

Constitutional Reforms

March 4, 2016

The following submission is respectfully made to the Public Representations Committee on Constitutional Reforms, to be brought to the attention of the Constitutional Assembly, in promulgating a new Constitution for the Democratic Socialist Republic of Sri Lanka.

Submission by civil society organizations and individuals advocating for the rights of persons with disabilities in Sri Lanka.

Chairman
Public Representations Committee on Constitutional Reforms Secretariat
Visumpaya
Staples Street
Colombo 02

February 29, 2016

The below submission has been initiated by a group of civil society organizations and individuals promoting the rights of persons with disabilities, including volunteers from the 2015 'Enabled Elections' campaign and facilitated by the Center for Monitoring Election Violence (CMEV), who have been advocating for the rights of persons with disabilities in Sri Lanka and in particular their civil and political rights. It has been developed from a draft that was discussed at a meeting convened by CMEV at the International Centre for Ethnic Studies (ICES) on February 8 2016, with the support of the International Foundation for Electoral Systems and the Northern Province Consortium of the Differently Abled, and finalized with the feedback of numerous disability and human rights advocates in Sri Lanka, and circulated for endorsement.

While emphasizing civil and political rights, this proposal seeks also to ensure the full inclusion of the rights of people with disabilities throughout a modern Bill of Rights that comprehensively reflects the range of Sri Lanka's obligations under international law, including the Convention on the Rights of Persons with Disabilities that was ratified by Sri Lanka, also on February 8, 2016.

This submission is a precursor to an opportunity for an oral submission that has been confirmed by the Public Representations Committee to take place on **March 4, 2016 at 2 pm at Visumpaya** in Colombo. At that time this proposal will be resubmitted along with its Sinhala and Tamil translations and any additional signatories. We look forward to this opportunity to answer any questions the PRC may have with regards to the content of this proposal. Braille formats and sign language interpretation will be made available.

Thank you.

Any communications in relation to this submission should be sent to:

Janith Rukmal enabledelectionsl@gmail.com 0766006404

Zahabia Adamaly Zahabia_a@hotmail.com, 0778862052

Kaushi de Mel cmev@cpalanka.org, 0772298565

Mr V. Subramaniam npcoda@gmail.com 0243244074, 0777343531

Received by: _____

Date: _____

Signature: _____

Ensuring the rights of persons with disabilities in Constitutional Reform¹

1. History / Context

The Ministry of Health stated in 2014 that 10% of Sri Lanka's population has some form of disability.² This includes people disabled by war, people disabled by traumatic injuries such as road accidents, and those disabled by non-communicable diseases such as diabetes. Sri Lanka is also a fast ageing country: 22% of the total population, or one in five persons, will be over 60 by 2030. The proportion of older persons experiencing age-related disabilities is increasing at a rapid pace.

Persons with disabilities have for far too long been marginalized from society, forced into dependency and denied equal opportunity to access even the most basic rights to health, education and employment that other citizens have taken for granted. Persons with disabilities have also been historically marginalized from decisionmaking processes and continue to face serious challenges to their participation and representation in such processes.

The current constitutional reform process is a vital opportunity for persons with disabilities, as human rights advocates, to contribute to a new constitution that, for the first time, would be:

- Inclusive;
- Explicitly recognize persons with disabilities as having the same rights as everyone else and ensures their visibility throughout a modern Bill of Rights.
- Provide the human rights framework that would fully enable Sri Lanka to incorporate the obligations of the Convention on the Rights of Persons with Disabilities (CRPD) into national law.

2. Process:

In keeping with this goal of inclusion, the government should ensure that all minorities, not just ethnic and religious minorities, are actively engaged in the constitution making process. This includes persons with disabilities, who have the right to be consulted in and influence any decisionmaking processes. A Constitution is supposed to reflect the will of the People and protect and empower the People from the State. To ensure that happens, effective public engagement is essential.

¹ This submission has been drafted by Zahabia Adamaly, at the request of CMEV.

