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Barriers to Implementing the Convention on the Rights of Persons with Disabilities in Sri Lanka



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Sri Lanka

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Cover art illustrated by Natasha Karunaratne. It includes the universal sign for accessibility alongside a person reading braille.

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Acronyms and Abbreviations

AIDSL (formerly CAMR) – Association for Intellectual Disability Sri Lanka

CAMID – Centre for Accessibility Monitoring and Information of Disability

(UN)CRPD – United Nations Convention on the Rights of Persons with Disabilities

DOJF – Disability Organizations Joint Front

DPO – Disabled Persons’ Organization

IFES – International Foundation for Electoral Systems

MARDAP – Mannar Association for Rehabilitation of Differently Abled People

MENCAFEP – Mentally Handicapped Children and Families Education Project

NAPD – National Action Plan for Disability (2013)

NAPHR – National Action Plan for the Protection and Promotion of Human Rights
(2017-2021)

NCPD – National Council for Persons with Disabilities

NGO – Non-Governmental Organization

NPCODA – Northern Province Consortium of Organizations for the Differently Abled

NSPD – National Secretariat for Persons with Disabilities

ORHAN – Organization for Rehabilitation of the Handicapped

WUSC – World University Service of Canada

Introduction

Sri Lanka ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on February 8th, 2016. Per article one, the purpose of the Convention: “[...] is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”¹ The Sri Lankan government does have policies in place that target disability rights, as demonstrated by the National Action Plan for Disability (NAPD 2013) and the National Action Plan for the Protection and Promotion of Human Rights (NAPHR 2017-2021), which contains a section on disability rights. However, several sources indicate that these plans are not implemented as expected in practice.² Other primary concerns related to implementation include the lack of disability legislation. The current legislation dates from 1996 and is criticised for being outdated and limited in reach. Furthermore, it is not modelled along the rights-based approach foundational to the CRPD, which underscores that people with disabilities are to be treated as rights bearers in and of themselves, as opposed to recipients of charity and welfare. This legislation is accordingly an inappropriate tool for implementation. These are significant issues, especially as Article 33 of the CRPD provides that the ratifying state party undertake a national process of implementation and monitoring.³ Arguably, this commitment is necessary to enable lasting and substantial change

¹ “Convention on the Rights of Persons with Disabilities and Optional Protocol,” (United Nations, Geneva, 2008), article 1, 4.

² This opinion was held by almost all of the participants interviewed and is clearly expressed in print by Padmini Mendis, “Disability, the Cabinet Reshuffle and Time for Change,” *The Island*, published April 17th, 2018, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=183217.

³ “Convention,” article 33, 25.

regarding disability rights. The following paper explores impediments to domestic implementation and provides recommendations on how both formal and informal mechanisms of implementation can be strengthened to ensure the effective application of disability rights in Sri Lanka.

Methodology

This paper is the product of a research project that aims to gain a sense of the barriers facing the application of the CRPD in Sri Lanka. The CRPD contains a vast number of articles that relate to specific areas of disability rights, such as education (article 24) or health (article 25) to name a few. Beyond concerns about specific areas of disability rights, participants in this project communicated that the CRPD is not being implemented generally. This paper therefore focuses on mechanisms of implementation, with specific attention paid to article 33: “national implementation and monitoring.”⁴ This paper studies both formal and informal mechanisms of implementation. Formal mechanisms of implementation include legislative action and policy enactment undertaken by the Sri Lankan government, thereby emphasizing the government’s duty to implement the CRPD as set out in the Convention. This also includes lobbying efforts on behalf of interest groups. Informal mechanisms of implementation are meant to underscore the role undertaken by organizations, for example through advocacy work and service provision. Informal mechanisms also accentuate the important role that the Convention accords to the voice of persons with disabilities and disability-related organizations domestically.⁵ This paper is therefore meant to provide some initial insight into key issues and potential solutions regarding

⁴ “Convention,” article 33, 24.

⁵ For examples see “Convention” a.4(3) holds that: “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

a.33(3): “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”

a.36(4): “States Parties shall make their reports widely available to the public in their own countries and facilitate access to suggestions and general recommendations relating to these reports.”

mechanisms of implementation, with the understanding that assuring the proper operation of these mechanisms is a critical first step towards widespread implementation. It is my hope that this project becomes a tool used to encourage greater collaboration among government institutions and disability-rights organizations to foster change through advocacy work and that it provides a foundation upon which future work can be expanded.

To undertake this project, I conducted formal interviews and informal meetings with 20 Disabled Persons' Organizations (DPOs), umbrella organizations relating to disability, Non-Governmental Organizations (NGOs), the secretary of the Human Rights Commission's sub-committee on disability, and independent disability advocates and researchers. Formal meetings were structured by consent forms which set out the aims of the project and the structure of the participant's involvement. Informal meetings were conducted with independent advocates and researchers to gain an initial sense of disability rights in the Sri Lankan context. Informal meetings were also conducted with participants who did not wish to sign the consent form. The list of participants interviewed includes umbrella organizations that focus on the West coast and South of the country (DOJF), the East (CAMID), and the North (NPCODA), thereby allowing for geographic variety. Participants included both men and women, and among them people who have disabilities as well as people who do not. The Ministry of Social Empowerment was contacted by phone and e-mail, but declined an interview.

During the interviews, participants were asked what they consider to be the principal barriers to implementing the CRPD in Sri Lanka. They were then asked to elaborate on why they think these impediments exist and what potential solutions they

envisage. Where necessary, additional questions were asked for the sake of clarification. Because each interview was centred around a different organization or institution, there was no set questionnaire. Aside from these foundational questions, interviews followed the conversation initiated by the participant allowing ample room for them to voice their concerns and thoughts regarding the topic of implementation in the Sri Lankan context.

From these interviews, I compiled a list of barriers to implementation and proposed solutions. This information was subsequently categorized using Alexander Betts and Phil Orchard's institutionalization-implementation gap theory and compared to the policy aims set out in the 2014 NAPD, the 2017-2021 NAPHR, as well as domestic legislation. Inconsistencies that would seemingly affect formal and/or informal mechanisms of implementation were also noted. Clarifications and additional information were requested of participants by e-mail when required. It should be noted that assertions made by participants are their own viewpoints and accordingly include their own biases. These viewpoints are nevertheless valuable insofar as they are reflective of realities relating to disability rights on the ground and within organizations.

This paper begins with a brief explanation of the institutionalization-implementation gap theory. It then discusses institutional, material (actor interests and capacity), and ideational (cultural and legal) impediments to implementation. Finally, issues facing women with disabilities are explored as a concern highlighted by many participants. The paper is concluded by a brief synopsis of the main issues explored herein as well as recommendations for the government, organizations, and donors.

The principal limitations to this project include time and budgetary constraints, as well as language barriers (I do not speak Sinhala or Tamil). Accordingly, I narrowed

the scope of this project to overcome these limitations. I approached time and budgetary constraints through the choice of my sample size, which is detailed above, and by focusing on mechanisms of implementation. Despite these limitations, this study captures a wide range of participants who vary in geographic focus, area of disability rights work, type of organization, and gender. Furthermore, the choice to focus on mechanisms of implementation brings important groundwork to a field that suffers from a lack of research in Sri Lanka. This contribution to a gap in the literature is especially relevant because implementation is an initial step towards a more precise application of the CRPD in terms of specific disability rights (like education, or sports and leisure).

To overcome the language barrier, I focused my research on high-skilled participants: specifically top-representatives of organizations, independent researchers and advocates, and government functionaries, almost all of whom spoke English. As such, this study represents somewhat of an institutional ethnography regarding the implementation of disability rights in Sri Lanka. Interpreters were used for two interviews that were conducted with participants who spoke Sinhala. I accept that there may have been information lost in translation during the interviews, although I have done my best to control these inconsistencies by using interpreters and by sending follow-up questions to participants where information was unclear. Due to the aforementioned time constraints and language barriers, this report does not tackle the complaints of smaller, rural organizations. However, their concerns were touched on by several participants, who explained that these DPOs cater to very specific needs within

their communities, sometimes eschewing formal mechanisms of implementation altogether. This is in and of itself telling of specific issues regarding implementation.

Further research specific to implementation would do well to focus on smaller DPOs across the country and within the ministries. The former is important because the majority of the population in Sri Lanka is rural. The latter is important because it would afford an important evaluation of roles given to the ever-expanding government ministries. Other research on disabilities in Sri Lanka should consider specific areas of disability that are under-researched, such as intellectual disability.

Ch. 1 - Institutionalization-Implementation Gap Theory

In *Implementation and World Politics: How International Norms Change Practice*, Alexander Betts and Phil Orchard propose a way of categorizing discrepancies between the internationalization of norms and their domestic implementation under the title “institutionalization–implementation gap.” Institutionalization is understood as the procedure by which norms emerge at the international level and is characterized by processes such as treaty ratification.⁶ Implementation refers to the domestic application of these international norms through formal legal and policy mechanisms meant to assure compliance.⁷ The institutionalization–implementation gap theory recognizes that as institutionalized international norms move downwards to the state level their application can diverge among states, even in cases where processes of implementation are similar.⁸ Betts and Orchard explain these inconsistencies through domestic structural influences on norms.⁹ These influences are described as institutional, material, and ideational – categories which are not mutually exclusive but provide a basic framework for identifying causal impediments to implementation.¹⁰ This paper

⁶ Alexander Betts and Phil Orchard, “Introduction: The Normative Institutionalization-Implementation Gap,” in *Implementation and World Politics: How International Norms Change Practice*, (Oxford University Press: Oxford, 2015), 2.

⁷ Ibid.

Betts and Orchard argue that implementation leads to compliance for four main reasons: it is rare that international norms precede compliance; implementation adds precision to international norms, which are often vague as they are meant to be applicable in a wider variety of circumstances; implementation can open a space for “norm contestation” where domestic actors act as an added pressure for implementation; and implementation provides for clear domestic standards against which the state can be monitored. (Ibid., 4).

⁸ Ibid., 3.

⁹ Ibid., 13.

¹⁰ Ibid., 12.

Betts and Orchard have also classified these influences as being either constitutive, in that they change the norm, or constraining, in that they adapt the norm. (Ibid., 13).

uses Betts and Orchard's categorization of the domestic structural influences on norms to classify barriers to the implementation of the CRPD raised by participants.

While Betts and Orchard's theory does acknowledge the role that domestic civil society and domestic chapters of international organizations play in shaping implementation, this aspect of theory could be expanded. Betts and Orchard discuss these actors in relation to their effects on the government as an implementing force. However, this paper accords additional focus on the way relationships between organizations, both formally and informally, affect implementation overall. The implementation gap theory is therefore modified in this paper to include discussions on informal mechanisms of implementation where relevant. Additionally, "state capacity" within material gaps was broadened to include organization capacity, which refers to the capacity of NGOs and DPOs to lobby the government and provide services for persons with disabilities. This modification is especially important in the context of implementing the CRPD, which is constructed to give weight to the efforts and opinions of PWDs and organizations that foster disability rights in the domestic context of states party to the Convention.¹¹ It also reflects the domestic situation as presented by participants, who indicated that disability service provision is largely shouldered by interest groups.

This paper concludes that institutional barriers present an initial impediment to implementation because they allow the government to skirt the responsibility of implementing the CRPD. Accordingly, implementation falls to organizations formally through lobbying and informally through service provision. At this stage, actor interests

¹¹ See note 5.

and issues of capacity – material impediments to implementation – create further barriers that complicate the process of domesticating the CRPD. Cultural barriers in the form of societal attitudes and legislation create additional difficulties in Sri Lanka. Societal attitudes complicate implementation when they are at odds with fundamental tenets of the CRPD. Legislation acts as an additional barrier when affirmative action meant to protect persons with disabilities in law is inaccessible.

