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Human Rights Commission of Sri Lanka

Parallel Report to the Committee on the Rights of Persons with Disabilities

Human Rights Commission of Sri Lanka

Submitted to the 19th Pre-Sessional Working Group, 25-28 March 2024

February 2024

Introduction

1. The Human Rights Commission of Sri Lanka (HRCSL) is an independent Commission established under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. Members of the Commission were appointed by the President on the recommendation of the Constitutional Council established under the Twenty-First Amendment to the Constitution of Sri Lanka. The HRCSL has a broad mandate to protect and promote human rights including the rights of persons with disabilities. It focuses on rights of persons with disabilities through inquiries and investigations, research and monitoring, education and awareness-raising, and advocacy.
2. The HRCSL notes the Initial Report submitted by Sri Lanka under Article 35 of the Convention on the Rights of Persons with Disabilities (CRPD). The Commission accordingly submits this parallel report to the Committee on the Rights of Persons with Disabilities.
3. This report is primarily based on the information collected by the HRCSL during inquiries and investigations held in response to individual complaints received by the HRCSL, and on its own motion. Relevant information was also gathered through monitoring of homes of persons with disabilities, the Commission's subcommittee on the persons with disabilities, civil society meetings at the regional and national levels, discussions held with the Disability Organisations Joint Front (DOJF) and with government authorities, and reports related to persons with disabilities published by various stakeholders. Additionally, the HRCSL participated in national consultations, discussions and meetings organised by relevant stakeholders, and has incorporated information gathered through such engagements.

General Observations

4. The HRCSL welcomes the fact that the Government of Sri Lanka (GoSL) signed the CRPD on 13 March 2007 and ratified the CRPD on 16 February 2016. It also welcomes the fact that the GoSL submitted the initial report to the Committee on the Rights of Persons with Disabilities.
5. Since 2016, the GoSL has engaged in efforts from time to time to prepare legislation on persons with disabilities to give effect to the CRPD. Such a comprehensive law would presumably replace the existing Protection of Rights of Persons with Disabilities Act (1996).
6. Additionally, the GoSL has sought to implement policies, procedures, regulations, and circulars to protect the rights of persons with disabilities. To this end, it has also formulated a National Action Plan and has allocated financial resources for the social welfare of persons with disabilities via various welfare schemes.
7. Despite delays in the enactment of comprehensive legislation on the rights of persons with disabilities, the Sri Lankan courts have issued landmark decisions that have recognised such rights. For example, the Supreme Court of Sri Lanka has recognised the rights of persons with disabilities in its judgement in *Ajith Perera v. Hon. Daya Gamage and others* (SC FR Application No. 273/2018). In this case, the Court recognised that the petitioner's statutory

rights under the existing Protection of Rights of Persons with Disabilities Act and related regulations had been violated, and ordered the government to improve the accessibility of the petitioner and similarly placed persons with disabilities.

Equality and Non-Discrimination (Article 5)

8. Article 12(1) and (2) of the Sri Lankan Constitution guarantees to all persons the rights to equality and non-discrimination. Such rights, by necessary implication, extend to persons with disabilities. Furthermore, according to Article 12(4) of the Constitution, the government is permitted to take affirmative action for the benefit and advancement of persons with disabilities.
9. The HRCSL observes that these constitutional provisions need to be strengthened further and accompanied by a more comprehensive legal framework to ensure the rights of persons with disabilities. In 2016, the HRCSL submitted a proposal on constitutional reform to the Prime Minister, Speaker and Public Representations Committee on Constitutional Reform. In its proposal, the HRCSL observed that the constitutional protection of persons with disabilities needs to be further strengthened. For example, the grounds on which a person may not be discriminated against under Article 12(2) of the Constitution ought to explicitly include ‘disability’.
10. There are several specific laws enacted by parliament to protect and promote persons with disabilities. These include the Protection of the Rights of Persons with Disabilities Act (1996), the Trust Fund Act for the Rehabilitation of the Visually Handicapped (1992), the Special Education Society Act (1999), and the Rana Viru Seva Authority Act (1999).
11. The HRCSL observes that a more comprehensive law that incorporates the provisions of the CRPD is yet to be enacted.
12. The Ministry of Justice has recently drafted the Protection of the Rights of Persons with Disabilities Bill, which was shared with the HRCSL for its observations and recommendations. The HRCSL sent its observations and recommendations (see annexure 1) in September 2023. The HRCSL urged that, in view of further strengthening the Bill, the Ministry of Justice considers the following general recommendations:
 - a. The concept of ‘reasonable accommodation’ should be more comprehensively integrated into the provisions of the Bill that set out the state’s obligations;
 - b. The notion that women and children with disabilities face ‘multiple’ or ‘intersectional’ discrimination should be comprehensively integrated into the Bill, including a specific commitment that state measures to protect, promote, and fulfil the rights of persons with disabilities would be gender and age sensitive;
 - c. A meaningful consultation with the HRCSL should be held to discuss the precise nature and scope of the Commission’s role as an independent monitoring mechanism as contemplated by the Bill;