² (<http://newsfirst.lk/english/2014/02/disabled-persons-sri-lanka-will-increase-upto-24-2-2040/21877>)

The Public Representations Committee appointed by the government should therefore reach out to and seek feedback from persons with disabilities, their representative organizations and disability advocates. In this regard, consultations for hearing submissions from civil society, especially in Districts out of Colombo, should enable persons with disabilities to overcome the physical and attitudinal barriers they face in such forums:

- Draft versions of the constitution to be made available in accessible formats (Braille, large print, sign language, visual media as well as simplified versions) and circulated widely among Disabled Peoples’ Organizations (DPOs) and civil society organizations that advocate on disability inclusion.
- Public consultations should be held in venues that are physically accessible with the provision of sign language interpreters where necessary.
- Financial and logistical support along with necessary approvals to get to the venue should be provided to persons with disabilities who wish to make submissions, as has been done in the recent past by the Elections Commission.
- More time should be allocated across the whole Constitutional consultation process.

3. Principles

The following cross cutting principles should underlie all the provisions of the new Constitution and in particular its Bill of Rights, which should also contain a separate Section for persons with disabilities:

Thematic category	Justification	Proposed language
Constitutional supremacy	This overarching principle is essential to protecting persons with disabilities from the past and any possible future overreaching of State power that can infringe on their rights. It will give persons with disabilities the right, through the courts, to ensure judicial review of any laws and practices that are against the Constitution.	<i>The Constitution is supreme. All laws inconsistent with it are void.</i>

Fundamental Rights	Persons with disabilities' rights in the socio-economic sphere are deeply interconnected to their ability to enjoy their rights in the political sphere, and the Constitution should affirm and entrench this principle of the indivisibility of economic, social, cultural, civil and political rights into a modern bill of rights.	<i>This Bill of Rights enshrines the inalienable rights of all people of Sri Lanka and affirms our recognition of the indivisibility and interdependence of our collective civil, political, economic, social and cultural human rights.</i>
Fundamental Rights	<p>The nondiscrimination clause should specify both 'physical and mental disability' among its protected characteristics keeping in mind the particular lack of awareness of people with mental disabilities in Sri Lanka, whose disabilities may also be invisible.</p> <p>The clause on the right to equality and nondiscrimination should also explicitly recognize equal opportunity as a corresponding legal obligation and not be relegated as it has been to any nonbinding sections of a new Constitution.</p> <p>The rights of persons with disabilities are not different from or additional to the rights recognized in the core international instruments ratified by Sri Lanka. Their realisation however, requires a level playing field – the duty of the state to create the conditions necessary, which may require adaptations and adjustments, whereby persons with disabilities can actually exercise those rights. The CRPD seeks only to elaborate on how existing human rights can</p>	<p><i>All persons are equal before the law and are entitled to the equal protection and equal benefit of the law.</i></p> <p><i>No person shall be discriminated against on the grounds of race, religion, caste, sex, gender, sexual orientation, marital status, maternity, age, language, mental or physical disability.</i></p> <p><i>The State shall undertake specific measures necessary to achieve the de facto equality of people with disabilities, and in particular of women and girls with disabilities who experience multiple discrimination. Such measures shall not be considered discrimination within the provisions of this Constitution.</i></p>

	<p>be made realizable to the specific situations of persons with disabilities. It does this by invoking the principle of equal opportunity – of ensuring rights “on an equal basis with others”- a total of 34 times, and through a detailed article on Accessibility.</p> <p>Equal opportunity language should be included in relevant articles of the Fundamental Rights chapter so as to provide the vital conceptual bridge connecting Sri Lanka’s existing obligations on economic, social, civil and political rights to the specific situation of persons with disabilities. It is therefore this principle, and not that of equal treatment, that is integral to a framework for the realisation of the rights of persons with disabilities.</p>	
<p>Fundamental Rights</p>	<p>Along with the right to recognition as a person before the law, there should be specific recognition of the inherent and individual dignity, autonomy and personhood of every person with a disability, including the freedom to make to make one’s own choices.</p> <p>This means persons with disabilities will not be deprived, on the basis of disability, of their right to influence political and public life, including the electoral process, as equal citizens of Sri Lanka.</p> <p>Furthermore, the duty of the state to respect</p>	<p><i>The State shall recognize and respect the inherent dignity and autonomy of persons with disabilities and their freedom to make their own choices.</i></p> <p><i>Persons with disabilities have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others in all aspects of life.</i></p> <p><i>In no case shall a determination of ‘unsound mind’ be used as a justification for the denial of legal capacity including the right to vote and run for office.</i></p> <p><i>In order to promote their independent decisionmaking, the state shall provide access for persons with disabilities to the support they may require to exercise their legal capacity respecting at all times the will and</i></p>

