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

Human Rights Commission of Sri Lanka

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Introduction

1. The Human Rights Commission of Sri Lanka (HRCSL) is an independent Commission established under the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. Members of the Commission were appointed by the President on the recommendation of the Constitutional Council established under the Twenty-First Amendment to the Constitution of Sri Lanka. The HRCSL has a broad mandate to protect and promote human rights including the rights of persons with disabilities. It focuses on rights of persons with disabilities through inquiries and investigations, research and monitoring, education and awareness-raising, and advocacy.

2. The HRCSL notes the Initial Report submitted by Sri Lanka under Article 35 of the Convention on the Rights of Persons with Disabilities (CRPD). The Commission accordingly submits this parallel report to the Committee on the Rights of Persons with Disabilities.

3. This report is primarily based on the information collected by the HRCSL during inquiries and investigations held in response to individual complaints received by the HRCSL, and on its own motion. Relevant information was also gathered through monitoring of homes of persons with disabilities, the Commission's subcommittee on the persons with disabilities, civil society meetings at the regional and national levels, discussions held with the Disability Organisations Joint Front (DOJF) and with government authorities, and reports related to persons with disabilities published by various stakeholders. Additionally, the HRCSL participated in national consultations, discussions and meetings organised by relevant stakeholders, and has incorporated information gathered through such engagements.

General Observations

4. The HRCSL welcomes the fact that the Government of Sri Lanka (GoSL) signed the CRPD on 13 March 2007 and ratified the CRPD on 16 February 2016. It also welcomes the fact that the GoSL submitted the initial report to the Committee on the Rights of Persons with Disabilities.

5. Since 2016, the GoSL has engaged in efforts from time to time to prepare legislation on persons with disabilities to give effect to the CRPD. Such a comprehensive law would presumably replace the existing Protection of Rights of Persons with Disabilities Act (1996).

6. Additionally, the GoSL has sought to implement policies, procedures, regulations, and circulars to protect the rights of persons with disabilities. To this end, it has also formulated a National Action Plan and has allocated financial resources for the social welfare of persons with disabilities via various welfare schemes.

7. Despite delays in the enactment of comprehensive legislation on the rights of persons with disabilities, the Sri Lankan courts have issued landmark decisions that have recognised such rights. For example, the Supreme Court of Sri Lanka has recognised the rights of persons with disabilities in its judgement in *Ajith Perera v. Hon. Daya Gamage and others* (SC FR Application No. 273/2018). In this case, the Court recognised that the petitioner's statutory

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

Equality and Non-Discrimination (Article 5)

8. Article 12(1) and (2) of the Sri Lankan Constitution guarantees to all persons the rights to equality and non-discrimination. Such rights, by necessary implication, extend to persons with disabilities. Furthermore, according to Article 12(4) of the Constitution, the government is permitted to take affirmative action for the benefit and advancement of persons with disabilities.

9. The HRCSL observes that these constitutional provisions need to be strengthened further and accompanied by a more comprehensive legal framework to ensure the rights of persons with disabilities. In 2016, the HRCSL submitted a proposal on constitutional reform to the Prime Minister, Speaker and Public Representations Committee on Constitutional Reform. In its proposal, the HRCSL observed that the constitutional protection of persons with disabilities needs to be further strengthened. For example, the grounds on which a person may not be discriminated against under Article 12(2) of the Constitution ought to explicitly include 'disability'.

10. There are several specific laws enacted by parliament to protect and promote persons with disabilities. These include the Protection of the Rights of Persons with Disabilities Act (1996), the Trust Fund Act for the Rehabilitation of the Visually Handicapped (1992), the Special Education Society Act (1999), and the Rana Viru Seva Authority Act (1999).

11. The HRCSL observes that a more comprehensive law that incorporates the provisions of the CRPD is yet to be enacted.

12. The Ministry of Justice has recently drafted the Protection of the Rights of Persons with Disabilities Bill, which was shared with the HRCSL for its observations and recommendations. The HRCSL sent its observations and recommendations (see annexure 1) in September 2023. The HRCSL urged that, in view of further strengthening the Bill, the Ministry of Justice considers the following general recommendations:

    a. The concept of 'reasonable accommodation' should be more comprehensively integrated into the provisions of the Bill that set out the state's obligations;
    b. The notion that women and children with disabilities face 'multiple' or 'intersectional' discrimination should be comprehensively integrated into the Bill, including a specific commitment that state measures to protect, promote, and fulfil the rights of persons with disabilities would be gender and age sensitive;
    c. A meaningful consultation with the HRCSL should be held to discuss the precise nature and scope of the Commission's role as an independent monitoring mechanism as contemplated by the Bill;

d. The composition, appointment process, and powers of the National Council for Persons with Disabilities should be reviewed to ensure greater independence as well as respect for the fundamental rights of the people enshrined in the Constitution; and
e. The line ministry under which the proposed National Council for Persons with Disabilities functions should be the Ministry of Justice.