- d. The composition, appointment process, and powers of the National Council for Persons with Disabilities should be reviewed to ensure greater independence as well as respect for the fundamental rights of the people enshrined in the Constitution; and
 - e. The line ministry under which the proposed National Council for Persons with Disabilities functions should be the Ministry of Justice.
13. These observations and recommendations were made public, and further discussions between the Ministry of Justice, the HRCSL, and the Attorney-General's Department were held with respect to the draft Bill. At these discussions, the HRCSL emphasised the need to enact the Bill expeditiously.

Women with Disabilities (Article 6)

14. Women with disabilities face multiple discrimination due to social, economic, and cultural disparities. In 2019, the HRCSL conducted discussions with women with disabilities from different regions of the country, civil society organisations engaging persons with disabilities, line ministry representatives, and local government officials to mark the International Women's Day under the theme of 'Mainstreaming women with disabilities for a dignified life'.
15. In these discussions, the following issues were highlighted by the participants:
- a. The absence of an effective mechanism to process complaints of sexual, verbal, physical and other forms of abuses suffered by women with disabilities;
 - b. The need for proper sex education;
 - c. The lack of adequate sanitation and hygiene for women with disabilities;
 - d. The lack of access to water;
 - e. Limited mobility;
 - f. The absence of dedicated facilities and special medical attention for pregnant mothers with disabilities;
 - g. The need to provide adequate pre- and post-natal care;
 - h. The lack of effective implementation of the 3% employment quota for women with disabilities;
 - i. The lack of accessibility to government buildings;
 - j. The absence of a dedicated mechanism to assist, empower and mainstream women entrepreneurs with disabilities into the competitive market, as well as attitudinal barriers encountered by the women entrepreneurs with disabilities when conducting business;
 - k. The gender pay-gap and other forms of gender-based discrimination in employment faced by women with disabilities;
 - l. The absence of structured and regular vocational training programmes that orient and equip women and young girls with disabilities with necessary skills to meet current labour market demands;
 - m. Attitudinal barriers in the form of stigma and prejudice against women with disabilities;
 - n. Domestic violence and abuse against women with disabilities;
 - o. The lack of access to property among women with disabilities due to patriarchal attitudes in terms of inheritance.

Children with Disabilities (Article 7) and Education (Article 24)

16. In Sri Lanka, children with disabilities encounter myriad challenges, within the educational system, particularly in the realm of accessibility.
17. Section 23(1) of the Protection of the Rights of Persons with Disabilities Act (1996) provides that ‘no person with a disability shall be discriminated against on the ground of such disability in...admission to any educational institution’. Therefore, children with disabilities have a statutory right to non-discrimination in relation to admission to schools.
18. However, beyond admission, there are a number of challenges encountered by children with disabilities in terms of the facilities to access education and the quality of education. The HRCSL observes that school transportation often lacks necessary accommodation for students with disabilities, thereby hindering their mobility. Furthermore, within school premises, a range of accessibility issues persists, limiting the overall inclusivity of the learning environment. It is also observed that the shortage of specialised teachers exacerbates the problem, as these professionals play a crucial role in catering to the unique needs of students with disabilities. Compounding these challenges is the scarcity of educational equipment tailored for persons with disabilities.

Awareness-Raising (Article 8)

19. In March 2017, the HRCSL, in collaboration with the Human Rights Commission of Australia, conducted a Training Workshop on Disability Access. The workshop focused on access to public premises and public transport and saw the participation of civil society representatives, government officers and HRCSL Staff.
20. In November 2017, the HRCSL delivered technical training for government stakeholders on the accessibility of persons with disabilities. It also conducted an advocacy training programme for HRCSL staff, the members of the HRCSL’s sub-committee on persons with disabilities, and representatives from DOJF.
21. The HRCSL regularly conducts awareness and education programmes for government officers, the police and the tri-forces on the rights of persons with disabilities.