<p>the physical and mental integrity of the person and their legal capacity should be recognised, with mechanisms for supported, rather than substituted, decisionmaking.</p> <p>The CRPD Committee’s General Comment of April 2014 states that “Article 12 now makes it clear that ‘unsoundedness of mind’ and other discriminatory labels are not legitimate reasons for the denial of legal capacity (legal standing and legal agency). Under Article 12 of the Convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.”</p> <p>In addition, in no case shall the existence of a disability justify a deprivation of their liberty.</p> <p>Finally, the right to life for persons with disabilities should be specifically recognized, highlighting those situations where persons with disabilities are the most vulnerable.</p>	<p><i>preferences of the person.</i></p> <p><i>Persons with disabilities shall enjoy the right to life, liberty and security of the person on an equal basis with others. The State shall ensure the protection and safety of persons with disabilities in situations of risk including man-made and natural disasters.</i></p> <p><i>In no case shall the existence of a disability justify a deprivation of liberty.</i></p>
--	--

<p>Fundamental Rights</p>	<p>There should be a separate Section for persons with disabilities containing those articles that deal specifically with disability.</p> <p>Such a section should incorporate a definition of disability drawn from the CRPD . It should enshrine an understanding of disability that is all inclusive, evolving and open-ended, include the differing concepts of impairment and disability, and highlight the environmental factors that are an essential component to understanding the meaning of disability.</p> <p>Such a section should also incorporate basic disability related principles where they are not mentioned elsewhere in the Constitution.</p>	<p><i>Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</i></p> <p><i>Persons with disabilities’ difference shall be respected and accepted as a part of human diversity and humanity.</i></p> <p><i>In order to ensure equal opportunity for persons with disabilities in all aspects of life, the State shall promote persons with disabilities’ access to the built environment, transportation, information and communication, and all other facilities and services open to and used by the public in urban and rural areas. Accordingly, the State shall ensure the progressive identification and elimination of all barriers to accessibility.</i></p>
---------------------------	--	--

4. Provisions

<p>Independent Commissions</p> <p>Fundamental Rights</p>	<p>Enforcement mechanism: The history of implementation of existing laws and policies dealing with disability has been very poor due to a lack of coordination, monitoring, enforcement and transparency, as well as a high degree of politicization. State institutions have not understood disability as a human rights issue.</p> <p>With respect to enforcement, a new institution</p>	<p>Within Independent Commissions:</p> <p><i>There shall be established a Disability Rights Commission consisting of __ members appointed by the President on the recommendation of the Constitutional Council.</i></p> <p>Within the Bill of Rights:</p> <p><i>The Human Rights Commission of Sri Lanka shall establish a subcommission dedicated to the monitoring and enforcement</i></p>
--	---	--

	<p>should be established ensuring maximum independence and substantial powers, given the highly intersectoral nature of disability rights implementation reaching into a large number of Ministries. It should be able to hear complaints and proactively carry out investigations dealing with both State and non-State actors. It should consist of members who have distinguished themselves in a variety of fields relevant to disability, with a proven track record in advocating for disability rights, and include a majority of persons with disabilities representing all types of disability. Its composition, mandate and functions should reflect international standards of national human rights institutions (Paris Principles) as noted in Article 33 of the CRPD.</p> <p>Two possibilities should be considered for the type of institution:</p> <ul style="list-style-type: none"> ○ A Disability Rights Commission whose members will be appointed based on the recommendations of the Constitutional Council. ○ A Subcommittee of the Human Rights Commission, that would be adequately resourced with dedicated Commissioners and staff. 	<p><i>of all rights guaranteed to persons with disabilities within this Bill of Rights.</i></p>
--	--	---