Ch. 2 - Institutional Impediments to Implementation

The institutionalization–implementation gap theory recognizes that the institutional structure of a country plays a role in the way norms are implemented domestically. Accordingly, different institutional structures can lead to different applications of international treaties and conventions among states. Betts and Orchard note that national history and politics define variations in the structure of government ministries and the division of responsibilities in different policy-fields.¹² Historical background and politics also play a role in determining how competencies are divided across different levels of government; for instance, the responsibility accorded to regional versus national governments.¹³ Betts and Orchard also argue that norms are constrained by domestic institutions, where policy gatekeepers have the power to adapt norms.¹⁴

Participants in this study revealed that institutional influences play a large role in impeding the implementation of the CRPD in Sri Lanka and accorded great importance to solutions that focus on remedying these barriers. While some participants located the main impediments to implementation within a niche area of disability rights related to their specific organization, most participants pointed to broader institutional issues as primary obstacles. This sentiment was expressed by disability rights advisor Dr. Padmini Mendis. Dr. Mendis argued that specific rights advancement for persons with disabilities, for instance in terms of education or health, will happen in an ad hoc matter

¹² Ibid., 18.

¹³ Ibid.

¹⁴ Ibid.

as advocates provide services in these fields or lobby the government to do so.¹⁵ However, she maintained that meaningful progress regarding disability rights in Sri Lanka depends on strong disability legislation and responsible implementation.¹⁶ Regarding specific institutional impediments, participants pointed to issues like centring implementation around the Ministry of Social Empowerment, the lack of coordination between ministries, the lack of institutional memory and knowledge about disability rights and issues within the ministries, the lack of independent oversight when it comes to implementation, and an institutional dichotomy in regionally-allocated disability-related resources.

Almost every participant rose issues related to centring the implementation of the CRPD around the Ministry of Social Empowerment. The NAPD does accord greater responsibility to the Ministry of Social Services (now the Ministry of Social Empowerment) by involving this Ministry in all seven of the thematic focus areas designed for the policy's implementation. At present, rights and representation for people with disabilities in Sri Lanka are governed within the mandate of the National Council for Persons with Disabilities (NCPD), which is housed within the Ministry of Social Empowerment. The National Council's responsibilities include raising awareness about disabilities, data collection, monitoring the activities of institutions that cater to the needs of persons with disabilities, and undergoing initiatives for disability prevention. The Ministry of Social Empowerment also lists the National Secretariat for Persons with Disabilities, the Department of Social Services, Provincial Social Service

¹⁵ Dr. Padmini Mendis, June 2018.

¹⁶ Ibid.

Departments, and Divisional Secretariats as service providers for persons with disabilities. While 27 other ministries are also involved in the NAPD, not one of them is charged with tasks spanning all seven focus areas. Dr. Mendis explains that the connection between disability and the Ministry of Social Empowerment is historically rooted: service provisions for persons with disabilities have always been the responsibility of the Ministry of Social Services.¹⁷

Participants brought up several issues regarding the Ministry of Social Empowerment's monopoly over disability, mostly in relation to capacity and rights culture. Nihal Nanayakkara, the President of the Association for the Intellectually Disabled – Sri Lanka (AIDSL formerly CAMR), argued that the Ministry of Social Empowerment has a small budget and minimal political might.¹⁸ He therefore posited that this Ministry is an ineffective institution around which to centre the implementation of disability rights. Disability is a broad, heterogeneous category. As such, people with different disabilities have different needs, making disability rights multi-sectoral in nature. Moreover, the rights afforded by the CRPD are multi-sectoral. Policies accommodating persons with disabilities therefore require the guidance of many ministries and a governing force that has the capacity to command over them.

Others added that housing disability rights within the Ministry of Social Empowerment necessarily associates disability with welfare. This is problematic as the CRPD is founded in a rights-based approach, meaning that persons with disabilities should be considered as rights-bearers and not “special cases” deserving of charity and

¹⁷ Mendis, “Disability, the Cabinet Reshuffle and Time for Change.”

¹⁸ Nihal Nanayakkara, June 2018.

reliant on welfare. The distinction between the two has an important effect on the role of the state: the transition that disability rights made from being a topic of welfare to one of human rights puts the onus on the state to ensure that the rights of people with disabilities are respected and upheld.¹⁹ Framing disability rights as a welfare issues accordingly allows the state to eschew responsibility. For example, Dr. Mendis explained that the association between the Ministry of Social Empowerment and disability enables ministries to default on their obligations regarding implementation by claiming that disability falls under the auspices of the Ministry of Social Empowerment.²⁰ Some participants agreed that actions calling for service provision, such as supplying persons with disability with technical aid, could remain the responsibility the Ministry of Social Empowerment.²¹ Yet, they maintained that disability rights need to be decentralized from this Ministry so that persons with disability can be considered rights bearers in and of themselves as per the CRPD.²²

Participants also raised issues pertaining to ministerial coordination and a lack of institutional memory regarding disability rights and associated projects. Internal coordination is a key issue regarding the CRPD's implementation. The existence of policies and laws only offers a theoretical protection: tangible protection requires clearly defined responsibilities and channels of communication within governments.²³ Gopi

¹⁹ Caroline Harnacke, "Disability and Capability: Exploring the Usefulness of Martha Nussbaum's Capabilities Approach for the UN Disability Rights Convention," *Journal of Law, Medicine, and Ethics* 24, no.4 (2013): 774.

²⁰ Dr. Mendis, June 2018.

²¹ Kapilan Kalvalairadjan, July 2018; Dr. Mendis, June 2018.

²² Ibid.

²³ Peter Mittler, "The UN Convention on the Rights of Persons with Disabilities: Implementing a Paradigm Shift," *Journal of Policy and Practice in Intellectual Disabilities* 12, no.2 (2015): 83.

Kitnasamy, the founder of Cerebral Palsy Lanka Foundation, explained that meetings meant to assess and advance the policies established in the NAPD only see representation from a few ministries.²⁴ This poses a strain on a multi-sectoral issue like disability rights. The multi-sectoral nature of disability rights is affirmed by the NAPD itself, which includes a whole section on institutional cohesion and calls for the involvement of 28 ministries.²⁵ Mr. Kitnasamy elaborated that the lack of representatives from a variety of ministries impedes the institutional power to make executive decisions.²⁶ For instance, if a solution is proposed the representatives present can default on agreeing to implement that solution by saying that another ministry, which is not present, needs to be involved.²⁷ Mr. Kitnasamy stressed that decisions related to implementation need not take long if planned properly.²⁸

On a related topic, participants raised concerns regarding the lack of disability-related focal points within these 28 ministries. Janitha Rukmal, the co-founder of Enable Lanka expressed that a focal point is important because the ministries are diffuse: when a disability-related issues needs to be raised with a specific ministry, participants did not know whom to contact.²⁹ Additionally, the appointment of a focal point would better enable the capacity of institutional memory.³⁰ One participant

²⁴ Gopi Kitnasamy, June 2018.

²⁵ “Sri Lanka: National Action Plan for Disability,” (Ministry of Social Services, Ministry of Health, Sri Lanka, 2013), 31-34.

²⁶ Mr. Kitnasamy, June 2018.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Janitha Rukmal, June 2018.

³⁰ Asanga Ruwan Perrera, June 2018.

expressed that ministers are frequently relocated, and that they are sometimes appointed to a ministry without sufficient background knowledge regarding the projects of that ministry.³¹ The appointment of a focal point within the ministries would therefore better enable intra-ministerial coordination as well as coordination between the ministries and interest groups. It would also ensure that the ministries have a constant focus on these projects, thereby simplifying transitions between employees. The NAPD 2013 section 2.1c of thematic area seven: “social and institutional cohesion,” does provide for an internal focal point to be designated by each listed ministry, thereby recognizing the importance of this practice.³² However, participants argued that this policy is not implemented.³³

As such, a central implementation body with designated disability focal points from all relevant ministries is needed to effectively coordinate and implement the Convention. Rasanjali Pathirage, the General Secretary of the Disability Organizations Joint Front (DOJF) and the President of the Association of Rheumatic Diseases, suggested that this body would meet twice a year to report on what they have done as a ministry and to monitor the progress of the NAPD.³⁴ Mr. Kitnasamy added that additional meetings would take place between the focal points of relevant ministries to coordinate action regarding implementation where it only involved a few ministries.³⁵ Ms. Pathirage stressed that these ministerial focal points would have to be trained in

³¹ Confidential.

³² “National Action Plan for Disability,” 32.

³³ Mr. Kitnasamy, June 2018.

³⁴ Rasanjali Pathirage, June 2018.

³⁵ Mr. Kitnasamy, June 2018.

disability rights.³⁶ She added that nominations for focal points among these ministries should be transparent and decisions to accept nominations should be made on the recommendations of DPOs, persons with disabilities, and experts in the field.³⁷

Almost every participant underscored the need for an independent monitoring committee that would supervise the implementation process, investigate complaints, and seek redress where necessary. As mentioned above, the NCPD is currently under the auspices of the Ministry of Social Empowerment, making this Ministry inappropriate as a monitoring body. Independent oversight is a key principle of the CRPD, and is enshrined in article 33.³⁸ The lack thereof is accordingly a key barrier to implementation. The members of this committee should include people with disabilities, DPOs, and experts in the field. Constituting the committee as such is in keeping with the powerful role the CRPD accords to PWDs and DPOs in the implementation process.³⁹

Participants raised geographic location as an impediment to implementation. This obstacle is at least in part institutional in nature, resulting from Sri Lanka's centralized government. It is worth noting that lobbying is significantly effective in the capital because that is where the ministries are located. While it is true that Provincial Councils and local authorities are given a role in the implementation process by the NAPD, some participants doubted their influence.⁴⁰ One participant remarked that the

³⁶ Ms. Pathirage, June 2018.

³⁷ Ibid.

³⁸ "Convention," article 33, 24.

³⁹ See note 5.

⁴⁰ Ishan Jalill, June 2018; Kasunjith Satanarachchi, July 2018.

provincial councils remain “defunct,” even though the 13th Amendment to the Constitution of Sri Lanka afforded them more powers.⁴¹ Other participants expressed opposing viewpoints, arguing that regional political recourse were sometimes more sympathetic to the plight of disability advocates and quick to provide resources. Mr. Rukmal explained that smaller rural areas were more successful testing grounds for progressive disability experiments.⁴² However, this observation was accompanied by the caveat that provincial and regional government structures are disrupted by an unequal distribution of resources, meaning that there is less funding for disability-related activities.⁴³ For example, Chris Stubbs the founder of the Mentally Handicapped Children and Families Education Project (MENCAFEP) said that the Grama Niladharis with whom he has spoken explained that the government allocates a flat rate for disability services, like the Rs.3,000 allowance given to families where the breadwinner lives with a disability caused by severe impairment.⁴⁴ Because there is no accurate data on who lives with a disability or the degree of the impairment, the amount of money allocated regionally is seemingly random and it is distributed on a first-come first-served basis. The result is that preferential treatment for those living with severe impairments is not followed and many cannot claim the allowance. Mr. Kitnasamy noted that children with disabilities in Colombo are “almost blessed” because of the amount of resources offered in the capital.⁴⁵

⁴¹ Confidential.

⁴² Mr. Rukmal, June 2018.

⁴³ Ibid.

⁴⁴ Chris Stubbs, June 2018; Lasanthi Daskon made similar remarks in June 2018.

⁴⁵ Mr. Kitnasamy, June 2018.

