri-urban landscapes carry a disproportionate burden of ecological degradation through their roles in water collection, food production, and care

work that depends directly on the condition of their surrounding environment. A law that does not name this reality cannot address it. This reality is well documented in international human rights frameworks. The OHCHR report on gender-responsive climate action (A/HRC/41/26, 2019), the CEDAW Committee's General Recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change (CEDAW/C/GC/37, 2018), and successive UN Women reports on women and climate resilience have each confirmed that women, particularly those in rural, coastal, and plantation communities in the Global South face disproportionate and compounding impacts from environmental degradation and climate change.

Recommendation 10: Conduct and publish a gender impact assessment of the Bill

Before enactment, a full gender impact assessment of the Bill's provisions should be conducted, with particular attention to the wetland declaration provisions, the criminalisation architecture, the damage assessment mechanism, and the penalty escalation provisions. This assessment should be conducted with the participation of women's organisations and should be made publicly available.

Recommendation 11: Mandate gender and community representation on Technical Expert Committees

The Technical Expert Committees established for hazardous waste management (section 23FC) and chemical management (section 23FE) have no gender, community, or civil society representation requirement. Their composition is entirely at the discretion of the Authority. Advisory bodies built without diversity requirements reproduce the homogeneity of the class they are drawn from.

We recommend that all Technical Expert Committees established under this Bill be required to include at least one-third women members, at least one representative from affected community organisations, and at least one representative from a civil society organisation with relevant environmental expertise.

Recommendation 12: Protect subsistence and women-led livelihoods from disproportionate criminalisation

The penalty provisions in this Bill apply equally to large industrial operators and to individuals and small enterprises operating at subsistence or near-subsistence level. A woman drying fish within a subsequently declared wetland, a small-scale farmer using chemical inputs without knowing they require a permit, a home-based producer handling

goods subject to EPR requirements, faces the same fines and imprisonment as a large industrial polluter.

We recommend that the Bill include graduated penalty provisions calibrated to the scale and commercial nature of the activity, that imprisonment provisions not be applicable to subsistence livelihood activities, and that enforcement guidelines issued under the Act explicitly direct enforcement resources toward industrial and commercial actors rather than subsistence and community-scale activities.

Part IV: Constitutional Accountability and Rule of Law

The Bill concentrates significant power in the Director-General and the Minister without adequate judicial oversight, defined standards, or community accountability mechanisms. This creates constitutional concerns and practical risks of selective, arbitrary, and politically shaped enforcement.

The Bill also fails to provide meaningful access to justice for communities affected by decisions made under its authority. Access to justice requires more than the formal availability of courts, it requires that affected people can realistically reach those courts and receive outcomes that genuinely address the harm they have suffered. Where harm has occurred, international human rights law, including the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, establishes that an effective remedy must encompass restitution, compensation, rehabilitation, measures of satisfaction, and guarantees of non-repetition. The Bill's damage assessment mechanism under section 24CA addresses compensation in a limited form only. The remaining elements, restitution, rehabilitation, satisfaction, and non-repetition are entirely absent. The recommendations in this section address both the concentration of power in the Bill and this gap in effective remedy.

Recommendation 13: Remove the "final and conclusive" ouster of judicial review

Section 23FA(3) declares that the Director-General's decision to issue or refuse a hazardous waste licence "shall be final and conclusive." This provision impermissibly restricts access to judicial review and is inconsistent with Article 12(1) of the Constitution, separation of powers principles, and the rule of law. Hazardous waste licensing decisions will determine which communities live adjacent to hazardous facilities and which do not. These decisions must be subject to meaningful judicial scrutiny.

We recommend the removal of the "final and conclusive" formulation from section 23FA(3) and the express provision of a right to judicial review of all licensing decisions under the new Parts introduced by this Bill.

Recommendation 14: Define objective criteria for licensing discretion

Sections 23B(4) and (5) permit the Director-General to assess whether applicants have the "capacity" to take corrective measures, and to reject applications where the Director-General "has reason to believe" capacity is lacking. Neither "capacity" nor "reason to believe" is defined. Undefined discretionary standards in licensing decisions create the conditions for arbitrary, inconsistent, and politically shaped outcomes.