<p>Electoral Reforms</p>	<p>Participation in the electoral process: The rights and opportunity for persons with disabilities to vote and be elected at both the central and devolved government levels should be specified.</p> <p>Qualifications for holding leadership positions in political parties or running for office cannot exclude people on the basis of any disability.</p> <p>The duty to create enabling conditions for citizens with disabilities to run for office should be specified, including putting into place a system of increased support to incentivise more persons with disabilities to contest.</p> <p>Efforts must also be made to transform internal power dynamics of political parties so that persons with disabilities can gain greater representation within the party leadership, exert greater influence within political parties more generally and benefit from increased financial support.</p>	<p><i>Every adult citizen has the right</i></p> <ul style="list-style-type: none"> ○ <i>to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret;</i> ○ <i>to stand for public office and, if elected, to hold office; and</i> ○ <i>to form a political party and participate in its activities, at both central and devolved levels of government.</i> <p><i>In no case shall the existence or acquisition of a disability disqualify a person from exercising these rights.</i></p> <p><i>The State shall ensure that voting procedures, facilities and materials are accessible to persons with disabilities including through the provision of transportation support and alternatives such as postal voting where necessary.</i></p> <p><i>The State shall create enabling conditions for qualified persons with disabilities to run for office, including through:</i></p> <ul style="list-style-type: none"> ○ <i>The allocation of seats in the legislature reserved for disabled candidates, without prejudice to persons with disabilities who also wish to contest elections for additional seats, to represent persons with disabilities;</i> ○ <i>The creation of incentives for political parties to promote persons with disabilities to positions of leadership and influence, by adjusting eligibility criteria for registration and fees;</i> ○ <i>Requiring all political party offices be accessible;</i> ○ <i>Supporting financially the establishment of an Access to Elected Office Fund to cover additional costs of campaigning by disabled contestants that are related to their disability;</i> ○ <i>Measures to guarantee media coverage and visibility for disabled candidates so as to promote equal opportunity in campaigning;</i>
--------------------------	--	--

		<ul style="list-style-type: none"> ○ <i>Reduction of threshold levels required for persons with disabilities to be eligible to contest.</i>
Legislature	<p>Participation in the political process: The constitutional framework as a whole should facilitate public participation in law and policy-making and enable persons with disabilities' engagement in a process in which they have been historically marginalised.</p> <p>This means that persons with disabilities should know in advance what bills will be presented in parliament, and draft legislation should be made available for public comment, in accessible formats, and for a longer period than is permitted under the current 19th Amendment. This is keeping in mind that the process of getting information to persons with disabilities and of garnering their participation and feedback may take longer than would otherwise be the case if</p>	<p><i>Parliament should:</i></p> <ul style="list-style-type: none"> ○ <i>facilitate public involvement in legislative and other processes and those of its committees, including the involvement of persons with disabilities through the provision of reasonable accommodations;</i> ○ <i>conduct its business in an open manner, and hold its sittings, and those of its committees, in public and with the use of sign language and Braille communications where necessary;</i> ○ <i>ensure that information about draft bills is released to the public, including in accessible formats, in advance of being presented in parliament;</i> ○ <i>ensure that draft legislation is available for public comment and for a sufficient period of time to enable their production into accessible formats and to garner feedback using communications of choice of persons with disabilities.</i> <p><i>In an Upper House of Parliament persons with disabilities shall</i></p>

	<p>that information was in a single format.</p> <p>An Upper House of Parliament should be established ensuring that the legislature will include professionals and experts from different fields, subdue majoritarian tendencies in Sri Lanka's multi-ethnic society and provide space for under represented groups to engage in the law making process.</p>	<p><i>have a reserved allocation of seats, the number of which shall be established by law.</i></p>
Fundamental Rights	<p>Privacy: The right to privacy as a fundamental right should be specified along with its implications for persons with disabilities. Persons with disabilities' medical and other records, correspondence and any other type of otherwise private communication, including in the home and family as well as in the electoral process, should be protected from interference.</p>	<p><i>Everyone has the right to privacy, and no one shall be subject to unlawful interference of their person, home, family, property, correspondence or any other communications.</i></p> <p><i>The State shall protect persons with disabilities' right to privacy on an equal basis with others including the privacy of their personal, health, rehabilitation and voting information.</i></p>
Fundamental Rights	<p>Freedom from exploitation: There is a high degree of institutionalization of persons with disabilities in Sri Lanka, where, especially for women and girls, the risk of exploitation is also high.</p>	<p><i>The State shall protect persons with disabilities from all forms of exploitation and abuse, including in their gender based aspects, both within and outside the home as well as in public and private institutional settings.</i></p>
Fundamental Rights Courts	<p>Access to Justice: Persons with disabilities should be provided reasonable accommodations to enable them to use the police system to report a crime, bring cases to the courts, serve as a witness and to participate in any other way in</p>	<p><i>The State shall ensure persons with disabilities are provided communications and procedural accommodations that are also appropriate to the age and maturity of the person, in order to enable them to approach law enforcement bodies and courts, including special courts, report a crime, serve as a witness, and</i></p>