Some participants spoke of this geographic barrier in terms of a rural versus urban dichotomy, specifically touching on the intersection between disability and poverty. Studies have shown that disability and poverty are correlated.⁴⁶ In fact, the Convention itself recognizes this issue in its preamble.⁴⁷ Many participants linked poverty as an impediment to effective lobbying, arguing that the poor are less aware of their rights and/or do not have the resources or time to spend on lobbying efforts.⁴⁸

Others brought up specific issues that their locality faced, which were not primary concerns for persons with disabilities living in Colombo. For instance, Nisha Shariff, the President of V for Rights, indicated that Kandy has an increased number of accessibility issues for people with reduced mobility because the city is located in a mountainous area.⁴⁹ K. Kandeepan, the programme director for CAMID, an organization that focuses on disability and inclusion in the Eastern Province, referred to the fact that there is an increased number of persons with disabilities in the East because this region was heavily affected by the 26-year civil war between the government and the Liberation Tigers of Tamil Eelam (LTTE).⁵⁰ Mr. V. Subramaniam,

⁴⁶ Disability Organizations Joint Front, “The State of Economic Social and Cultural Rights of Persons with Disabilities in Sri Lanka,” International Centre for Ethnic Studies, April 2017, accessed July 2018, <http://ices.lk/wp-content/uploads/2017/06/The-State-of-Economic-Social-and-Cultural-Rights.pdf>. Academic research has also noted this point; see Raymond Lang, Maria Kett, Nora Groce, and Jean-Francois Trani, “Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations,” *European Journal of Disability Research* 5 (2011): 207.

⁴⁷ “Convention,” preamble (t), 3.

⁴⁸ Manique Gunaratne, June 2018; Ms. Mendis, June 2018; Ms. Pathirage, June 2018.

⁴⁹ Nisha Shariff, July 2018.

⁵⁰ K. Kandeepan, July 2018.

the President of the – Northern Province Consortium of Organizations for the Differently Abled (NPCODA), made similar remarks.⁵¹

As such, many participants felt that a centralized government located in Colombo was disconnected from the realities of persons with disabilities living in other parts of the country, and that funding is not adequately distributed to these regions. Participants also noted that lobbying Ministries in Colombo imposes accessibility issues to persons with disabilities who live outside of the capital including but not limited to: the lack of accessible transportation, financial and time concerns, and harassment towards persons with disabilities preventing them from travelling alone. Some participants suggested an increase in the allocated funding to the Provincial Councils for disability-related services and projects or grants directly available to organizations by application would allow for more accessible implementation targeted to the needs of that area.⁵² Other solutions include capacity building among DPOs and rights literacy projects in schools and community centres to increase rights-awareness. From a research perspective, region-specific research into implementation barriers would be an additional asset.

⁵¹ V. Subramaniam, June 2018.

⁵² Mr. Rukmal, June 2018; Mr. Stubbs, June 2018.

Ch. 3 - Material Impediments to Implementation

The material category of domestic structural influences on norms is centred around the recognition that interests shape norms. Under this framework, norms are constitutively changed by actor interests and modified by state capacity. For the purposes of this paper, formal mechanisms of implementation include those underscored by participants: government ministries, organizations in their capacity as lobbying agents, and democratic monitoring bodies like the Human Rights Commission. This paper also looks at actor interests and capacity regarding disability rights-related actors as service providers, thereby recognizing their significant involvement in informal mechanisms of implementation.

Actor Interests

Betts and Orchard rely on Krasner's theory of organized hypocrisy as an example of how actor interests influence the domestic application of norms. In this theory, Krasner argues that vague international norms are likely to be interpreted through the preconceived interests of actors who wield a significant amount of power in the field of application.⁵³ In the context of the CRPD's application in Sri Lanka, the imprecision of the norm lies in the Convention's provision for a domestic implementation process. Article 33 of the Convention holds that the state party provide focal points within their government, that they devise a mechanism of coordination to facilitate this process, and that they establish a mechanism of independent oversight to monitor the Convention's implementation.⁵⁴ Article 33 also underscores the participation of civil society, and

⁵³ Betts and Orchard, "The Normative Institutionalization-Implementation Gap," 17.

⁵⁴ "Convention," article 33, 24.

especially persons living with a disability and their organizations, in the monitoring process.⁵⁵ However, the method by which these processes are meant to occur remains vague: “in accordance with [the state party’s] system of organization.”⁵⁶ The state party therefore has significant leeway to shape their own process of implementation. This can result in variations according to actor interests. In Sri Lanka, the formal mechanisms of implementation are shaped by the interests of the government, politically active interest groups, and the Human Rights Commission. Informal mechanisms of implementation are also present in the form of service provision by domestic and international organizations. The type of services provided and their asymmetric distribution are indications that these programs are also shaped by actor interests.

1.a Formal Actor Interests – Government Ministries

When asked why the policies providing for the application of disability rights through the NAPD and the NAPHR are not implemented in practice, participants frequently pointed to state interests as a reason. Many answered that disability rights are not the government’s primary concern or are a last concern.⁵⁷ Others specified that the government has the resources to implement the CRPD but is unwilling to do so.⁵⁸ As mentioned above, one participant supported these responses by highlighting that implementation of the CRPD is governed by the Ministry of Social Empowerment – a

⁵⁵ Ibid., 25.

⁵⁶ Ibid.

⁵⁷ Prasanna Kuruppu, June 2018; Ms. Pathirage, June 2018; Mr. Stubbs, June 2018; Vajira Suhashini, June 2018.

⁵⁸ Mr. Kitnasamy, June 2018; Dr. Mendis, June 2018; Mr. Stubbs, June 2018; Ms. Shariff argued that government has all of the resources but there’s a practical problem with implementation, principally because the government lacks human resources.

ministry with a relatively small budget and accordingly less political force.⁵⁹ Others have reasoned that the government is corrupt: while the resources exist to address disability rights, they are not spent accordingly.⁶⁰ It is noteworthy that some participants argued that this incongruity was due to a mismanagement of resources, as opposed to intentional corruption.⁶¹ Isabel Bogorinsky, a programme coordinator for Humanity and Inclusion, added that budgets are allocated but sometimes remain unused due to a lack of awareness.⁶² Others pointed to the government's initial motives for ratification to explain the lack of efficient implementation. They argued that the government did not ratify the Convention fully of its own volition but due to international pressure, or that ratification was a self-interested act in the aim of international recognition.⁶³ Following this line of argumentation, the government was willing to accede to institutionalization, but lacks the political will to follow through with domestic implementation.

To be clear, the government does provide some services. According to the Ministry of Social Empowerment's website these services include: Rs. 250,000 for a new house, accessibility facilities, self-employment assistance, medical assistance, the purchase of medicine and travel expenses, assistive devices, a payment of Rs. 3,000 per month for low-income families, educational assistance, Rs. 5,000 for Chronic Kidney Disease of Undetermined Causes (CKDU) patients from low-income families, salaries for the

⁵⁹ Mr. Nanayakkara, June 2018.

⁶⁰ Mr. Kitnasamy, June 2018; Mr. Stubbs, June 2018; Mr. Kalvalairadjan, July 2018.

⁶¹ Isabel Bogorinsky, July 2018.

⁶² Ibid.

⁶³ Mr. Kuruppu, June 2018; Mr. Ruwan Perrera, June 2018; Sugath Wasantha De Silva, June 2018.

Victoria Home and money for sign language courses.⁶⁴ Participants noted several problems with these services including but not limited to: assistive devices that are uniform and not customized to suit the body requirements of a person with a disability; the first-come first-served allocation of Rs. 3,000 for low-income families, which should be prioritized based on a hierarchy of needs; and long waiting lists for self-employment assistance.⁶⁵

In terms of solutions, participants were optimistic about the policy recommendations made in the institutional section above, such as the creation of a monitoring committee and an implementation body consisting of appointed disability-rights focal points responsible to the office of the President or the Prime Minister. However, it is noteworthy that a minority of participants expressed a range of potential issues that could impede upon the success of these recommendations. One participant argued that the success of the implementation body relies on the chairperson's character and their interest in implementation, as "anyone can be bought."⁶⁶ Others insisted that implementation will only be successful if political actors charged with implementation have a specific interest in advancing disability rights, stressing the need for more political representation by persons with disabilities.⁶⁷ Some pointed to themselves as advocates and explained that they became involved in this field because they have a

⁶⁴ "Services for Persons with Disabilities," *Ministry of Social Empowerment* Online, last updated July 20, 2018, http://www.socialemwelfare.gov.lk/web/index.php?option=com_content&view=article&id=30&Itemid=151&lang=en#provision-of-assistance-for-victoria-home

⁶⁵ Mr. Kitnasamy, June 2018; Ms. Shariff, July 2018; Mr. Stubbs, June 2018.

⁶⁶ Mr. Nanayakkara, June 2018.

⁶⁷ Mr. Kitnasamy, June 2018; Ms. Pathirage, June 2018; Puvaneswary Ponniah, June 2018.

disability, or because they have a child with a disability.⁶⁸ Mr. Kitnasamy added that his organization's programming only ever geared the interest of a few "able-bodied" persons, and that it is always the same persons without disabilities who are interested in the Foundation's activities.⁶⁹ Participants suggested that these issues could be countered by including more persons with disabilities, advocates, and experts beyond policy creation and in the actual process of implementation. This might require ministries to hire more persons with disabilities. There are however several issues that stand in the way of such solutions. For instance, Manique Gunaratne from the Employers' Federation of Ceylon said that the government sector does not successfully fulfil their 3% employment quota of persons with disabilities because there is a lack of qualified persons with disabilities for the position due to barriers preventing them from accessing education.⁷⁰ As such, the education sector must be made accessible so that persons with disabilities might successfully apply for such positions. This solution also requires educated persons with disabilities to be interested in holding such positions. Others eschewed lobbying the government all together, maintaining that their institutional memory evidenced that it is more productive for them to act alone.⁷¹ If the government is insufficiently interested in implementation, the burden of realizing disability rights is placed on the disability movement to mobilize enough political might to pressure the government formally and to provide services in the interim informally. The interests of

⁶⁸ Mr. Kitnasamy, June 2018; Ms. Ponniah, June 2018

⁶⁹ Mr. Kitnasamy, June 2018.

⁷⁰ Ms. Gunaratne, June 2018.

⁷¹ Mr. Kitnasamy, June 2018. Mr. Nanayakkara mentioned that some organizations fear the government will capture their resources if the organizations make themselves known to the government. Accordingly, they operate privately.

disability-related organizations accordingly play an instrumental role in advancing or delaying this process.

1.b Formal Actor Interests – Politically Active Organizations

Formal mechanisms of implementation are also shaped by the interests of the disability movement as a lobbying force. Several participants brought this up as an issue affecting implementation, remarking that different interests among organizations can hinder their capacity as a coalition. For some, these problems are rooted in the unwillingness of DPOs to coalesce into a unitary disability rights movement. Participants occasionally remarked that DPOs interrupt one another at meetings, and are focused on their niche area of disability. The lack of collaboration is problematic to participants who believe that a strong coalition among disability rights activists is necessary to muster the political impetus to pressure the government into implementing the Convention. Some participants elaborated that DPOs waste resources by attempting to do things on their own: the lack of coordination uses up ministerial time and results in the duplication of projects.⁷² One example of project duplication involves projects related to data collection. Article 31 of the CRPD provides that the state party will collect statistical research and data “disaggregated as appropriate” to identify the barriers faced by persons with disabilities and more effectively provide for implementation.⁷³ Yet participants argued that the available data was outdated and poorly collected; for

⁷² Ms. Daskon, June 2018; Mr. Kandeepan, July 2018; Mr. Kitnasamy, June 2018; Ms. Shariff, July 2018.