We recommend that the Bill define objective, published criteria against which licensing capacity is assessed, that these criteria be developed through a transparent consultative process, and that licensing decisions include written reasons that are publicly accessible.

Recommendation 15: Remove the evidentiary presumption favouring executive enforcement documents

Section 12(5) provides that a Directive for Enforcement issued by the CEA "shall be admissible in evidence and shall be prima facie proof of the facts stated therein." This shifts the evidentiary burden onto those against whom enforcement action is taken, undermining procedural fairness and the constitutional right to a fair hearing. In the context of enforcement against community livelihoods, this provision will operate to presume the CEA's characterisation of community activities as correct and to require communities to disprove official documents using resources they frequently do not have.

We recognise that the precautionary principle is a legitimate basis for regulatory action where serious or irreversible environmental harm is at risk. However, the precautionary principle justifies precautionary measures to prevent harm, it does not justify reversing the burden of proof in proceedings against individuals and communities. These are distinct legal contexts and must be treated as such.

We recommend that Directives for Enforcement be treated as admissible evidence but not as prima facie proof, and that the standard evidentiary burden in Magistrate court proceedings be maintained. Where urgent precautionary action is needed, this should be pursued through time-limited interim orders subject to prompt judicial review.

Recommendation 16: Require warrants for premises entry and seizure

Sections 23WA and 24A authorise entry, inspection, and seizure of materials based on "reason to believe," without requiring prior judicial authorisation or a warrant. We recommend that all powers of entry, inspection, and seizure under this Bill be made

subject to prior judicial authorisation except in defined and genuinely urgent circumstances, and that the evidentiary threshold for such authorisation be set at an objectively reasonable standard rather than the subjective "reason to believe" formulation currently used.

Recommendation 17: Narrow and define the general penalty provision

Section 23RR creates a residual penalty provision of Rs. 250,000 to Rs. 15 million and up to two years imprisonment for offences "for which no penalty is expressly provided." This provision applies to undefined conduct across the full scope of the Act and its regulations. Such broad, open-ended criminalisation, with a penalty range that gives courts no legislative guidance on calibration, raises serious constitutional concerns about vagueness and disproportionality.

We recommend that section 23RR be replaced with a narrowed provision that identifies the categories of conduct to which the general penalty applies, sets a proportionate maximum penalty, and provides legislative guidance on the factors a court should consider in determining the appropriate sanction.

Recommendation 18: Establish an independent environmental complaints and oversight mechanism

The Bill does not create any mechanism through which civil society, communities, or individuals can raise concerns about the CEA's exercise of its powers that does not involve either litigation or political appeal to the Minister. The CEA functions simultaneously as investigator, complainant, and assessor in environmental damage proceedings under section 24CA, without structural checks on that accumulation of roles.

We recommend the establishment of an independent environmental ombudsman or oversight body, accessible without litigation costs, to which communities and civil society can bring complaints about CEA decisions and enforcement actions. This body should have the power to review, recommend, and where appropriate, refer matters to the Supreme Court under the fundamental rights jurisdiction.

Closing Statement

Sri Lanka needs strong environmental law. The communities most affected by environmental harm have been waiting for decades for a regulatory framework that takes their situation seriously.

This Bill moves in the right direction. It does so with genuine ambition and on important fronts. We do not oppose it. We are asking that it be made worthy of the communities it is meant to serve.

The recommendations in this statement are not technically complex or financially costly to implement. They require political will and a willingness to place community rights at the centre of environmental governance rather than at its margins. They require acknowledgment that the gaps identified in this statement are not optional refinements but conditions for the law to deliver what it promises.

Sri Lanka has made commitments at the UNFCCC, at the Human Rights Council, the Convention on Biological Diversity, and in its own Constitution that this Bill, in its current form, does not honour. We ask the Cabinet to ensure that it does before this legislation becomes law.

We remain available to engage further on any of the recommendations in this statement and to participate in any consultative process the Government wishes to convene on the Bill.

Respectfully submitted on behalf of the undersigned organisations,

Signatories:

Climate Action Now Sri Lanka

Greenpeace South Asia

Law & Society Trust

People's Alliance for Right to Land

The Biodiversity Project

Yukthi Collective