13. These observations and recommendations were made public, and further discussions between the Ministry of Justice, the HRCSL, and the Attorney-General's Department were held with respect to the draft Bill. At these discussions, the HRCSL emphasised the need to enact the Bill expeditiously.

Women with Disabilities (Article 6)

14. Women with disabilities face multiple discrimination due to social, economic, and cultural disparities. In 2019, the HRCSL conducted discussions with women with disabilities from different regions of the country, civil society organisations engaging persons with disabilities, line ministry representatives, and local government officials to mark the International Women's Day under the theme of 'Mainstreaming women with disabilities for a dignified life'.

15. In these discussions, the following issues were highlighted by the participants:
    a. The absence of an effective mechanism to process complaints of sexual, verbal, physical and other forms of abuses suffered by women with disabilities;
    b. The need for proper sex education;
    c. The lack of adequate sanitation and hygiene for women with disabilities;
    d. The lack of access to water;
    e. Limited mobility;
    f. The absence of dedicated facilities and special medical attention for pregnant mothers with disabilities;
    g. The need to provide adequate pre- and post-natal care;
    h. The lack of effective implementation of the 3% employment quota for women with disabilities;
    i. The lack of accessibility to government buildings;
    j. The absence of a dedicated mechanism to assist, empower and mainstream women entrepreneurs with disabilities into the competitive market, as well as attitudinal barriers encountered by the women entrepreneurs with disabilities when conducting business;
    k. The gender pay-gap and other forms of gender-based discrimination in employment faced by women with disabilities;
    l. The absence of structured and regular vocational training programmes that orient and equip women and young girls with disabilities with necessary skills to meet current labour market demands;
    m. Attitudinal barriers in the form of stigma and prejudice against women with disabilities;
    n. Domestic violence and abuse against women with disabilities;
    o. The lack of access to property among women with disabilities due to patriarchal attitudes in terms of inheritance.

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

16. In Sri Lanka, children with disabilities encounter myriad challenges, within the educational system, particularly in the realm of accessibility.

17. Section 23(1) of the Protection of the Rights of Persons with Disabilities Act (1996) provides that 'no person with a disability shall be discriminated against on the ground of such disability in…admission to any educational institution'. Therefore, children with disabilities have a statutory right to non-discrimination in relation to admission to schools.

18. However, beyond admission, there are a number of challenges encountered by children with disabilities in terms of the facilities to access education and the quality of education. The HRCSL observes that school transportation often lacks necessary accommodation for students with disabilities, thereby hindering their mobility. Furthermore, within school premises, a range of accessibility issues persists, limiting the overall inclusivity of the learning environment. It is also observed that the shortage of specialised teachers exacerbates the problem, as these professionals play a crucial role in catering to the unique needs of students with disabilities. Compounding these challenges is the scarcity of educational equipment tailored for persons with disabilities.

Awareness-Raising (Article 8)

19. In March 2017, the HRCSL, in collaboration with the Human Rights Commission of Australia, conducted a Training Workshop on Disability Access. The workshop focused on access to public premises and public transport and saw the participation of civil society representatives, government officers and HRCSL Staff.

20. In November 2017, the HRCSL delivered technical training for government stakeholders on the accessibility of persons with disabilities. It also conducted an advocacy training programme for HRCSL staff, the members of the HRCSL's sub-committee on persons with disabilities, and representatives from DOJF.

21. The HRCSL regularly conducts awareness and education programmes for government officers, the police and the tri-forces on the rights of persons with disabilities.

Accessibility (Article 9)

22. Section 23(2) of the Protection of the Rights of Persons with Disabilities Act (1996) provides for the accessibility of persons with disabilities.

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

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

24. The HRCSL has conducted several accessibility audits in several parts of Sri Lanka and has provided recommendations to relevant public authorities. In 2019, the HRCSL recommended allocating funds in the annual budget to make public buildings and public transport more accessible to persons with disabilities. The HRCSL emphasised that the lack of access to public buildings can adversely impact a person's life, education, and livelihood opportunities. Following the HRCSL's recommendations, the Minister of Finance allocated budgetary provisions for improving the accessibility of public buildings.