Structure	<p>legal proceedings.</p> <p>Procedural accommodations should be made to ensure that persons with mental and intellectual disabilities and children with disabilities in particular have equal opportunity of access to justice.</p> <p>Furthermore, fundamental rights applications should be permitted to be made in Provincial High Court and any other courts thereby bringing the Courts system for such cases in greater proximity to the people. This should include any special courts set up in the context of transitional justice efforts.</p> <p>In addition to promoting rule of law, this will enable persons with disabilities to better access the Courts system in general keeping in mind that most persons with disabilities live outside of Colombo and face considerable hurdles with access to transportation.</p>	<p><i>to participate in any other way in all stages of all legal proceedings.</i></p> <p><i>In no case shall the existence of a disability justify a deprivation of the right to access the justice system.</i></p> <p><i>Anyone has the right to approach the Provincial High Courts as well as any other competent court alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.</i></p> <p><i>The persons who may approach a court are:</i></p> <ul style="list-style-type: none"> <i>o anyone acting in their own interest;</i> <i>o anyone acting on behalf of another person who cannot act in their own name;</i> <i>o anyone acting at the request of a person with a disability in support of their right to access the justice system and exercise their legal capacity;</i> <i>o anyone acting as a member of, or in the interest of, a group or class of persons;</i> <i>o anyone acting in the public interest; and</i> <i>o an association acting in the interest of its members.</i>
Fundamental Rights Public Service	<p>Economic and social rights: The CRPD comprehensively elaborates on these rights with respect to persons with disabilities, highlighting the strong nexus between disability and poverty and how they mutually reinforce one another. Rights to education, health, employment, social protection and housing, along with other ESC rights that Sri Lanka has ratified through the Covenant and as outlined in the Fundamental Rights chapter, should specifically recognize</p>	<p><i>Persons with disabilities may not be excluded from the general education system at any level on the basis of disability. The state shall ensure that persons with disabilities receive the individualized support required within the general education system to maximize their academic and social development, including by facilitating the use of and training teachers in, sign language and Braille.</i></p> <p><i>Persons with disabilities are entitled to the same range and quality of free and affordable healthcare as provided to other</i></p>

	<p>persons with disabilities.</p>	<p><i>persons. They shall also have the right to receive health services required specifically because of their disabilities, including rehabilitation. The state shall ensure that such care is provided on the basis of free and informed consent of the person with disability.</i></p> <p><i>Discrimination on the basis of disability in all matters concerning conditions of recruitment, continuation of employment, career advancement and working conditions shall be prohibited. The Administrative Service shall be required to hire persons with disabilities in accordance with quotas to be established by law across all levels and the State shall ensure that reasonable accommodations are provided accordingly.</i></p>
<p>Fundamental Rights</p>	<p>Access to information: The right to information (RTI) should be enshrined in the new Constitution and explicitly extended to persons with disabilities as it is essential to protecting their freedom of expression and opinion and access to information as outlined in the CRPD. Persons with disabilities face hurdles with accessing information that is already in the public domain, which are significantly increased when that information is hidden from public view.</p> <p>Persons with disabilities cannot participate in the electoral process if they do not have timely and equal access to information needed to make decisions of their political representatives' qualifications and achievements. They cannot hold accountable those institutions mandated to provide programs and services related to</p>	<p><i>Every citizen shall have the right of access to information which is in the possession, custody or control of a public authority.</i></p> <p><i>The State shall ensure that such information is, when so requested, available to persons with disabilities in accessible formats and technologies, appropriate to different kinds of disabilities, in a timely manner and without additional cost.</i></p> <p><i>Persons with disabilities have a right to seek and receive such information through all forms of communication of their choice.</i></p>