⁷³ “Convention,” article 31, 23.

example, it is not disaggregated by gender.⁷⁴ Participants underscored that the lack of disability-related data represents a significant impediment to the implementation of the CRPD in Sri Lanka. It is challenging to effectively lobby the government on behalf of persons with disabilities when one cannot estimate the scope of the resources needed or the magnitude of the existing problem. However, rather than collaborate to collect and share data across sectors, it would seem that a number of organizations have their own initiatives to collect data including the Cerebral Palsy Lanka Foundation, the DOJF, ORHAN, and the WHO.⁷⁵ It is worth noting that the Election Commission also has a data collection initiative with the support of IFES and the Technical Working Group on disability.⁷⁶

For others, the problem lies in a discrepancy between the needs of individual organizations and the interests of larger, politicized organizations like umbrella organizations. Umbrella organizations can be particularly powerful lobbying forces due to their strong membership: they represent a coalition, a mobilization of the disability rights movement. One historically influential umbrella organisation is the DOJF, which is composed of representatives from thirty organizations that span a wide range of disabilities and geographic regions. This organization was instrumental in lobbying the

74 Ms. Bogorinsky, July 2018; Ms. Daskon, June 2018; Mr. Kalvalairadjan, July 2018; Mr. Kandeepanm July 2018; Mr. Satanarachchi, July 2018; Mr. Kitnasamy, June 2018; Mr. Kuruppu, June 2018; Ms. Pathirage, June 2018; Mr. Ruwan Perrera, June 2018; Mr. Stubbs, June 2018.

For more information on why data should be disaggregated by gender see Dinesha Samararatne, Karen Soldatic, and Binendri Perera, “‘Out of the Shadows’: War-Affected Women with Disabilities in Sri Lanka: Final Report” prepared for the *Law & Society Trust*, (Sri Lanka, 2018), 1.

75 Mr. Kitnasamy, June 2018; Mr. Subramaniam, June 2018; Ms. Suhashini, June 2018; Mr. Wasantha De Silva, June 2018.

Please note that Mr. Kitnasamy’s project was a cerebral palsy registry and therefore disability specific, Mr. Subramaniam’s organization collects regional data in the North.

76 Ms. Daskon, June 2018. Ms. Daskon specifically mentioned that IFES hopes to share this data island-wide.

government to ratify the Convention in 2016. However, the DOJF is not without its limitations. For instance, the DOJF stated that they have representatives that span the country and that they provide interpreters at their meetings to account for language barriers and for those who are hearing impaired.⁷⁷ While participants from Sinhala-speaking majority regions often bolstered these claims, participants from other regions expressed that their DPOs experienced a language barrier as Tamil speakers.⁷⁸ Other participants remarked that DPOs do not see any advantage in joining DOJF, although some argued that this is because DPOs altogether lack the capacity to lobby in terms of rights-awareness.⁷⁹ Some participants expressed that organizations like the DOJF are politicized and would not give their issues sufficient weight.⁸⁰ From these experiences one concludes that it is at times more advantageous for organizations to operate as solitary actors, either by lobbying the government independently or by finding external sources to support their initiatives.

1.c Formal Actor Interests – The Human Rights Commission

Similar barriers to implementation are at play regarding the Human Rights Commission's sub-committee on disability. The Human Rights Commission⁸¹ is a permanent national institution that aims to protect and promote human rights and is vested with investigative and advisory powers. The Commission may investigate into allegations of infringement or imminent infringement of human rights either

⁷⁷ Mr. Kuruppu, June 2018.

⁷⁸ Mr. Kandeepan, July 2018.

⁷⁹ Confidential.

⁸⁰ Confidential.

⁸¹ Henceforth the Commission.

independently, by reference from a group acting on behalf of an aggrieved party, or directly on behalf of an aggrieved party. In this way, it is a powerful democratic institution that can be used to protect vulnerable persons. The Commission's sub-committee on disability is composed of seven members including an attorney, a consultant, a representative from the Employers' Federation of Ceylon, the President of ORHAN (the Northern consortium for disability), a representative from CAMID (an Eastern umbrella organisation for disability), a representative from the DOJF, and a representative from MARDAP (the Mannar Association for Rehabilitation of Differently Aabled People). K. Kapilan Kalvalairadjan, the secretary of the sub-committee explained that its members were selected due to their geographic location, representation among a vast array of disabilities, and due to their expertise in the field of disability rights.⁸² When asked if the sub-committee allowed non-members to sit in, the secretary answered that they are not, but that they could voice their comments and concerns through a seated member.⁸³ Because the sub-committee's minutes are not public, I asked how DPOs are meant to know sufficiently about the sub-committee's projects to comment on them. The secretary answered that the sub-committee is limited in capacity and therefore must prioritise its projects.⁸⁴ At the time of writing, their focus was on proposing amendments to the draft bill.⁸⁵ I was met with the same response when I asked why the sub-committee wasn't exercising the Human Rights Commission's

⁸² Mr. Kalvalairadjan, July 2018.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

investigatory capacities to process complaints on behalf of persons with disabilities and their organizations. The secretary also noted that consultations among a variety (about 50) of DPOs and NGOs had already taken place.⁸⁶

One of the biggest issues expressed by participants regarding the sub-committee was its exclusivity. Some of the participants with whom I spoke asserted that the Human Rights Commission did not take up disability under its mandate. Others knew of the sub-committee, but claimed it is inaccessible – “they appoint their friends” – and not useful for their organizations.⁸⁷ Some participants expressed that they had been invited to a meeting as external organizations but had never received follow up or minutes from that meeting – to them it seemed as if the sub-committee merely waned.⁸⁸ Contrarily, members of the DOJF attested that they could access minutes through the DOJF.⁸⁹ These contrasting experiences points to an asymmetry in access: independent organizations who are not represented on the sub-committee are not aware of its activities. The exclusivity of the sub-committee therefore acts as a barrier to independent oversight regarding potential disability-rights related complaints and to the coordination of a diverse and representative disability rights movement.

The secretary of the sub-committee also raised the issue of a lack of collaboration between organizations. He communicated that organizations hinder oversight and rights protection by not completing audits and sharing their findings with the sub-

⁸⁶ Ibid.

⁸⁷ Confidential.

⁸⁸ Confidential.

⁸⁹ Mr. Satanarachchi., July 2018.

committee.⁹⁰ Were they to do so with their regional human rights commission, as CAMID from Batticaloa did, the commission would be able to advocate on their behalf.⁹¹ As the experiences shared above do show a lack of collaboration among organizations, it is reasonable to assume that issues regarding the sub-committee's disability projects are not one-sided. However, the secretary's answer here seems somewhat flawed: how are people meant to know that they should be conducting these audits and sharing them with the commission when it is unclear that the commission deals with disability and when the sub-committee for disability conducts its activities behind closed doors? Moreover, there seems to be a discrepancy in the disability-related activities undertaken by the regional branches of the Human Rights Commission. One participant noted that she had engaged in activities organized by the sub-committee in Kandy, but that the committee did not conduct disability-rights related affairs to her knowledge.

2. Informal Actor Interests – Disability Rights Organizations

Services that provide for disability rights are informally captured by the projects of NGOs and grass-roots organizations. Indeed, several participants stressed that their organizations are effectively carrying out the services that should be provided by the government.⁹² Some participants declared that government ministries had asked them to help fund disability rights-related activities.⁹³ One participant did note that the Ministry of Education had been forthright in funding one of their projects.⁹⁴ However,

⁹⁰ Mr. Kalvalairadjan, July 2018.

⁹¹ Ibid.

⁹² Ms. Gunaratne, June 2018; Mr. Stubbs, June 2018; Ms. Ponniah, June 2018.

⁹³ Ms. Ponniah, June 2018.

⁹⁴ Mr. Rukmal, June 2018.

the participant attributed the ministerial interest to the a priori connection that existed between the organisation and the Ministry: a ministry representative had met the participant in an Uber and became interested in the project.⁹⁵ From these observations we may conclude that the lack of state action is sometimes captured by organizations.

However, the type of services provided by such organizations are shaped by the interests of those organizations and by their funding schemes. Mr. Kalvalairadjan stressed that these projects are meant to satisfy a specific institution.⁹⁶ For example, The International Foundation for Electoral Systems (IFES) has facilitated the establishment of a technical advisory group providing technical advice to the Election Commission of Sri Lanka in a pilot project in Kothmale, Killinochchi and Kataragama where Grama Niladharis will collect data on accessibility requirements at polling station.⁹⁷ However, this is a very niche project focusing specifically on voters – people over the age of 18 – whose disability requires accessibility at polling stations.

Another example of the way in which actor interests shape service provision is demonstrated by how these organizations change their services when their funding is reduced. Some participants stressed that persons with disabilities in Sri Lanka were adversely affected by a reduction in NGO funding when Sri Lanka became a middle-income country.⁹⁸ For example, Mr. Kandeepan from CAMID explained that Handicap International (now Humanity and Inclusion) handed over rehabilitation projects to

⁹⁵ Ibid.

⁹⁶ Mr. Kalvalairadjan, July 2018.

⁹⁷ Ms. Daskon said that the electoral commission hopes to share the data with other stakeholders and launch island-wide once it has been analysed.

⁹⁸ Mr. Kandeepan, July 2018; Mr. Kitnasamy, June 2018.

hospitals in Batticaloa and Trincomalee when their funding was restricted. Kandeepan asserted that these small centres struggled to repair prosthesis limbs, and especially struggled to provide prosthesis when a fresh amputation occurred (it could take up to six months).⁹⁹ Ms. Bogorinsky from Humanity and Inclusion confirmed that donors withdrew funding for projects in Sri Lanka when the country was declared a middle-income country.¹⁰⁰ She explained that from the donor's perspective it is reasonable to consider reallocating funding when a government is considered capable of providing its own services.¹⁰¹ Yet, as communicated by participants above, the reality in Sri Lanka is that the government is not allocating these services. Additionally, Lasanthi Daskon from IFES remarked that many donors forget to take into consideration additional costs incurred by accessibility requirements when providing funding for projects that are not disability-specific.¹⁰² The burden to do so therefore falls on the shoulder of individual organizations who will provide services that match their interests.

Capacity

The response to many of the issues noted above is that these are not problems of interest, but ones of capacity. Betts and Orchard employ Vandever and Dabelko's theory of compliance to demonstrate how capacity can constrain norms during the process of implementation. They argue that implementation can be constrained by issues such as economic strength and human resources.¹⁰³ Indeed, funding and human

⁹⁹ Mr. Kandeepan, July 2018.

¹⁰⁰ Ms. Bogorinsky, July 2018.

¹⁰¹ Ibid.

¹⁰² Ms. Daskon, June 2018.

¹⁰³ Betts and Orchard, "The Normative Institutionalization-Implementation Gap," 17.

resources were underscored by participants as issues in both formal and informal processes of implementation.

1. Formal Mechanisms of Implementation – Government Ministries and Institutions

In terms of formal implementation, both Ms. Gunaratne from the Employers' Federation of Ceylon and the Mr. Kalvalairadjan, the secretary of the sub-committee on disability, stated that government institutions lack budgetary allocations for disability facilities.¹⁰⁴ However, the lack of budgetary line-items does not tell us whether ministries are capable of affording these funds. Article 2 of the convention defines “reasonable accommodation” as:

“[the] means 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.”¹⁰⁵

As a middle-income country that theoretically understands the importance of an intra-ministerial approach to disability rights,¹⁰⁶ one would suspect that at least some budgetary allocation could be made among relevant ministries.

Capacity can also mean the capacity to allow for proper implementation: the capacity to coordinate among ministries, to coordinate among organizations, and to

¹⁰⁴ Mr. Kalvalairadjan, July 2018.

¹⁰⁵ Convention,” article 2, 4.