Accessibility (Article 9)

22. Section 23(2) of the Protection of the Rights of Persons with Disabilities Act (1996) provides for the accessibility of persons with disabilities.
23. In 2006, Regulations were issued under the Act to ensure enhanced accessibility to persons with disabilities. Following the aforesaid fundamental rights case before the Supreme Court (*Ajith Perera v. Hon. Daya Gamage*), accessibility to all new public buildings and public places needed to be ensured, and such buildings and public places needed to be designed and constructed in accordance with the design requirements specified in the Regulations. The Court in fact held that ‘compliance with this court order is mandatory and failure to comply

with this court order shall be a serious punishable offence and shall attract punitive repercussions as set in the law.’

24. The HRCSL has conducted several accessibility audits in several parts of Sri Lanka and has provided recommendations to relevant public authorities. In 2019, the HRCSL recommended allocating funds in the annual budget to make public buildings and public transport more accessible to persons with disabilities. The HRCSL emphasised that the lack of access to public buildings can adversely impact a person’s life, education, and livelihood opportunities. Following the HRCSL’s recommendations, the Minister of Finance allocated budgetary provisions for improving the accessibility of public buildings.
25. The HRCSL has received several complaints related to accessibility. One such complaint involved a woman undergraduate student who was unable to continue studying at the Institute of Indigenous Medicine, University of Colombo due to the building not being accessible and the failure of the relevant authority to provide reasonable accommodation. The HRCSL recommended that the University Grants Commission create adequate accessibility facilities for all students with disabilities and to prepare guidelines on how institutional authorities in the university system deal with students with disabilities. The Commission also recommended that all universities should promote disability-inclusive education and conduct training programmes for university academic staff about the rights of persons with disabilities.
26. The HRCSL has also established an Accessibility Audit Team in each district in Sri Lanka with the support of the European Union-funded JURE Project administered by the United Nations Development Programme. The HRCSL provided training to the Audit Team, which comprises government officers and persons with disabilities to audit public buildings and public transportation.
27. In January 2024, the HRCSL held a discussion with transport authorities to advance accessibility in public transportation. According to the Railway Department’s report, several measures have been implemented to enhance the accessibility of persons with disabilities. These include specially designed wide floors and wheelchair access near the entrance to the railway stations, display billboards for the hearing impaired, and plans for electronic train timetables. Handrails have been installed at busy stations for easy access, and information inside and outside train carriages is now clearly labelled. Station staff are also trained to assist persons with disabilities and to ensure all passengers, including those with special needs, are safely aboard prior to departure. Newly added coach toilets are equipped with handrails, and new railway platforms feature separate lanes for the visually impaired. Currently, seventeen trains offer easy access facilities for persons with disabilities. Out of 310 railway stations, 174 stations have constructed railway platforms to the standard height, 145 stations provide accessing facilities for persons with disabilities, 111 stations have installed Tack Tiles, and 64 stations have provided toilet facilities for persons with disabilities.
28. The Motor Traffic Department is also facilitating driving licenses for the hearing impaired and is considering licenses for persons with other types of disabilities through medical referrals. The National Transport Commission is meanwhile implementing accessibility features in buses. Seats are reserved for persons with disabilities, and efforts are underway to address

space issues and provide wheelchair accommodation in buses. Complaints regarding transportation for persons with disabilities are also addressed by the National Transport Commission.

29. Additionally, the National Institute of Transport Medicine is ensuring wheelchair accessibility in its offices. Parliamentary discussions are ongoing to establish clear criteria for accessible bus and railway stations.

Right to Life (Article 10)

30. The HRCSL noted the death of a patient at the National Institute of Mental Health and took measures to inquire into the death.
31. The HRCSL carried out a fact-finding mission with respect to the Right to Health and Liberty of Patients at the National Institute of Mental Health as a direct response to this death. The Interim report of the mission was published on 11 December 2023 and the final report is in the process of being finalised.