	<p>disability - such as social welfare payments, access regulations, medical records, and legal aid and education - if those institutions' decisionmaking is not transparent.</p> <p>This lack of information affects persons with disabilities' realisation and enjoyment of a range of political, economic and social rights. Any constitutional provisions on the RTI should therefore recognize that, in order to make it meaningful, it should also specify the need for information to be produced in ways that are accessible to persons with disabilities.</p>	
--	--	--

This statement is endorsed by the following organizations and individuals:

Organizations

- Ability Forum / International Youth Alliance for Peace
- Center for Monitoring Election Violence; www.cmev.org
- Center for Policy Alternatives; www.cpalanka.org
- Cerebral Palsy Lanka Foundation
- Community Business & Technology Developers (Gte) Ltd; Trincomalee. www.cbtdsl.org
- Eastern Community Resource Development Foundation, Trincomalee
- Enable Lanka Foundation
- Handicap International, Sri Lanka
- Human Link, Ampara
- International Centre for Ethnic Studies, www.ices.lk
- MENCAFEP, for children and young people with disabilities. www.mencafep.com
- Navajeevana Rehabilitation, Tangalle; www.navajeevana.org; (Oral submission: Matara District on February 10, 2016)
- Northern Province Consortium of the Differently Abled, (NPCODA), Killinochchi composed of 15 organisations (Oral submission: Vavuniya District - February 6, 2016)

- Organization for the Rehabilitation of the Handicapped (ORHAN), Vavuniya; <http://www.orhansrilanka.org>
- Parents and Teachers Organisation for Intellectually Disabled in Sri Lanka; <http://www.ptoidsl.org>
- Peoples' Action for Free and Fair Elections; www.paffrel.com
- University of Kelaniya
- Wheels in Motion, Moneragala
- The following organizations located in Batticaloa District:

Arokiya - DPO, Vaharai	Kattankudy DPO
Batticaloa District Consortium of Disabled People Organizations (BDC DPO)	DISHA-DPO, Kaluwanchikudy
Dharisanam School for Visually Handicapped	Ethirneechal - DPO
Earmunai - DPO, Chenkalady	KPW-DPO
Association for social Inclusion (DPO), Arayampathy	Ladder of Hope (LoH)
Center for Accessibility, Monitoring and Information on Disability (CAMID)	Puthiya Pathai - DPO, Kiran
Ozimayam - DPO, Ottamavadi, Batticaloa, Valvin Uthayam - DPO, Valachchenai	Valvaham - DPO, Vavunathevu
Uthaya Oli DPO, Pattipalai	ZAM ZAM - DPO, Eravur
Ozanam Centre for Those Who Need Special Care	

Representatives / Individuals:

Dilhara Pathirana	Anushka Kahandagama	Chulani Kodikara
Lasanthi Daskon Attanayake, Attorney at Law	Hiranya Fernando	Ishan Jalil
Nirmi Vitarana	Manique Gunarathna	Dr. Mario Gomez
Senarath Attanayake, Attorney at Law	Niroshika Wegiriya	Ruwendi Wekwalla
Manjula Gajanayake	Thirukumar Premakumar	Udaya Edirimanne
Dinushika Dissanayake, Attorney at Law	V. Subramaniam, Attorney At Law	Janith Rukmal
Chintha Munasinghe	Rashmi Purasinghe	K. Kandeepan
Samitha Samanmalee, MBBS (Col)	G. Pirapaharan	Zahabia Adamaly
Chris Stubbs	Ranji Stubbs	Kithsiri Dharmapriya
Gopi Kitnasamy; BSc MCSP(UK) MIMDTP(UK)	P. K. A. Nirosha	Kasunjith Satanarachchi
Matteo Caprotti	Arturo Gonzales	Dr. Shyamani Hettiarachchi
A. Kamarutheen		