¹⁰⁶ “National Action Plan for Disability,” 32.

fight corruption.¹⁰⁷ Accordingly, the answer to why there is a lack of coordination among ministries regarding the CRPD's implementation might come back to capacity, whether due to financial constraints or issues related to the lack of human resources. Ensuring that each ministry has specific budgetary line-items for disability-rights funding and requiring accessible audits could be a solution to some of these issues. For one, it would associate a monetary obligation to disability rights within each ministry. Moreover, it might allow for transparency as to how that funding is being spent.

The secretary for the Human Rights Commission's sub-committee on disability also spoke about capacity: he stressed that the sub-committee only has the resources to focus on amending legislation for the time being.¹⁰⁸ Yet the sub-committee could make themselves more inclusive by publishing minutes and making their existence known. While the sub-committee might not have the express mandate to monitor or implement the CRPD, for instance by publicising their existence and their projects, they can better enable these processes. For example, being more accessible will allow more individuals and organizations to seek out the sub-committee. This might also benefit the sub-committee as more organizations from diverse backgrounds might be willing to conduct audits and share information as per the desires of the secretary mentioned above. Furthermore, increased transparency might foster collaboration among disability rights organizations, or at least allow them to be on the same page regarding the sub-committee's ongoing works. Since the Human Rights Commission has an interest in human rights, it would follow that the institution's sub-committee on disability should

¹⁰⁷ Betts and Orchard, "The Normative Institutionalization-Implementation Gap," 17.

¹⁰⁸ Mr. Kalvalairadjan, July 2018.

have an implicit aim of ensuring the proper implementation and monitoring of the CRPD, if not an explicit mandate to do so.

2. Informal Mechanisms of Implementation – Disability Rights Organizations and Donors

Disability rights organizations also expressed issues related to capacity, as detailed above. Participants agreed that the disability sector suffers from a lack of funding. Mr. Stubbs attested that his organization “begs and borrows” to stay afloat.¹⁰⁹ Mr. Nanayakkara spoke of AIDSL’s small membership fee and underscored that their work would not be possible without donor support.¹¹⁰ However, coordination was also noted as a significant problem. Better coordination between organizations would provide a cost-efficient way of strengthening the disability rights movement by eliminating costs associated with the duplication of projects and resources. Avoiding the duplication of projects is an advantageous means of maximizing the disability rights movement’s already scarce resources. Indeed, Ms. Daskon from IFES underscored that the success of their work is largely due to a strong collaboration between diverse disability stakeholders.¹¹¹ Doing so necessitates that the most powerful disability-rights organizations cater at least partially to the needs of smaller organizations, for example, by assuring translation services. Additionally, meetings could be made more accessible with cost-efficient technology such as skype so that member-organizations would not have to travel to Colombo.

¹⁰⁹ Mr. Stubbs, June 2018.

¹¹⁰ Mr. Nanayakkara, June 2018.

¹¹¹ Ms Daskon, June 2018.

This is not to say that all disability-related organizations need to coalesce. This paper recognizes the value in smaller, independent organizations that cater to specific community concerns. It is understood that working together necessarily involves compromise, which can adversely affect community-based needs that are overlooked by bigger organizations. Rather, the idea is that better coordination is possible and can foster better political incentive. Where compromise is disadvantageous, organizations can foster implementation indirectly by sharing data, best practices, and lessons learned. While larger organizations tend to do this already, they should ensure that the information is widespread.¹¹² This might enable organizations to use their available funds more efficiently. Additionally, disability organizations may be able to capture extra funding through projects that are not specific to disability. Ms. Bogorinsky remarked that DPOs were unwilling to participate in Humanity and Inclusion's reconciliation projects because they did not believe these were relevant to disability.¹¹³ Yet, this may provide DPOs with additional resources. Alternatively, if organizations like Humanity and Inclusion want to include more DPOs in their work they should assess why DPOs do not wish to participate in such projects and reform the projects to make them more profitable for DPOs.

When it comes to donor support, Ms. Daskon noted that many donors forget to take additional disability-related costs into consideration.¹¹⁴ Donors could facilitate implementation by including disability-specific accommodations in their budgets. Mr.

¹¹² For example, ORHAN and My Right have published strategic plans online.

¹¹³ Ms. Bogorinsky, July 2018.

¹¹⁴ Ms. Daskon, June 2018.

Stubbs added that government corruption would be partially curtailed if donors, and especially INGOs, directly funded domestic disability-related organizations.¹¹⁵

3. Commentary

It is unclear to what degree material impediments to implementation are due to actor interests versus issues of capacity. Regardless, if the government is unwilling to follow through with implementation, the burden to apply political pressure for implementation and provide disability-related services in the interim falls on organizations. It is therefore imperative that organizations coordinate and collaborate to a degree and that democratic institutions like the disability sub-committee make themselves accessible.

¹¹⁵ Mr. Stubbs, June 2018.

Ch. 4 - Ideational Barriers to Implementation

Cultural context

Betts and Orchard's institutionalization-implementation gap recognizes that norms can come to mean thoroughly different things when applied domestically due to the pre-existing cultural and historical context of the state party.¹¹⁶ In terms of cultural barriers to implementation, participants remarked that Sri Lanka lacks a culture of rights, or more specifically that disability is understood as an issue inherently linked to charity. Other cultural impediments include social stigma, stereotyping, and disparate treatment of different disabilities. Awareness was the most common solution proposed.

1. A Culture of Rights

The broader issue of lacking a culture of rights comes from the idea that disability rights are not “mainstream human rights.”¹¹⁷ Several participants commented that Sri Lanka is unable to process disability rights until it has accepted and facilitated mainstream human rights, which they argued it has yet to do.¹¹⁸ “Mainstream human rights” might include those guaranteed by earlier conventions because they've been around longer. An example could be the civil and political rights enshrined in the International Convention on Civil and Political Rights (ICCPR), which Sri Lanka ratified in 1980. Conversely, international disability law has only recently gained traction: the Convention entered into force in the UN in 2008 and was ratified by Sri Lanka in

¹¹⁶ Betts and Orchard, “The Normative Institutionalization-Implementation Gap,” 14.

¹¹⁷ Ms. Daskon, June 2018; Mr. Rukmal, June 2018; Mr. Wasantha De Silva, June 2018.

¹¹⁸ Mr. Kalvalairadjan, July 2018; Ms. Ponniah, June 2018.

2016.¹¹⁹ The idea that the rights included in the CRPD are not “mainstream human rights” also touches on academic commentary which asserts that the CRPD is a accumulation of pre-existing rights applied to a specific group (persons with disabilities).¹²⁰ If the former pre-existing rights cannot yet be guaranteed by the State party to the CRPD, it logically follows that neither can the rights in the CRPD. Additionally, separating disability rights from mainstream human rights might also stress a reality that there exists a hierarchy of rights contingent on priority. One participant asked how the country could deal with disability when it has yet to properly acknowledge enforced disappearances, which is seen as a more pressing issue.¹²¹ The idea that there’s a hierarchy of needs when it comes to rights assessment was particularly evident in the context of war-affected regions in the North and the East. I was told that in some families, a family member has a disability, a male relative is missing, and the family might also be internally displaced.¹²² In this context, the disability is the last priority among the individual’s concerns. If we are to assume that disability rights advancement in Sri Lanka necessitates political pressure in the form of a mobilized disability grass-roots movement, it is unsurprising that this political pressure is lacking in a context where persons with disabilities have prioritized other issues.

2. Disability and Charity

¹¹⁹ Previously the UN had non-compulsory policies such as the "Standard Rules on the Equalisation of Opportunities for Persons with Disabilities" adopted in 1993.

¹²⁰ Harnacke, “Disability and Capability,” 775. Frédéric Mégret, “The Disabilities Convention: Human Rights of Persons with Disabilities or Disability Rights,” *Human Rights Quarterly* 30, no 2 (2008): 515.

¹²¹ Mr. Kalvalairadjan, July 2018.

¹²² Mr. Subramaniam, June 2018.

Participants also underscored that many people understand accommodation for disability as an issue related to charity and not as a rights issues.¹²³ In contrast, the CRPD is founded on recognizing persons with disabilities as rights bearers and stresses their inherent dignity. Participants elaborated that this understanding has its roots in the concept of karma.¹²⁴ They explained that karma suggests that persons with disabilities did something to deserve their disability in a past life, and consequently their disability and the struggles that accompany it act as a repayment for past debts.¹²⁵ This debt-based understanding of disability invalidates the necessity of affirmative action in the form of a Convention like the CRPD. Dr. Mendis explained that people also believe that giving charity to persons with disabilities will act as positive reinforcement to their own Karma.¹²⁶ Dr. Mendis pointed out that this self-interested approach to aiding persons with disabilities disturbs the CRPD's focus on treating them with dignity.¹²⁷

Cultural understandings of disability rooted in karma are not unique to non-disabled persons and can be held by persons with disabilities themselves. Ms. Gunaratne attested that persons with disabilities often take on this mindset of a charity-based approach.¹²⁸ Mr. Kandeepan from CAMID added that doing so is sometimes a conscious choice made by the person with a disability because it is opportunity

¹²³ Ms. Bogorinsky, July 2018; Mr. Satanarachchi July 2018; Mr. Kandeepan, July 2018; Dr. Mendis, June 2018; Ms. Pathirage, June 2018; Mr Rukmal, June 2018; Ms. Shariff, July 2018; Mr. Wasantha De Silva, June 2018.

¹²⁴ Dr. Mendis, June 2018; Mr. Rukmal, June 2018; Mr. Stubbs, June 2018.

¹²⁵ Ibid.

¹²⁶ Dr. Mendis, June 2018.

¹²⁷ Ibid.

¹²⁸ Ms. Gunaratne, June 2018.

maximising.¹²⁹ To explain this phenomenon, Mr. Kandeepan gave the example of a man he knew who used a tricycle as a mobility assistive device. The man's tricycle broke down and Mr. Kandeepan suggested he take it to the repair shop. Mr. Kandeepan did not see the man for several months, and one day he found the man begging at a bus stop. The man explained to Mr. Kandeepan that he made a better living begging with a disability. From these testimonies, we see that when accommodations for disability are not effectively mainstreamed, persons with disabilities will turn to alternatives that better their predicament. In the case of Sri Lanka, this sometimes means resorting to charity, which is emphasized by the cultural context. Doing so can reinforce the notion that charity and disability are intertwined, thereby further inhibiting the implementation of a rights-based model for disability accommodation.

3. Stigma

Cultural barriers are also present in terms of stigma. Participants expressed that it is common for parents to hide their children with disabilities by confining them to the house.¹³⁰ At times, this practice is meant to protect the family at large from social stigma. For example, participants explained that having a person with a disability in one's family could adversely affect other family members' marriage eligibility. At other times, persons with disabilities are house-ridden in the guise of their own protection. Participants also asserted that persons with disabilities are frequently the object of harassment, abuse, and exploitation.¹³¹ The fear of such harm acts as a disincentive to

¹²⁹ Mr. Kandeepan, July 2018.

¹³⁰ Mr. Kandeepan, July 3 2018; Mr. Nanayakkara, June 2018; Ms. Pathirage, June 2018.

¹³¹ Ms. Gunaratne, June 2018; Mr. Nanayakkara, June 2018; Ms. Shariff, July 2018.

taking public transit, attending school, and working outside of the home. These limitations can both affect persons with disabilities and constrain the family members who feel the need to accompany them in the public realm.

4. Stereotyping

Cultural barriers are also manifested in capacity-related stereotypes. For instance, participants from organizations that tackle employment for persons with disabilities expressed that there's an assumption that they are only fit for blue-collar jobs.¹³² Puvaneswary Ponniah, the manager of gender equality and social inclusion for the World University Service Canada (WUSC) added that employers sometimes hold disability-related stereotypes, such as the idea that people with a hearing impairment are only capable of working in the handicraft industry.¹³³ In terms of education, participants expressed contrasting viewpoints, especially on the topic of integrated classrooms: some said that the capabilities of persons with disabilities are overestimated while others said that they are underestimated. For example, participants who spoke of intellectual disability explained that persons with disabilities are often put in mainstream classes where they cannot keep up.¹³⁴ In this light, while reasonable accommodation with the aim of "mainstreaming" every person with a disability might sound nice, it is worth considering whether that unilateral aim is in the best interest of every person with a disability. Especially in the case of persons with more severe intellectual disabilities, the lack of differential treatment might adversely affect persons

¹³² Ms. Gunaratne, June 2018; Mr. Rukmal, June 2018.