25. The HRCSL has received several complaints related to accessibility. One such complaint involved a woman undergraduate student who was unable to continue studying at the Institute of Indigenous Medicine, University of Colombo due to the building not being accessible and the failure of the relevant authority to provide reasonable accommodation. The HRCSL recommended that the University Grants Commission create adequate accessibility facilities for all students with disabilities and to prepare guidelines on how institutional authorities in the university system deal with students with disabilities. The Commission also recommended that all universities should promote disability-inclusive education and conduct training programmes for university academic staff about the rights of persons with disabilities.

26. The HRCSL has also established an Accessibility Audit Team in each district in Sri Lanka with the support of the European Union-funded JURE Project administered by the United Nations Development Programme. The HRCSL provided training to the Audit Team, which comprises government officers and persons with disabilities to audit public buildings and public transportation.

27. In January 2024, the HRCSL held a discussion with transport authorities to advance accessibility in public transportation. According to the Railway Department's report, several measures have been implemented to enhance the accessibility of persons with disabilities. These include specially designed wide floors and wheelchair access near the entrance to the railway stations, display billboards for the hearing impaired, and plans for electronic train timetables. Handrails have been installed at busy stations for easy access, and information inside and outside train carriages is now clearly labelled. Station staff are also trained to assist persons with disabilities and to ensure all passengers, including those with special needs, are safely aboard prior to departure. Newly added coach toilets are equipped with handrails, and new railway platforms feature separate lanes for the visually impaired. Currently, seventeen trains offer easy access facilities for persons with disabilities. Out of 310 railway stations, 174 stations have constructed railway platforms to the standard height, 145 stations provide accessing facilities for persons with disabilities, 111 stations have installed Tack Tiles, and 64 stations have provided toilet facilities for persons with disabilities.

28. The Motor Traffic Department is also facilitating driving licenses for the hearing impaired and is considering licenses for persons with other types of disabilities through medical referrals. The National Transport Commission is meanwhile implementing accessibility features in buses. Seats are reserved for persons with disabilities, and efforts are underway to address

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

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

Right to Life (Article 10)

30. The HRCSL noted the death of a patient at the National Institute of Mental Health and took measures to inquire into the death.

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

Equal recognition before the law (Article 12)

32. The HRCSL received a complaint from a visually impaired person highlighting that they did not have adequate facilities to access banks. For instance, bank applications and instructions are not provided in braille, and banks are reluctant to open individual bank accounts and provide bank loans to such persons with disabilities. Moreover, such persons find it difficult to identify currency notes and to get cash from ATMs.

33. The HRCSL held a discussion with several banks including the Central Bank of Sri Lanka, after which the Central Bank issued directives to all banks to ensure the accessibility of visually impaired persons. Moreover, the Central Bank agreed to change the size of currency note and the shape of coins to enable visually impaired persons to easily identify notes and coins.

Health (Article 25)

34. The HRCSL recommended to the Ministry of Health that immediate measures should be taken to enact a Mental Health Act that is in line with international medical standards and Sri Lanka's human rights obligations.

35. As mentioned above, the HRCSL released an Interim Report of the Fact-Finding Mission on the Right to Heath and Liberty of Patients at National Institute of Mental Health on 11 December 2023. The report included key recommendations with respect to strengthening the protection of the rights of persons with mental disabilities within state institutions.

Work and Employment (Article 27)

36. In August 2023, the HRCSL held a discussion with government officers and persons with disabilities with respect to the full implementation of the 1988 Public Administration Circular. The Circular requires 3% of vacancies in public sector employment to be allocated to persons with disabilities. This Circular remains a pivotal measure in terms of advancing equality and inclusivity within the public sector workforce, acknowledging the capabilities of persons with disabilities and their entitlement to equal opportunities.

37. Nevertheless, the HRCSL observes that this Circular needs to be further strengthened to remove ambiguities. For example, the Circular stipulates that a disability should not be a 'hindrance' to an employee's official responsibilities. Since the term 'hindrance' is not precisely defined, the Circular is capable of being misinterpreted to exclude persons with certain types of disabilities that are seen as 'hindrances' to an employee's official responsibilities.

38. Additionally, the HRCSL observes that Sri Lanka's legal framework does not currently provide for reasonable accommodation of persons with disabilities in employment settings.

Ratification of Optional Protocol

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