Equal recognition before the law (Article 12)

32. The HRCSL received a complaint from a visually impaired person highlighting that they did not have adequate facilities to access banks. For instance, bank applications and instructions are not provided in braille, and banks are reluctant to open individual bank accounts and provide bank loans to such persons with disabilities. Moreover, such persons find it difficult to identify currency notes and to get cash from ATMs.
33. The HRCSL held a discussion with several banks including the Central Bank of Sri Lanka, after which the Central Bank issued directives to all banks to ensure the accessibility of visually impaired persons. Moreover, the Central Bank agreed to change the size of currency note and the shape of coins to enable visually impaired persons to easily identify notes and coins.

Health (Article 25)

34. The HRCSL recommended to the Ministry of Health that immediate measures should be taken to enact a Mental Health Act that is in line with international medical standards and Sri Lanka's human rights obligations.
35. As mentioned above, the HRCSL released an Interim Report of the Fact-Finding Mission on the Right to Health and Liberty of Patients at National Institute of Mental Health on 11 December 2023. The report included key recommendations with respect to strengthening the protection of the rights of persons with mental disabilities within state institutions.

Work and Employment (Article 27)

36. In August 2023, the HRCSL held a discussion with government officers and persons with disabilities with respect to the full implementation of the 1988 Public Administration Circular. The Circular requires 3% of vacancies in public sector employment to be allocated to persons with disabilities. This Circular remains a pivotal measure in terms of advancing equality and inclusivity within the public sector workforce, acknowledging the capabilities of persons with disabilities and their entitlement to equal opportunities.
37. Nevertheless, the HRCSL observes that this Circular needs to be further strengthened to remove ambiguities. For example, the Circular stipulates that a disability should not be a ‘hindrance’ to an employee’s official responsibilities. Since the term ‘hindrance’ is not precisely defined, the Circular is capable of being misinterpreted to exclude persons with certain types of disabilities that are seen as ‘hindrances’ to an employee’s official responsibilities.
38. Additionally, the HRCSL observes that Sri Lanka’s legal framework does not currently provide for reasonable accommodation of persons with disabilities in employment settings.

Ratification of Optional Protocol

39. The HRCSL encourages the GoSL to ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which was adopted by General Assembly Resolution 61/106 of 13 December 2006.

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Hon. Dr. Wijeyadasa Rajapakshe
Minister of Justice, Prison Affairs and Constitutional Reforms
19 Sri Sangaraja Mawatha,
Colombo 10

Hon. Minister,

Observations and Recommendations on the Draft Protection of the Rights of Persons with Disabilities Bill

We write to you with reference to the draft Protection of the Rights of Persons with Disabilities Bill that your Ministry shared with the Human Rights Commission of Sri Lanka on 17 July 2023. We wish to state at the outset that we welcome this legislative initiative and are grateful for the cooperation shown by your Ministry in enabling the Commission to fulfil its mandate in terms of section 10(c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. The said provision empowers the Commission to 'advise and assist the government in formulating legislation...in furtherance of the promotion and protection of fundamental rights'.

We wish to note that the Bill aims to ensure the fulfilment of Sri Lanka's obligations under the United Nations Convention on the Rights of Persons with Disabilities. The Bill stands to establish a valuable legal framework for the protection, promotion, and fulfilment of the rights of persons with disabilities.

In view of further strengthening the Bill, we request that your Ministry consider the following general recommendations:

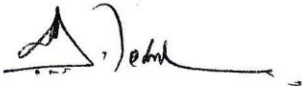
1. The standard of 'reasonable accommodation' should be more comprehensively integrated into the provisions of the Bill that set out the state's obligations;
2. The notion that women and children with disabilities face 'multiple' or 'intersectional' discrimination should be comprehensively integrated into the Bill, including a specific commitment that state measures to protect, promote, and fulfil the rights of persons with disabilities would be gender and age sensitive;
3. A meaningful consultation with the Human Rights Commission of Sri Lanka should be held to discuss the precise nature and scope of the Commission's role as an independent monitoring mechanism as contemplated by the Bill;
4. The composition, appointment process, and powers of the National Council for Persons with Disabilities should be reviewed to ensure greater independence as well as respect for the fundamental rights of the people enshrined in the Constitution.

5. The line ministry under which the proposed National Council for Persons with Disabilities should be the Ministry of Justice.

We enclose herewith our detailed observations and recommendations on the specific provisions of the draft Bill (Annex 1). Please be assured that the Commission is prepared to offer its continued advice and support in strengthening the Bill.