¹³³ Ms. Ponniah, June 2018.

¹³⁴ Mr. Nanayakkara, June 2018; Ms. Ponniah, June 2018.

with disabilities who need a system adapted to their capabilities. Conversely, participants who primarily face issues related to culture and accessibility when it comes to education emphasized a greater need for education.¹³⁵ In this context, participants pointed to a misconception about the intellect of persons who are mobility impaired, visually impaired, and speech impaired specifically. In such cases, the installation of ramps, accessible washrooms, and accessible examinations are just a few examples of how access to education for these persons with disabilities could be better enabled. The issues discussed here reveal two main findings regarding cultural barriers to implementation: that stereotypes about persons with disabilities act as a limitation and that there is an insufficient understanding of the different capacities and accommodations required by persons with different disabilities. Disability is not a homogenous category, but manifests itself in many forms. This is acknowledged by the CRPD in article 1, which emphasizes that disability can be physical, sensory, intellectual, or a result of impediments to accessibility.¹³⁶ From the experiences conveyed by participants it seems that a cultural understanding of disability that reduces all persons with disabilities to a single category is therefore inept at dealing with the varying issues that they face.

5. Disparate Treatment of Different Disabilities

Another cultural barrier was expressed in the idea that there exists a hierarchy of disabilities. For example, participants mentioned that people who are hearing impaired

¹³⁵ Ms. Gunaratne, June 2015; Mr. Satanarachchi, July 2018; Mr. Kitnasamy, June 2018;

¹³⁶ “Convention,” article 1, 4.

and people with intellectual disabilities face increased barriers in Sri Lanka.¹³⁷ Asanga Ruwan Perera, the country coordinator for MyRight explained that those who are hearing impaired are disadvantaged by the lack of sign language interpreters.¹³⁸ Furthermore, he noted that they often learn a version of sign language particular to their area, which impedes their communication when interpreters are available.¹³⁹ Mr. Ruwan Perera also commented that in his experience, children who are hearing impaired are often the ones to teach their teachers sign language.¹⁴⁰ The lack of teachers qualified in sign language acts as a barrier to the intellectual development of the child with a hearing impairment. Specifically, impediments to communication and intellectual development adversely affect informal mechanisms of implementation in that these persons with disabilities face increased barriers to advocating for their rights, which is instrumental to realizing disability rights in a context where a government might lack the political will necessary for implementation.

Kasunjith Satanarachchi of the Parents Teachers Organization of the Intellectually Disabled in Sri Lanka remarked that people with intellectual disabilities are seen as the most severely disabled and therefore they tend to be drawn towards exclusion rather than inclusion societally.¹⁴¹ One example is the Ministry of Social Empowerment's

¹³⁷ Ms Daskon, June 2018; Mr. Satanarachchi, July 2018; Ms. Ponniah, June 2018; Ms. Pathirage, June 2018; Mr. Rukmal, June 2018; Mr. Ruwan Perera, June 2018.

¹³⁸ Mr. Ruwan Perera, June 2018.

¹³⁹ Ibid.

¹⁴⁰ Mr. Ruwan Perera, June 2018.

¹⁴¹ Mr. Satanarachchi, July 2018.

description of the Victoria Home: “where severely disabled incurables are detained.”¹⁴² Ms. Shariff affirmed that these residences are underfunded and often lack necessities like food.¹⁴³ She said that there is no place for these people in Sri Lanka coordinated by the government. As such, the rights of these people depend on their families, both in terms of their family’s acceptance and their family’s ability to advocate on their behalf. In some cases, parents’ associations are successful. For instance, MENCAFEP requires parents to be actively involved in the organization. Mr. Stubbs says this requirement has fostered a better understanding of disability among parents and has led to better rights advocacy.¹⁴⁴ Yet Mr. Nanayakkara posited that parents’ associations are a weaker medium for rights advocacy because they tend to be composed of people, and predominantly women, who are less educated and lack resources in terms of time and money.¹⁴⁵ Regardless, the necessity of relying on another person for a political voice adds an additional barrier to rights realization for persons with intellectual disabilities.

6. Solutions

Awareness raising was often highlighted as a solution to these cultural issues, although its capacity to produce results was questioned by some. Most participants asserted that meaningful implementation needs to be representative and requires that persons with disabilities know their rights so that they may be reclaimed. Awareness was also flagged as important among able-bodied persons to foster better acceptance of

¹⁴² “Services for Persons with Disabilities,” http://www.socialemwelfare.gov.lk/web/index.php?option=com_content&view=article&id=30&Itemid=151&lang=en#provision-of-assistance-for-victoria-home.

¹⁴³ Ms. Shariff, July 2018.

¹⁴⁴ Mr. Stubbs, June 2018.

¹⁴⁵ Mr. Nanayakkara, June 2018.

persons with disabilities and broader promotion of disability rights. The importance of awareness raising is recognized by the NAPD 1.1c, which provides for knowledge enhancement projects among the general public.¹⁴⁶ However, participants underscored the point that this policy has not been implemented.

Most participants attested that persons with disabilities do not know their rights. Ms. Shariff asserted that outside of Colombo, and in Kandy specifically, very few people know what the CRPD is.¹⁴⁷ The consequence is that they do not know that there is a standard against which the government should be held accountable regarding disability rights. Accordingly, most participants stressed the need to focus on capacity building and awareness raising targeted towards both persons with disabilities and non-disabled persons.

According to participants, awareness raising faces its own challenges including a lack of interest in disability rights and the deep-rootedness of cultural understandings of disability. It's not that the organizations neglect awareness campaigns, rather the campaigns are not picked up by the public. For example, Ms. Pathirage said that the DOJF has contacted the media and sent newsletters to public libraries and universities free of charge to little effect.¹⁴⁸ She also mentioned that newsletters are sent to each divisional secretariat office.¹⁴⁹ Mr Ruwan Perera and Prasanna Kuruppu, the technical advisor for the DOJF, specifically underscored the lack of youth participation, which Mr.

¹⁴⁶ "Sri Lanka: National Action Plan for Disability," 1.

¹⁴⁷ Ms. Shariff, July 2018.

¹⁴⁸ Ms. Pathirage, June 2018.

¹⁴⁹ Ibid.

Nanayakkara emphasized is necessary.¹⁵⁰ Yet, the idea that youth are not interested in disability rights may be due in part to the lack of coordination between organizations mentioned earlier. Many organizations do work with youth. Within the DOJF, the Parents Teachers Organization of the Intellectually Disabled in Sri Lanka has a youth programme. External to the DOJF, Mr. Rukmal's organization Enable Lanka recruits non-disabled persons as well as persons with disabilities and is described as a youth organization. In fact, Mr. Rukmal expressed that the NCPD does not seem to be happy about their contribution for the progress of inclusion, and suggested that there is pushback against youth organisations.¹⁵¹

Regarding more culturally engrained concepts like karma, Mr. Stubbs from MENCAFEP shared that in their experience the concepts are too deeply rooted to overcome.¹⁵² Instead, they ask parents to meet them half way by participating in activities. Mr. Stubbs expressed that parents see a positive change in the life of their child and this motivates changes in their understanding of disability.¹⁵³

Solutions include awareness raising among the general public, capacity building among DPOs. It was also suggested that an increase in collaboration among disability rights organizations would accord a voice to different actors beyond the typical ones voiced in Colombo. This is desirable because a one-size-fits-all approach to disability does not adequately address issues across the country, and an increase in diversity of

¹⁵⁰ Mr. Kuruppu, June 2018; Mr. Nanayakkara, June 2018; Mr. Ruwan Perera, June 2018.

¹⁵¹ Mr. Rukmal, June 2018.

¹⁵² Mr. Stubbs, June 2018.

¹⁵³ Ibid.

voices will allow for more precise and therefore more suitable solutions. Storytelling is an essential part of activism and creating change; efforts on behalf of the government and organizations should therefore give persons with disabilities a platform to share their individual stories. The improvement of accessibility services and the use of technology would further strengthen the movement by providing an initial solution to issues of transportation, funding, or access to spaces in which persons with disabilities can articulate a politicized voice.

Legal system

Betts and Orchard's theory acknowledges that the domestic legal system can transmute the way international norms take effect.¹⁵⁴ Quoting Simmons, they argue that national legal frameworks are the most significant independent variable explaining differences in the implementation of human rights norms across states.¹⁵⁵ Many participants underscored the importance of strong disability legislation where the current legal routes are outdated and ineffective. To support this point, the following offers a brief survey of disability legislation and jurisprudence in Sri Lanka with commentary by participants. Finally, some commentary on the CRPD itself is offered.

1. The Domestic Legal System

The Sri Lankan Constitution does not mention the rights of persons with disabilities explicitly but rather tangentially. Disability is only mentioned in article 12(4). Article 12 guarantees that "all persons are equal before the law and entitled to

¹⁵⁴Betts and Orchard, "The Normative Institutionalization-Implementation Gap," 16.

¹⁵⁵ Ibid.

equal protection under the law”¹⁵⁶ and the fourth clause states: “nothing in this Article shall prevent special provision being made by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.”¹⁵⁷ As such, the Constitution allows for affirmative action on behalf of persons with disabilities but does not make any explicit guarantee of their rights.

The cornerstone of disability legislation in Sri Lanka is the *Act for the Protection of the Rights of Persons with Disabilities*, No.28 of 1996. The Act asserts protection for persons with disabilities against discrimination relating to employment, education, and access to man-made environments, making it limited in scope. Furthermore, the Act does not reflect the rights-based approach foundational to the CRPD.¹⁵⁸ It is accordingly outdated in the current context. A Disability Rights Bill drafted in 2006 was meant to update the 1996 Act, although it was never realized.

In some cases, there is legislation that provides for affirmative action and accommodation regarding disability. As noted by ORHAN in their strategic plan 2017-2021, in several cases new approaches to legislative accommodation represent progress for the disability rights movement.¹⁵⁹ Yet, participants remarked that disability legislation and regulations often remain inaccessible and theoretical. For instance,

¹⁵⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka, chapter two, article 12, clause 1.

¹⁵⁷ Ibid., clause 4.

¹⁵⁸ For example, in s.37 it defines disability in terms of dependency.

¹⁵⁹ Orhan’s strategic report commended some markers of progress: it noted that the existence of 3% quota for persons with disabilities (PWDs_ in government and legal acceptance of sign language provide more opportunities for persons with disabilities.

There are also various schemes and regulations regarding pensions, insurance and compensation if people acquire disability in certain circumstances, including the Social Security Board (Amendment) Act, the Wages Board Ordinance, Ranaviru Seva Act and the Workman’s Compensation Act.

circular no.27/88 provides that 3% of public service and public corporation vacancies should be filled by persons with disabilities who possess the requisite qualifications and whose disability is not a hindrance to the performance of such duties.¹⁶⁰ Participants who work directly in the field of employment on behalf of the Employers' Federation of Ceylon and WUSC expressed that this circular is not applied.¹⁶¹ Ms. Gunaratne and Ms. Pathirage offered explanations such as a lack of accommodation undertaken by employers, a low level of education among PWDs, and a lack of will on the part of the government.¹⁶²

Similarly, persons with disabilities are accorded accommodation to exercise their franchise through the *Elections (Special Provisions) Act*, no.28 of 2011.¹⁶³ However, they are required to obtain a medical certification attesting to their disability. Ms. Daskon from IFES pointed out that this acts as an impediment to those who do not have the time or money to collect the certification.¹⁶⁴ It is also worth noting that the lack of adapted public transportation further complicates this requirement by making certification less accessible. The legislation allows for an accompanying person to vote on behalf of a person who has a visual impairment. Yet, this provision effectively destroys the secrecy of one's franchise.

¹⁶⁰ Public Administration Circular No. 27/88 dated August 1988 cited in Padmani Mendis, "Training and Employment of People with Disabilities: Sri Lanka 2003" *International Labour Organisation* (2004): 18.

¹⁶¹ Ms. Gunaratne, June 2018; Ms. Ponniah, June 2018.

¹⁶² Ms. Gunaratne, June 2018; Ms. Pathirage, June 2018.

¹⁶³ Elections (Special Provisions) Act, No. 28 of 2011.

¹⁶⁴ Ms. Daskon, June 2018.

Accessibility was also flagged as issues that impede education, employment, transportation, and every day activities generally.¹⁶⁵ In terms of mobility and access to public buildings, the leading (and only) Supreme Court Case on disability, *Dr. Ajith Perera v AG*, held that “No person should be discriminated against on grounds of disability and their mobility restricted in a manner which precludes or impedes them from enjoying equally their inherent right to access safety and accommodation in day-to-day life at man-made public buildings public places and facilities.”¹⁶⁶ In practice, participants asserted that public buildings remain inaccessible, including important formal and informal democratic institutions like government buildings, courthouses, and media outlets. While the *Perera* case provides a framework upon which future cases may be made, the fact remains that the court system is itself largely financially (not to mention physically) inaccessible for persons with disabilities.¹⁶⁷ The fact that the jurisprudence regarding disability law amounts to one case is symbolic of how inaccessible legal protections are for persons with disabilities in Sri Lanka.

The most recent draft legislation is the *Protection of the Rights of Persons with Disabilities Bill 2017*. Participants brought up concerns both regarding the process by which the bill was formed and regarding its contents. For one, participants noted that draft legislation is often elusively kept behind closed doors. This makes advocacy difficult as participants remarked that they seldom know whether the material in circulation is up to date and they must constantly follow-up with the government. In

¹⁶⁵ Ms. Daskon, June 2018; Ms. Gunaratne, June 2018; Mr. Kalvalairadjan, July 2018; Mr. Kandeepan, July 2018; Mr. Kitnasamy, June 2018; Mr. Nanayakkara, June 2018; Ms. Pathirage, June 2018; Mr. Rukmal, June 2018; Ms. Shariff, July 2018.

¹⁶⁶ *Dr. Ajith Perera v AG*, S.C.F.R. No.221/2009.

¹⁶⁷ Ms. Daskon, June 2018; Mr. Kitnasamy, June 2018; Ms. Shariff, July 2018.

fact, the Bill was only released following a successful Right to Information request made on behalf of Mario Gomez from ICES.¹⁶⁸ Additionally, the draft legislation continues to centre power around the Ministry of Social Empowerment. The Bill was drafted by this Ministry, it gives the Minister the power to make regulations¹⁶⁹ and to appoint members of the disability secretariat.¹⁷⁰ As noted above, participants expressed that this Ministry was an unsuitable government institution around which to centre implementation by questioning its ability to effectively coordinate among ministries, its resources, and because it links disability to welfare rather than inherent rights. Furthermore, participants stressed that there should be an independent selection process to ensure transparency and effective implementation. In affording the Ministry of Social empowerment such powers, the draft legislation does not address these concerns.

Additionally, Sri Lanka has yet to ratify the CRPD's Optional Protocol. Through the Optional Protocol, the Committee on the Rights of Persons with Disabilities can investigate and make recommendations regarding violations of the Convention. In omitting to ratify the Optional Protocol, the Sri Lankan government has eschewed an important mechanism of independent oversight. This speaks to larger issues of accountability regarding the CRPD in general and in the case of Sri Lanka in particular. Monitoring is a primary concern for ensuring the application of the CRPD.¹⁷¹ However, the success of independent mechanisms of oversight will depend to a certain degree on

¹⁶⁸ *Dr. Mario Gomez v. Ministry of Social Empowerment, Welfare and Kandyan Heritage*, RTIC Appeal, December 5th, 2017 <http://www.rticommission.lk/web/images/pdf/01032018/Mario-Gomez-v-Ministry-of-Social-Empowerment-01032018.pdf>.

¹⁶⁹ "Protection of the Rights of Persons with Disabilities Bill," (Sri Lanka, 2017), s. 58.

¹⁷⁰ "Disability Bill," part IV.

¹⁷¹ Peter Mittler, "The UN Convention on the Rights of Persons with Disabilities," 79.

the availability of information and data.¹⁷² In a country where data pertaining to disability is anaemic and information regarding proposed disability legislation is scarce, the missing ratification to the Optional Protocol acts as an additional barrier to voicing concerns raised by persons with disabilities, this time on an in the international scale. Conversely, ratifying the Optional Protocol would act as a countermeasure to some of the other barriers to accountability raised above.

As for informal legal implementation, participants stressed that few persons with disabilities are cognisant of their rights.¹⁷³ Legal literacy programmes were therefore recommended along with capacity building programmes designed to better enable advocacy endeavours through organizations. However, the financial and physical inaccessibility of the court system acts as an impediment to these solutions, as mentioned above. Finally, one participant suggested that DPOs stand in the way of implementation by constantly amending the draft legislation, arguing that it would be better to pass the legislation and have something tangible in law. Yet, pointing to the failed 2006 revision of the 1996 Act and the 12 years that have since passed, Ms. Pathirage underscored that Bills must be perfected by amendments prior to enactment because legislation takes so long to pass.¹⁷⁴

Overall, disability law in Sri Lanka remains largely outdated. Where affirmative action is present, participants argued that it is not widely applied and that it is inaccessible. This represents a barrier to formal implementation in that the government

¹⁷² Ibid.

¹⁷³ Manique Gunaratne, June 2018; Ms. Mendis, June 2018; Ms. Pathirage, June 2018.

¹⁷⁴ Ms. Pathirage, June 2018.

has not fulfilled their obligations to legally protect persons with disabilities by adopting appropriate legislation and modifying or abolishing existing legislation where necessary as outlined in Article 4.¹⁷⁵ Informal implementation would be benefitted by legal literacy and capacity building programmes as well as endeavours that facilitate access to justice.

2. The CRPD

It is worth commenting on some of the CRPD's own lacunae that might act as barriers to implementation. The following offers some thoughts on issues relating to the contents of the CRPD and the context in which it is applied.

In terms of content, one might criticise the CRPD for being too vague and too all-encompassing. As has been demonstrated earlier in this paper, the ambiguous language of the CRPD becomes problematic when it allows states too much leeway, thereby alleviating some of the pressure on the state to follow through with implementation. One example includes the unclear language around mechanisms of oversight, which is meant to be formed "in accordance with [the state party's] system of organization."¹⁷⁶ However, one might advance the argument that international norms require a certain amount of ambiguity for them to be applicable across a wide array of domestic contexts. Ratifying the Optional Protocol might offer a solution to the specific problem addressed above, as it allows non-governmental organizations and individuals to raise complaints with the CRPD Committee. Yet states are not obliged to ratify this Protocol, and many have not done so, Sri Lanka included.

¹⁷⁵ "Convention," article 4.

¹⁷⁶ "Convention," article 33, 24.

Others criticize the CRPD for being too all-encompassing. Indeed, the Convention seems to be an aggregation of pre-existing human rights.¹⁷⁷ In this respect, some criticise the CRPD for not advancing new rights specific to persons with disabilities, while others respond that the CRPD affords recognition to a specific group by underscoring the rights of persons with disabilities explicitly.¹⁷⁸ Another issue is the individual implementation of these rights. Mechanisms of implementation aside, the rights included in the CRPD include both negative rights (which involves an omission: not having one of your rights, like freedom of assembly, breeched) and positive rights (which involve an action of giving something extra).¹⁷⁹ This is an important distinction as governments tend to be more amenable to ensuring negative rights, versus providing positive rights.¹⁸⁰ Moreover, the United Nations' *Handbook* on realizing the rights of persons with disabilities itself pushes for the immediate realization of political and civil rights, whereas economic and social rights can be progressively implemented.¹⁸¹ At issue is the fact that the CRPD does not denote which rights are negative rights and which rights are positive rights.¹⁸² This sets unclear obligations that might lead to delays in implementation, either because the state is unsure of how to proceed, or because they are taking advantage of the Convention's inherent ambiguities.

¹⁷⁷ Harnacke, "Disability and Capability," 775; Mégret, "The Disabilities Convention," 514.

¹⁷⁸ Ibid. Harnacke states existing criticism, Mégret responds.

¹⁷⁹ Harnacke, "Disability and Capability," 775.

¹⁸⁰ Ibid.

¹⁸¹ United Nations, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities: Handbook for Parliamentarians on the Convention of the Rights of Persons with Disabilities and Its Optional Protocol* (New York/Geneva: United Nations, 2007): 19-20.

¹⁸² Harnacke, "Disability and Capability," 774.

In terms of context, academic commentators have flagged issues relating to human rights documents like the CRPD, which are largely influenced by discourses in the Global North, and their application to Global South countries.¹⁸³ Among other issues, these criticisms stress the need to recognize that colonial legacies leave lasting impairments (on the country's capacities and on its citizens), and that in evaluating the application of human rights in these countries we must recognize issues of limited human and financial resources.¹⁸⁴ This is not to say the governments in the Global South are in any way alleviated of their obligation to ensure human rights, but rather that these states must be evaluated within their own capacities, and with an understanding of the historical context that has led to those capacities.

¹⁸³ Helen Meekosha and Karen Soldatic, "Human Rights and the Global South: The Case of Disability," *Third World Quarterly* 32, no.8 (2011). Vera Chouinard, "Living on the Global Peripheries of Law: Disability and Human Rights Law in Principle and in Practice in the Global South," *McMaster University School of Geography*, published February 2018.

¹⁸⁴ Meekosha and Soldatic, "Human Rights and the Global South," 1834. Chouinard, "Living on the Global Peripheries of Law," 1.

Ch 5 - Additional Notes and Further Research

Women with Disabilities

It is always important to consider which voices are overlooked within rights movements – doing so affords a more complete understanding of the issues at hand. Participants noted that women with disabilities face increased hardships in society.¹⁸⁵ The notion that women with disabilities represent a marginalized group within a marginalized group is recognized on an international scale by Article 6 of the Convention and domestically through research.¹⁸⁶

At the individual level, participants remarked that women are constrained by societal attitudes including family and security. Some family members prevent women with disabilities from making decisions or participating in DPOs and similar organizations.¹⁸⁷ Ms. Shariff added that having a disability can assign a woman the role of a servant within her family.¹⁸⁸ Ms. Gunaratne remarked that women with disabilities are often prevented from obtaining an education or attending vocational training.¹⁸⁹ For instance, Mr. Ruwan Perera noted that women make up more than 50% of persons with disabilities but are underrepresented among them in universities.¹⁹⁰ These constraints

¹⁸⁵ Ms. Shariff, July 2018; Mr. Stubbs, June 2018.

¹⁸⁶ “The Convention,” article 6.; for more information on women with disabilities in Sri Lanka see Dinesha Samararatne, “‘Out of the Shadows’: War-Affected Women with Disabilities in Sri Lanka: Final Report” and ICES “Sri Lanka Women Living With Disabilities” Report for the Committee on the Elimination of Discrimination against Women, January 2017, <http://ices.lk/wp-content/uploads/2017/05/ICES-Disability-Shadow-Shadow-Report-31-Jan-17-3.pdf> .