Thank you.

Sincerely,



Justice L T B Dehideniya
Chairman

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

Human Rights Commission of Sri Lanka

Cc: H.E. Ranil Wickremesinghe
President of the Republic of Sri Lanka
Presidential Secretariat
Colombo 01

Annex 1
Observations and Recommendations on the Protection of the Rights of Persons with Disabilities Bill

The United Nations Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008, and Sri Lanka ratified the Convention on 8 February 2016. The Preamble to the draft Bill acknowledges the Government of Sri Lanka's obligations to enact enabling provisions to give effect to the Convention.

Pursuant to the mandate of the Human Rights Commission of Sri Lanka under section 10(c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996,¹ the Commission submits the following observations and recommendations with respect to the draft Bill. The Commission has relied on the abovementioned Convention as the primary frame of reference for these observations and recommendations.

Clause 3

1. While many of the elements of the Convention, including non-discrimination on the grounds of disability, have been included in this Clause, the Clause does not adequately refer to the standards of reasonable accommodation and affirmative action. Such reference would strengthen this Clause and bring it in line with Article 5 of the Convention. It is also noted that Article 12(4) of the Sri Lankan Constitution clarifies that the rights to equality and non-discrimination does not prevent the state from enacting special legislation 'for the advancement of...disabled persons'. Accordingly, the standards of reasonable accommodation and affirmative action are compatible with Sri Lanka's Constitution.
2. Moreover, Clause 3(3) can be further strengthened by the inclusion of the obligation to introduce measures that enable persons with disabilities to control their own financial affairs and to have equal access to bank loans, mortgages, and other forms of financial credit in line with Article 12 of the Convention.
3. **Clause 3 of the Bill should contain clear references to the standards of reasonable accommodation and affirmative action and set out the obligations that flow from these standards in line with Article 5 of the Convention. It is further recommended that Clause 3(3) of the Bill be strengthened to ensure persons with disabilities are enabled to manage their financial affairs and to access financial credit.**

Clause 5

4. This Clause can be further strengthened to include specific obligations found in Article 13 of the Convention. Such obligations include the obligation to provide procedural and age-appropriate accommodations to persons with disabilities to obtain access to justice, and to provide training for those working in the field of administration of justice, including police and prison staff.

¹ Section 10(c) provides that the Commission shall have the function 'to advise and assist the government in formulating legislation...in furtherance of the promotion and protection of fundamental rights'.

5. **Clause 5 of the Bill should be strengthened to include reasonable accommodation of persons with disabilities and training for persons working in the field of administration of justice.**

Clause 6

6. Similar to the gap in Clause 5 of the Bill, Clause 6 also omits specific reference to the standard of reasonable accommodation in line with Article 14 of the Convention.
7. **Clause 6 of the Bill should make a clear reference to providing reasonable accommodation to persons with disabilities when guaranteeing the right to liberty and security of person.**

Clause 8

8. While Clause 8 includes most elements of Article 16 of the Convention, which deals with the freedom from exploitation, violence, and abuse, it currently does not reference the obligation to ensure age and gender sensitive assistance to persons with disabilities who are vulnerable to such abuse. Moreover, the Clause does not set out specific obligations with respect to avoiding, recognising, and reporting incidents of abuse targeting persons with disabilities, as well as the promotion of the physical, cognitive, and psychological recovery, rehabilitation, and reintegration of victims.
9. **Clause 8 should be strengthened to specify that measures to combat exploitation, violence, and abuse targeting persons with disabilities include age and gender sensitive measures. It is further recommended that the Clause be enhanced to include obligations with respect to preventing and reporting incidents of abuse, and promoting recovery, rehabilitation, and reintegration.**

Clause 9

10. This Clause contains most elements within Article 18 of the Convention. However, the Clause does not refer to obligations with respect to the liberty of movement, including the freedom to leave a country or enter one's own country.
11. **Clause 9 of the Bill should be strengthened to ensure that persons with disabilities are not deprived of their liberty of movement on the basis of their disabilities.**

Clause 10

12. This Clause on the rights of children with disabilities can be further strengthened by a clear general reference to the notion that in all matters concerning children with disabilities, the best interests of the child shall be a primary consideration. This commitment is in line with Article 7 of the Convention. Moreover, the Clause makes no reference to ensuring that children with

disabilities have the right to express their views freely with due regard to their age and maturity.