¹⁸⁷ Ms. Bogorinsky, July 2018; Ms. Shariff, July 2018.

¹⁸⁸ Ms. Shariff, July 2018.

¹⁸⁹ Ms. Gunaratne, June 2018.

¹⁹⁰ Mr. Ruwan Perera, June 2018.

may in part be due to concerns regarding security: participants explained that women with disability face increased danger when it comes to harassment.¹⁹¹

At the organizational level, participants noted that there is a lack of female representation among DPOs. Ms. Bogorinsky added that Humanity and Inclusion has difficulty finding female participants for their projects, and that DPOs are often dominated by men.¹⁹² In contrast, some participants remarked that women are by far the main participants in parents' associations.¹⁹³ This may be because women are expected to be the primary caregivers for children with disabilities.¹⁹⁴ Mr. Kalvalairadjan explained that this designation is sometimes due to a lack of trust in proper childcare services for children with disabilities.¹⁹⁵ Overall, this designation negatively impacts the family's income and participation in the economy overall by tethering women to their homes.¹⁹⁶

Participants remarked that women with disabilities are under-represented in government. Ms. Pathirage noted that there is no quota for a woman with disabilities on the National Council for Persons with Disabilities and that women with disabilities are not represented within the Ministry of Women and Child Affairs.¹⁹⁷ Ms. Pathirage explained that this Ministry refuses to acknowledge the important experiential value of

¹⁹¹ Ms. Gunaratne, June 2018; Ms. Shariff, July 2018.

¹⁹² Ms. Bogorinsky, July 2018.

¹⁹³ Mr. Nanayakkara, June 2018; Ms. Shariff, July 2018.

¹⁹⁴ Mr. Kalvalairadjan, July 2018; Mr. Nanayakkara, June 2018.

¹⁹⁵ Mr. Kalvalairadjan, July 2018.

¹⁹⁶ Mr. Kalvalairadjan, July 2018.

¹⁹⁷ Ms. Pathirage, June 2018.

including a woman with disabilities among their ranks.¹⁹⁸ Mr. Kuruppu added that this Ministry has excluded disability to the extent that they do not have the capacity to address disability-related issues.¹⁹⁹

These lacunae are important issues. For one, only women with disabilities can speak to the unique barriers that this group faces from an experiential point of view. It is therefore essential that their voices be included in both formal and informal structures that strive to implement disability rights. Moreover, if women are usually the primary caregivers for children with disabilities, their voices should be heard as a source of knowledge on the issues faced by this group in Sri Lanka. Participants remarked that women with disabilities and women who are caregivers to persons with disabilities may be unwilling to participate in the rights movement because they lack the time and/or money to do so or because doing so presents a risk to their security – the effort is not worth it for them. It is therefore not enough to simply instate a quota for representation by women with disabilities and caregivers: affirmative action needs to be instated to overcome barriers that may prevent or act as a disincentive from this group's participation.

While women with disabilities are a specifically marginalized group, much of the research on disability rights in Sri Lanka conducted on behalf of the Law & Society Trust and the International Centre for Ethnic Studies has focused on this topic. Dr. Mendis remarked that women with disabilities have become somewhat of a hot research topic

¹⁹⁸ Ms. Pathirage, June 2018.

¹⁹⁹ Mr. Kuruppu, June 2018.

recently.²⁰⁰ Indeed, participants from WUSC noted that their organization was planning on conducting a study this summer that looked at women with disabilities, focusing on special accommodations and capacity building.²⁰¹ Future researchers would therefore do well to conduct a literature review of disability research in the country and work in collaboration with organizations to determine which area of disability rights needs further contributions.

Conclusion

This report has touched on some of the institutional, material, and ideational barriers to implementing the CRPD in Sri Lanka.

Participants in this research project revealed that institutional barriers include a lack of coordination among ministries, a lack of institutional memory within ministries, and a lack of knowledge about disability rights. They also noted that the Ministry of Social Empowerment is accorded too much power over the implementation of disability rights, which is problematic as disability rights are intersectional in nature and because doing so earmarks disability rights as an issue of welfare. These lacunae relegate disability rights to an institutional structure that is both diffuse and impoverished in resources and political might. Institutional barriers present an initial impediment to implementation because they allow the government to skirt the responsibility of implementing the CRPD. Accordingly, implementation falls to organizations formally through lobbying and informally through service provision.

²⁰⁰ Dr. Mendis, June 2018.

²⁰¹ Ms. Gabrielle Larente, June 2018; Ms. Ponniah, June 2018.

At this stage, actor interests and issues of capacity – material impediments to implementation – create further barriers that complicate the process of domesticating the CRPD. In terms of actor interests, government ministries and institutions like the Human Rights Commission might not have implementation as a primary interest, or as an interest at all. For their part, individual organizations might see it as more advantageous to operate outside of the disability rights movement and act as solitary actors instead. However, the disability rights movement in Sri Lanka already faces increased barriers: institutional procedures for lobbying on behalf of disability rights are made ambiguous by the lack of commitment among ministries to this area generally, or more specifically by the lack of disability focal points; there is no up-to-date data on persons with disabilities; legislation on disability rights is outdated and inaccessible, and the draft legislation is unclear. If the government is unwilling to fix these issues formally to assure implementation, it is necessary that the informal sector of organizations (and donors) collaborate and coordinate at least to a certain degree to ensure informal implementation. Better collaboration can also enable the informal sector to better pressure the government into formally implementing the Convention.

Cultural barriers create additional difficulties, in that people are less aware of disability rights and less likely to fight for them. Participants also noted that in certain cases, it might be more advantageous for a person with a disability to rely on understandings of disability rooted in charity, which stands at odds with the fundamental tenets of the CRPD. In terms of legislation, provisions meant to assure affirmative action regarding disability rights are largely inaccessible in Sri Lanka. The current legislation (1996) is outdated and does not reflect the foundational tenets of the

CRPD. While there is draft legislation in the making, it is elusive, which raises concerns about the efficacy of its contents.

Recommendations

Government

- The creation of an implementation body composed of members of each relevant ministry directly under the office of the President or the Prime Minister and on the recommendation of persons with disabilities and DPOs
- The designation of a focal point in each ministry who is knowledgeable about disability rights, issues, and disability-related programming undertaken by that ministry
- The creation of a monitoring body consisting of persons with disabilities, DPOs, and experts in disability rights and advocacy
- An increase in regional funding of disability-related projects
- Rights literacy projects among the general population and especially for persons with disabilities
- Specific budgetary allocation to allow for transparency
- Oversight on behalf of the focal points from different ministries
- Make existing disability legislation accessible to persons with disabilities
- Make court houses accessible to persons with disabilities
- Amend the 2017 Disability Bill to reflect the propositions of disability organizations, especially by disassociating disability legislation with the Ministry of Social Empowerment
- Ensure that an implementation mechanisms is incorporated into law
- Create legal literacy programs across the country to vernacularize disability rights

Researchers and Disability Related Organizations

- Regional-specific research on disability-rights with a focus on the grass-roots level to uncover best practices and lessons learned as well as issues specific to particular communities
- Capacity building projects for DPOs and rights literacy programmes for persons with disabilities to be disseminated through DPOs
- Collaboration among organizations to avoid duplication of projects through the publication of data, best practices, and lessons learned

- Increased representation and accessibility on behalf of larger organizations
- Rights awareness and capacity building among smaller DPOs
- Increased transparency on behalf of the Human Rights Commission's sub-committee on disability through awareness building and publication of minutes
- As DPOs, participate in activities that intersect with disability where relevant to capture additional resources
- As larger organizations looking for the participation of DPOs, ensure that non-disability specific projects and activities are accessible to PWDs and worth their time
- Create legal literacy programmes across the country to vernacularize disability rights

Donors

- Especially among INGOs and international donors, consider disability-specific accommodations and line items in budgetary expenses for projects that are not disability-specific
- Consider directly funding DPOs

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Appendix A – Participants

Formal meetings were structured by consent forms which set out the aims of the project and the structure of the participant’s involvement. Informal meetings were conducted with independent advocates and researchers to gain an initial sense of disability rights in the Sri Lankan context. Informal meetings were also conducted with participants who did not wish to sign the consent form.

Formal Interviews

Organization	Participant	Position	Date
DOJF	Sugath Wasantha De Silva and Sasanka Mendis	President and Programme Manager	June 21 st , 2018
WUSC	Gabrielle Larente	HR Inclusivity toolkit	June 21 st , 2018
WUSC	Puvaneswary Ponniah	Manager - Gender Equality and Social Inclusion	June 21 st , 2018
Association for Persons with Rheumatic Diseases	Rasanjali Pathirage	President and General Secretary of the DOJF	June 22 nd , 2018
Employers’ Federation of Ceylon	Manique Gunaratne	Specialized training and Disability Resource Centre	June 25 th , 2018
AIDSL (CAMR)	Nihal Nanayakkara And Nandhini Wijayarakami	President and Secretary	June 26 th , 2018
Cerebral Palsy Lanka Foundation	Gopi Kitnasamy	Founder/Chairman	June 26 th , 2018
DOJF	Prasanna Kuruppu	Technical Advisor	June 27 th , 2018
ORHAN/NPCODA	V. Subramaniam	President (of both organizations)	June 28 th , 2018

Human Rights Commission	Kapilan Kalvalairadjan	Education Officer/ Secretary Disability Sub- Committee	July 2 nd , 2018
Parents Teachers Organization of the Intellectually Disabled in Sri Lanka	Kasunjith Satanarachchi		July 3 rd , 2018
CAMID	K. Kandeepan	Programme Director	July 3 rd , 2018
Humanity and Inclusion	Isabel Bogorinsky	Programme Coordinator	July 5 th , 2018
V for Right	Nisha Shariff	President	July 11 th , 2018

Informal Interviews

Lasanthi Daskon	Attorney-at-law, IFES	June 6 th , 2018
Ishan Jalill	National Inclusion Consultant, IFES	June 6 th , 2018
Asanga Ruwan Perera	Country Coordinator, MyRight	June 7 th , 2018
Dr. Padmini Mendis	Disability Rights Activist	June 8 th , 2018
Janitha Rukmal	Co-Founder of Enable Lanka	June 20 th , 2018
MENCAFEP	Chris Stubbs	June 25 th , 2018

Barriers to Implementing the Convention on the Rights of Persons with Disabilities

Adriana Cefis

Disability remains one of the most glaring examples of social inequality in Sri Lanka. Persons living with disabilities have been largely ignored by development policy and practice, by donors, by the media, by the human rights movement, and by women's groups. Statistics on disability are ambiguous: in 2013 the Ministry of Health estimated that 10% of the population was disabled, and in 2011 the World Disability Report, using local data, estimated that 12.9% of the population was disabled. In the North and East of the country, it is estimated that 15% of the population, carry a disability. There is anecdotal evidence to suggest that many of those disabled as a result of the 26-year ethnic war were breadwinners.

Sri Lanka ratified the Convention on the Rights of the Persons with Disabilities (CRPD) in February 2016. The time is now ripe to move policy and practice in Sri Lanka from a charity-centred approach to a rights-based approach. In this paper, Adriana Cefis discusses the barriers to the domestic implementation of the norms contained in the CRPD. For this paper she interviewed several organisations and individuals working on disability rights in Sri Lanka, including men and women living with disabilities. Almost all agreed that Sri Lanka should move policy and practice from a charity-centred approach to a rights-based approach as laid down in the CRPD. In this paper she looks at the barriers to realizing disability rights in Sri Lanka and offers recommendations for policy and practice.

Adriana Cefis worked for the International Centre for Ethnic Studies as a Researcher in 2018. She is currently completing her law degree at McGill University in Montreal, Canada.



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