13. Additionally, the Clause does not include the obligation set out in Article 23 of the Convention, i.e., to provide alternative care to a child with disabilities where the immediate family is unable to care for the child.
- 14. Clause 10 of the Bill should be revised to include a general reference to ‘the best interests of the child’ standard, a recognition of the right of children with disabilities to express their views freely, and an obligation to provide alternative care to a child with disabilities where the immediate family is unable to care for the child.**

Clause 12

15. This Clause can be further strengthened by placing an obligation on all authorities to make available facilities such as Braille documents and signage in public buildings, to ensure adequate training to relevant stakeholders on accessibility issues, and to provide live assistance and intermediaries, including guides, readers, and new technologies of interpretation. Such obligations are in line with Article 9 of the Convention.
- 16. Clause 12 of the Bill should be further strengthened to include specific obligations with respect to accessibility found in Article 9 of the Convention.**

Clause 14

17. This Clause is compatible with Article 19 of the Convention.
- 18. It is, however, recommended that the term ‘cornered’ be reconsidered, and replaced with the terms ‘isolated or segregated’ to be in line with Article 19.**

Clause 13

19. This Clause does not contain specific reference to the obligation to facilitate the personal mobility of persons with disabilities ‘in the manner and at the time of their choice’ in line with Article 20 of the Convention.
- 20. Clause 13 of the Bill should be strengthened to enhance the choice of persons with disabilities in how and when they can access affordable options for personal mobility.**

Clause 15

21. This Clause on women with disabilities does not specifically reference the notion that women and girls face ‘multiple discrimination’, where they face discrimination both on the grounds of sex and disability.

- 22. Clause 15 of the Bill should clearly refer to 'girls' in addition to 'women' and refer to the notion of 'multiple discrimination'.**

Clause 22

23. This Clause does not make specific reference to the obligation to require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent in terms of Article 25 of the Convention. The state is accordingly expected to raise awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and framing ethical standards for public and private health care.
- 24. Clause 22 of the Bill should include the obligation to set standards for and provide training to public and health professionals with a view to providing the same quality care to persons with disabilities as to others.**

Clause 23

25. This Clause does not refer to the concept of 'habilitation', which is specifically found in Article 26 of the Convention, and which is distinct from 'rehabilitation'. The term 'habilitation' generally refers to the process of helping persons with disabilities attain, keep, or improve skills and functioning for daily living.
- 26. Clause 23 of the Bill should recognise the right of persons with disabilities to access means of habilitation in addition to rehabilitation.**

Clause 25

27. This Clause does not specifically refer to the obligation found in Article 27 of the Convention to ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.
- 28. Clause 25 of the Bill should include a reference to the obligation to ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.**

Clause 27

29. This Clause sets out the composition and appointment process with respect to the National Council for Persons with Disabilities. It is observed that, apart from the thirteen *ex officio* members of the Council (who include the relevant Minister and the secretaries to several relevant ministries) the twelve other members will be appointed by the President in consultation with the Secretary to the relevant Ministry. This appointment process does not include adequate safeguards with respect to ensuring the independence of the said appointees.

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

30. It is recommended that the composition and appointment process concerning the National Council for Persons with Disabilities be revisited to ensure greater political independence.

Clause 42

31. While the Commission acknowledges the important role to be played by the National Council for Persons with Disabilities, it observes that the Council's role in terms of awareness raising could be strengthened in line with Article 8 of the Convention.
32. Moreover, we noted that clause 42(c) does not include the term 'inhuman' in the phrase 'torture, cruel and degrading treatment'.
33. **Clause 42(y) of the Bill should be further enhanced to include more specific obligations with respect to awareness-raising, combatting stereotypes, prejudices and harmful practices, and promoting positive perceptions and greater social awareness towards persons with disabilities, including in the media. Furthermore, clause 42(c) should include the term 'inhuman'.**

Clauses 44 and 45

34. Clauses 44 and 45 vest broad powers in the National Council for Persons with Disabilities to authorise entering, searching, or inspecting premises, and interrogating persons. It is noted that in the absence of adequate safeguards with respect to ensuring the independence of this Council, vesting such broad powers in such Council is inadvisable. The arbitrary exercise of such powers may result in the violation of the fundamental rights of persons, including the fundamental right to equal protection of the law, guaranteed by Article 12(1) of the Constitution.
35. **It is recommended that Clauses 44 and 45 be revisited and the powers to authorise entering, searching, and inspecting premises, and interrogating persons be vested only in a politically independent body subject to judicial oversight.**

Clause 67

36. This Clause aims to fulfil certain obligations found in Article 33 of the Convention, i.e., with respect to establishing an independent mechanism to monitor the implementation of the Convention.
37. It is observed that the statutory role of the Human Rights Commission of Sri Lanka as an independent monitoring mechanism should be defined and determined following meaningful consultation with the Commission on its future role. Such a monitoring mechanism should be consistent with the provisions of the Human Rights Commission of Sri Lanka Act.
38. It is noted that, where the fundamental rights of persons with disabilities have been allegedly violated, the Commission already has the power to investigate such violations in terms of section 10(a) of the Human Rights Commission of Sri Lanka Act. Concurrently, Clause 67(2)

of the Bill contemplates situations in which the National Council for Persons with Disabilities can refer matters to the Commission for investigation. It is imperative that the role of the Commission as contemplated by the Bill is compatible with the Commission's existing mandate under the Human Rights Commission of Sri Lanka Act. This concern is particularly relevant given how the current Bill sets out the Council's composition and appointment process.

- 39. It is recommended that Clause 67 of the Bill be revisited in consultation with the Human Rights Commission of Sri Lanka to ensure full compatibility with the Commission's mandate under the Human Rights Commission of Sri Lanka Act.**

Clause 78

40. The interpretation clause in the Bill does not contain a specific definition for 'language' as found in Article 2 of the Convention. Article 2 defines 'language' to include 'spoken and signed languages and other forms of non-spoken languages'. The Bill instead includes elements of the Convention's definition for 'language' within its definition for 'communication'.
41. Moreover, Clause 78 currently lacks any reference to the definition of 'reasonable accommodation'. This standard is defined in the Convention as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.'
- 42. It is recommended that separate definitions for 'language' and 'reasonable accommodation' in line with the Convention be introduced into Clause 78 of the Bill.**

Other Substantive Gaps in the Bill

43. It is noted that the Bill does not include a reference to the right to life of persons with disabilities in line with Article 10 of the Convention. Although the right to life is not expressly articulated in the Sri Lankan Constitution, the Supreme Court has recognised the fundamental right to life in its jurisprudence, and any express reference to such right would not be incompatible with such jurisprudence.
- 44. It is recommended that the Bill include a specific provision on the right to life of all persons with disabilities.**
45. It is noted that the right set out in Article 17 of the Convention, i.e., that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others, is not recognised in the Bill. The articulation of such a right is important to ensuring the dignity of persons with disabilities.
- 46. It is recommended that the right to respect for one's physical and mental integrity be specifically included in the Bill.**

47. It is noted that the right to respect for privacy set out in Article 22 of the Convention is not explicitly recognised in the Bill. Such right includes the right to be free from arbitrary or unlawful interference with the privacy of persons with disabilities and maintaining the confidentiality of personal, health and rehabilitation information of persons with disabilities.
48. **The right to respect for the privacy of persons with disabilities should be recognised in the Bill.**
49. It is observed that the right to an adequate standard of living and social protection recognised in Article 28 of the Convention is not found in the Bill.
50. **The right to an adequate standard of living and social protection should be recognised in the Bill in line with the standard of progressive realisation.**

General Recommendations

51. The standard of 'reasonable accommodation' should be more comprehensively integrated into the provisions of the Bill that set out the state's obligations.
52. The notion that women and children with disabilities face 'multiple' or 'intersectional' discrimination should be comprehensively integrated into the Bill, including a specific commitment that state measures to protect, promote, and fulfil the rights of persons with disabilities would be gender and age sensitive.
53. A meaningful consultation with the Human Rights Commission of Sri Lanka should be held to discuss the precise nature and scope of the Commission's role as an independent monitoring mechanism as contemplated by the Bill.
54. The composition, appointment process, and powers of the National Council for Persons with Disabilities should be reviewed to ensure greater independence as well as respect for the fundamental rights of the people enshrined in the Constitution.
55. The line ministry under which the proposed National Council for Persons with Disabilities should be the Ministry of Justice.

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka