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Disability Policy Brief
for
Law Makers, Administrators and
other Decision Makers



Padmani Mendis and Binendri Perera

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International Centre for Ethnic Studies

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2, Kynsey Terrace,
Colombo 8
Sri Lanka
E-mail: admin@ices.lk
URL: www.ices.lk

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About the Authors

Padmani Mendis has had a career in Disability and Rehabilitation internationally and in Sri Lanka for a period spanning over 60 years. Her most significant contribution has been in pioneering the global development of Community-Based Rehabilitation (CBR) for the World Health Organization together with Einar Helander and Gunnel Nelson, now called Disability Inclusive Development (DID). In recognition of this role she was awarded a Doctor of Medicine Honoris Causa by Uppsala University Sweden in 1990 and an Honorary Professorship and Honorary Ph.D. in Physiotherapy by Lincoln College University, Malaysia in 2019.

Binendri Perera (LLB) (Hons.) (Colombo), (LLM) (Harvard), Attorney-at-Law is a Consultant Researcher at Law & Society Trust and Center for Policy Alternatives, Sri Lanka. Her main research interests are constitutional law, economic, social and cultural rights, rights of persons with disabilities and women's rights.

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CONTENTS

	page
Purpose of the Policy Brief	1
<i>Section One: Disability – a new definition</i>	2
<i>Section Two: The situation of people with disabilities</i>	4
<i>Section three: Cabinet- approved substantive policy areas for disability mainstreaming and inclusion</i>	8
<i>Section Four: Implementing Policy</i>	16

Purpose of the Policy Brief

This Policy Brief is designed for use by:

- **law makers**
- **administrators and**
- **other decision makers**

It is enshrined in the Constitution that all people of Sri Lanka are entitled to the equal protection of the law¹. Therefore people with disabilities are entitled to full and effective participation in society on an equal basis with others. Such persons must be empowered to fulfill themselves as citizens and contribute their full potential towards the development of the country.

Legislative as well as executive and administrative powers are vested in the people². They are exercised by the people through their representatives who include law makers, administrators and other decision makers³. These persons are responsible for designing and implementing policies and laws on behalf of the people. Hence this policy brief is addressed to them.

This policy brief informs users on defining who persons with disabilities are, their vulnerable and marginalized situation, a summary of cabinet-approved substantive policy areas for mainstreaming and inclusion⁴ and on how such policies could be implemented.

At the same time this policy brief informs people with disabilities and other interested parties what they should expect from our parliamentarians, policy makers and other senior decision makers

¹ Constitution of the Democratic Socialist republic of Sri Lanka, 1978, Article 12 (1)

² Constitution of the Democratic Socialist republic of Sri Lanka, 1978, Articles 3 and 4

³ Constitution of the Democratic Socialist republic of Sri Lanka, 1978, Articles 3 and 4

⁴ An approach that is now called Disability inclusive Development (DID). Disability inclusive Development in UNDP.

[file:///C:/Users/user/Downloads/UNDP- Disability Inclusive Development accessible%20\(3\).pdf](file:///C:/Users/user/Downloads/UNDP-Disability%20Inclusive%20Development%20accessible%20(3).pdf)

SECTION ONE

DISABILITY

– A New

Definition

Today there is a whole new change in the way that Disability is defined and looked at. It is now defined by the state of health of human beings related to the environment they live in. The state of health in turn is looked at as how a human being functions in day to day life⁵. The way a human being functions depends on 3 areas.

The *first* area is in terms of parts or organs which make up a person's body (eyes, ears, voice box, muscles, joints, nerves, the brain and the mind for instance).

Second, the manner in which a person's body carries out day to day activities. These activities include seeing, hearing, speaking, communicating, moving, looking after one's-self, learning and behaving.

And the *third* area is how a person interacts with other people – that is, carries out a social role. These include for instance, work and employment, schooling, sports, being part of a family, community and society and so on. A person has difficulty carrying out a social role and is made disabled because of barriers in the environment. These include social attitudes and inaccessible buildings and public spaces.

⁵ International Classification of Functioning, Disability and Health (ICF). WHO 2001The ICF was adopted by the WHO in 2001. It uses a definition of disability based on impairment, activity limitation and participation restrictions in the context of social and environmental factors rather than on individual attributes.
<https://www.who.int/classifications/icf/en/>.

If all these 3 areas function in the way that they should, then there is no upset in a person's health and functioning. If however a health condition or illness or accident has changed the way any one or two or all these areas function, then the person is said to have disability.

Disability then is a term that describes a change in a person's health condition, combined with barriers that make it difficult for the person to function⁶. Any human being can have a change in their health condition and so any human being can have disability. It is not a characteristic of a person which is how it was defined in the past.

Defined in this way, Disability is a part of being human. It is a part of human diversity. It is part of us. Disability does not make us different as human beings. As human beings, we all have the same feelings, emotions, needs and aspirations. We all have the same rights and responsibilities and should have the same opportunities and the same choices that all other people have.

Disability in Brief

Disability is:	Difficulty in engaging in daily life due to changes in the state of health of a human being combined with societal barriers
Disability needs to be viewed as	A situation of human life and as a part of human diversity
People with Disabilities are:	Denied access to make their contribution to society and participate in it by environmental barriers and hostile social attitudes.
Persons with Disabilities should have:	The same rights, responsibilities, opportunities and choices as other people

⁶ The UN Convention on Persons with Disabilities of 2006 (CRPD) does not include disability in its definitions. It views disability as an evolving concept. In the preamble and in Article 1 describes persons with disabilities as including "those who have long-term physical, mental, intellectual and sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/>

SECTION TWO

Situation of People with Disabilities

Data and Statistics:

Data from the National Census of 2012 indicates a disability prevalence rate of 8.7%⁷. Districts with over 10.0% of population having disabilities were found to be Nuwara Eliya, Kandy and Rathnapura; prevalence rates of between 9.1 – 9.6% were found in Jaffna, Trincomalee, Puttalam, Kurunegala, Kegalle, Badulla, Moneragala and Hambantota; rates of between 8.5 – 9.0% were found in Mullaitivu, Anuradhapura, Polonnaruwa, Matale, Kalutara and Galle; all other districts had rates of between 7.0 – 8.4% with Colombo recording the lowest at 7.0%. The National Census identified people who had functional difficulties related to walking, seeing, hearing, concentrating and remembering (cognition), self-care and communication⁸. The largest number identified had difficulty seeing, with walking next, and then hearing⁹.

The rate of 8.7% from the National Census converts to a figure of 1,617,924 Sri Lankans over 5 years of age having disability. The number of people with disabilities is however not static. Disability prevalence continues to increase constantly and steadily due to population growth, ageing, increase in chronic diseases and medical

⁷ National Census of Population and Housing 2012 Final Report. Dept of Census and Statistics. <http://www.statistics.gov.lk/page.asp?page=Population%20and%20Housing>

⁸ The National Census 2012 used the Short Question Set by **The Washington Group on Disability Statistics** to identify those who had disability. These are the types of disabilities identified by the Short Question Set. This group was established under the UN Statistical Commission. Its mandate is the promotion and co-ordination of international co-operation in the area of health statistics focusing on disability data collection tools suitable for censuses and national surveys. <http://www.washingtongroup-disability.com/>

⁹ National Census of Population and Housing 2012 Final Report. Dept of Census and Statistics. op cit 7

advances that preserve and prolong life. The most common medical causes of impairment and disability include chronic diseases such as diabetes, cardiovascular disease and cancer; injuries resulting from road traffic accidents and violence; birth defects, malnutrition, and communicable diseases such as HIV/AIDS, all of which are on the increase in Sri Lanka.

Education: What is disturbing is also that during the time that the census was taken, 1,548,684 of persons recognized as having disability were not involved in any educational activity. Only 2,142 children were in preschool, 54,311 were in primary and secondary schools and 2,076 were involved in a higher educational activity¹⁰. With Sri Lanka having a primary school enrolment rate of 99%¹¹ one may well ask how it is that their school attendance (including preschools) is so low. It is the observation of disability field workers that parents, realizing well the importance of education for their children with disability, register them for school. They observe that school drop-outs however are significantly high, especially in the early years. This is reflected in the very small numbers qualifying for university entrance. It seems that our school system is not yet equipped to provide education to those children who have impairments and disability.

Economic participation; Whilst 1,558,852 of the population over 15 years were found with disability, only 29% were economically active. 70.9% did not have opportunities for contributing to the country's development.

¹⁰ National Census of Population and Housing 2012 Final Report. Dept of Census and Statistics Ibid

¹¹ Primary School Enrolment Rate. UNESCO Institute for Statistics.
<https://data.worldbank.org/indicator/SE.PRM.NENR>

These figures indicate the deplorable degree to which children, youth and adults are deprived of their educational and economic rights. This is the only data available through Census 2012.

Economic and Social Consequences of Disability:

The figure of 1,617,924 persons with disabilities in the general population does not in any way reflect the extent of the social and economic consequences disability has on these individuals, their families, communities and society-at-large.

Moreover, one must recall that the presence of a member with disability affects every family member. As such the prevalence of people with disability at 8.7 %, with a national family household size of 3.9, reflects that possibly 34 % of our population or more are affected directly by disability.

Families struggling with disability are among the poorest segments of Sri Lankan society. They are more likely to be trapped in poverty due to a range of challenges including stigma linked with disability, negative societal attitudes, problems with mobility, earning power, child care problems etc. Families affected by the prolonged conflict in the north and east with disabled members were subject to even greater poverty and vulnerability. They lost whatever assets and social support systems they had on top of the psychosocial trauma they experienced. In other parts of the country continuing cousin-marriages result in the birth of children with complex and multiple disabilities.

Many superstitious beliefs stigmatize people with disabilities and often extend to their families. Many believe for example, that seeing a person who has disability when one starts on a journey will bring bad luck. Such societal barriers

underscore the situation of persons with disabilities and prevent them from using the abilities they have to contribute to the development of their families, communities and their country. Negative social attitudes are commonplace, such as for example, believing that persons with disabilities are helpless and will always be dependent on others; an unwillingness to make simple changes such as to a workplace to accommodate a job-seeker with disabilities; or make play areas accessible to children with disabilities; or public transportation accessible so that persons with disabilities will not be confined to their homes and can travel to where they need to. These social and environmental barriers keep persons with disabilities out of the mainstream of social life and out of development. These consequences affect women disproportionately.

Children and families struggling with disability are in these ways systematically excluded from the mainstream, and the poorer they are the greater that exclusion is likely to be¹². This results in a significantly large group of people in every community subject to vulnerability and marginalization. These people are unable to fulfill their potential as contributing and productive citizens and unable to lift themselves away from the debilitating cycle of disability-poverty-illness-disability.

¹² National Policy on Disability (NPD) Ministry of Social Welfare. Approved by Cabinet 2004. http://data.worldbank.org/country/sri-lanka#cp_wdi (2013)

SECTION THREE

Cabinet- Approved Substantive Policy Areas for Disability Mainstreaming and Inclusion

The situation of persons with disabilities summarized in the previous section has been given due recognition by Government. As a result, Cabinet has approved a National Policy¹³ and National Action Plans for Disability¹⁴.

Substantive policy areas here are as they are presented and listed in the National Policy on Disability. They were selected for the policy on the findings of a socio-economic study of the situation of persons with disabilities at the time. Census 2012¹⁵ confirms that their situation remains unchanged. Policy areas in the National Policy further coincide with the subject areas of development.

It is also significant to note that this section takes into account the CRPD¹⁶ which was ratified by Sri Lanka on 08th February 2016.

The Marrakesh Treaty¹⁷ which was acceded to on 05th October 2016 is also included in this section.

¹³ National Policy on Disability approved by Cabinet 2004. Ministry of Social Welfare. op cit 12

¹⁴ National Action Plan for Disability – a multisectoral framework. Ministry of Health and of Social Welfare, 2014. National Human Rights Action Plan 2016 – 2020. http://www.pmooffice.gov.lk/download/press/D0000000063_EN.pdf

¹⁵ National Census of Population and Housing 2012 Final Report. Dept of Census and Statistics. op cit 7

¹⁶ UN Convention on the Rights of Persons with Disabilities (CRPD) ratified 2016. op cit 6

¹⁷ Marrakesh Treaty acceded to on 05th October 2016. <http://www.infolanka.com/news/IL/on134.htm>

As per the National Policy and the UN Convention on the Rights of Persons with Disabilities (CRPD)¹⁸, implementation of all policy areas should be based on the following:

1. Acceptance of persons with disabilities as part of human diversity and of humanity, with respect for their inherent dignity and autonomy;
2. All persons are treated equally, and are not discriminated based on disability;
3. All persons are empowered through access, opportunities and choice for full and effective participation and inclusion in society;
4. Equality between men and women;
5. Respect for the evolving capacities of children and their enjoyment of a full and decent life.

Substantive Policy Areas in brief

National Policy area ¹⁹	Synopsis of policy linked to the CRPD ²⁰	CRPD ²¹	NAPD ²²	NHRA P ²³
1. Work And employment	1. People with disabilities will have their right to work fulfilled through a free choice of employment in public and private sectors, wage and self-employment and formal and informal sectors. 2. They shall be included in employment, Employment Placement Services including data banks and in employment support services. 3. Employers shall make reasonable accommodation for persons with disabilities to ensure just and favourable conditions of work, including equal remuneration for work of equal value, safe and healthy working conditions, protection from harassment, the redress of	27	Section Four	3

¹⁸ UN Convention on the Rights of Persons with Disabilities (CRPD) ratified 2016. Article 3 General Principles op cit

¹⁹ National Policy on Disability approved by Cabinet 2004. These subject areas in the NPD are synonymous with subject areas in the country's Development System. They were selected and prioritized following a socio-economic study of persons with disabilities to inform policy formulation. op cit 12

²⁰ The Policy is given in brief and linked to the Rights stated in the CRPD (articles 5 – 30)

²¹ Rights listed by Article (5 – 30) in the Convention on the Rights of Persons with Disabilities (CRPD) ratified 2016. These Rights have been related here to each Policy area and therefore to subject areas in the Country's Development System.

²² Reference in National Action Plan on Disability (NAPD) approved by Cabinet 2014

²³ Reference in National Human Rights Action Plan (NHRAP) 2016-2020. Reference no. refers to that Chapter (6) "Rights of Persons with Disabilities".

National Policy area ¹⁹	Synopsis of policy linked to the CRPD ²⁰	CRPD 21	NAPD 22	NHRA P ²³
	grievances and career advancement.			
2. Vocational training and skills development	<ol style="list-style-type: none"> 1. Youth and adults with disability shall be included in mainstream vocational training and skills development programmes. 2. Reasonable accommodation shall be made for them to undertake training in a skill of their choice. 3. Personnel of Vocational Training Institutions and Skills Development Programmes will be equipped to meet the needs of persons with disabilities. 	27	Section Four	3.3
3. Poverty alleviation and income generation	<ol style="list-style-type: none"> 1. Persons with disabilities who live below the recognized poverty line should be included in all poverty alleviation programmes, social safety nets and social security programmes implemented for the economic, social and political empowerment of those who are poor. 	28	Section One: 7	4.1 4.2
4. School Education	<ol style="list-style-type: none"> 1. Educational rights of children with disabilities shall be promoted and protected through an inclusive education system at all levels. 2. Full participation of such children shall be ensured with reasonable accommodation where necessary in the preliminary and continuing training of teachers, accessible teaching methodologies, alternative learning strategies, learning materials, assistive devices, accessible physical environment, accessible extra-curricular activities and accessible sports. 3. Teachers shall be trained to be fluent in sign language, Braille and other forms of communication to provide quality education to children with visual and hearing and other impairments. 5. Special schools for children with disabilities shall be registered and regulated towards complying with the same standards. 	24	Section Three:	5.1 5.3 5.4 5.5
5. Non-formal education	<ol style="list-style-type: none"> 1. Children and youth with disabilities who have not completed school education will have equal access to non-formal education programmes with reasonable accommodation when necessary. 	24	Section Three: 4	..
6. Higher education	<ol style="list-style-type: none"> 1. More students with disabilities will be enrolled in Universities and other Institutes of Higher Education. 2. Full participation of such students in higher education shall be ensured with reasonable accommodation when necessary through training of teachers, accessible teaching methodologies, alternative learning strategies, 	24	Section Three; 5	5.2

National Policy area ¹⁹	Synopsis of policy linked to the CRPD ²⁰	CRPD ²¹	NAPD ²²	NHRA P ²³
	learning materials, assistive devices and technologies, accessible physical environment, accessible extra-curricular activities and accessible sports 3. Higher educational institutions shall promote disability-related research			
7. Health and Rehabilitation	1. Persons with disabilities shall have improved access to quality health care and rehabilitation through strengthened training of medical and health care personnel, specialized services and health care facilities. 2. Health and rehabilitation services such as early identification and interventions and services that respond to mental health needs and needs of those with hearing, visual, mobility, communication, intellectual and other developmental impairments as well as behavioral problems shall be improved 3. Persons with disabilities shall be provided with quality indigenous medical practices.	25, 26	Section Two:	6
8. Sports	1. People with disabilities will participate in sports activities of their choice like their peers for both recreational and competitive purposes. 2. State and private organizations responsible for sports, starting at school level and continuing through all levels of administration shall organize events in recognition of their abilities in all public sports; adapt existing sport rules to accommodate persons with disabilities; provide access to all facilities including training; encourage their participation at national and international events and ensure disability inclusivity in the training of sports personnel.	30	Section Five: 8	10
9. Transport	1. Public and private transport by bus, rail, water and air shall be more accessible to persons with disabilities, in keeping with Accessibility Regulations of 2006 ²⁴ and 2009 ²⁵ . The Supreme Court has ordered that these are implemented ²⁶ . 2. Stakeholders shall be trained to deal with accessibility issues facing persons with disabilities.	9	Section Five: 1	8.2
10. Housing	1. State supported housing development and state	28	Section	4.4

²⁴ Ministry of Social Welfare, Guidelines of making the built environment accessible to persons with disabilities, Gazette Number: 1, 467/15 (17.10.2006). http://www.hrsl.lk/PFF/Library_Domestic_Laws/regulations/146

²⁵ Ministry of Social Welfare, Guidelines of making the built environment accessible to persons with disabilities, Gazette No. 1619/24 – (18.09.2009) https://socialemwelfare.gov.lk/web/images/content_image/pdf/legislation/1619_24e.pdf.

²⁶ *Perera v Minister of Social Services* SC FR No 221/2009 SC Minutes 27 April 2011; *Perera v Minister of Social Services*, SC FR Application No. 273/2018 (18.04.2019) http://www.supremecourt.lk/images/documents/sc_fr_273_2018.pdf

National Policy area¹⁹	Synopsis of policy linked to the CRPD²⁰	CRPD²¹	NAPD²²	NHRA P²³
	land distribution shall include persons with disabilities as beneficiaries.		Five: 7	
11. Social security	1. Social security measures, including pensions and insurance schemes will be available to persons with disabilities.	28	Section One: 7	..
12. Access to the built environment and accessible tourism	1. Public spaces and other areas used by the public shall be adapted and designed to enable free access, safety and independence of persons with disabilities, in keeping with Accessibility Regulations of 2006 ²⁷ and 2009 ²⁸ . 2. Major tourist sites and attractions will be made as accessible as possible ²⁹ . 3. Disability shall be included in training of personnel as well as in the production and dissemination of information regarding tourism.	9	Section Five: 2	8.1 10.2
13. Access to communication and information	1. Persons with disabilities shall have access to all information and have the freedom to communicate through the use of sign language, Braille and other alternative and augmentative communication methodologies. 2. Sign language interpreters shall be trained and registered in adequate numbers. 3. All printed materials shall be made available in accessible formats ³⁰ .	9	Section One: 4	8.3
14. Assistive devices and technologies	1. Appropriate assistive devices and technologies shall be made available and accessible to facilitate education, work and the independent living of persons with disabilities.	20	Section Two: 10	8.4
15. Children	1. Children with disabilities shall be included in early childhood care and development programmes, pre-schools and kindergartens, and their maximum participation be ensured in a manner conducive to the child's achieving the fullest possible social inclusion and individual development, including spiritual and cultural development. 2. Support shall be made available to parents and other family members and carers in the form of knowledge, skills, advice and counselling to support each child with disability so that they may be equipped to provide an enabling	7, 23	Section One 1 Section Two:	14

²⁷ Ministry of Social Welfare, Guidelines of making the built environment accessible to persons with disabilities, Gazette Number: 1, 467/15 (17.10.2006). http://www.hrsl.lk/PFF/Library_Domestic_Laws/regulations/146

²⁸ Ministry of Social Welfare, Guidelines of making the built environment accessible to persons with disabilities, Ibid

²⁹ Ministry of Social Welfare, Guidelines of making the built environment accessible to persons with disabilities, Gazette Number: 1, 467/15 (17.10.2006). http://www.hrsl.lk/PFF/Library_Domestic_Laws/regulations/146
op cit 27

³⁰ Sri Lanka Accedes to the Marrakesh Treaty 06 October 2016. Permanent Mission of Sri Lanka, Geneva. op cit 17

National Policy area¹⁹	Synopsis of policy linked to the CRPD²⁰	CRPD²¹	NAPD²²	NHRA P²³
	environment. 3. Adolescent reproductive health programmes shall include children with disabilities, with attention to gender sensitivity.			
16. Youth	1. Youth with disabilities shall have equal access to all activities, programmes and projects planned for youth development.	23	Section Four: Five:	6.5
17. Women	1. Any state program for the upliftment of women should include women with disabilities. 2. State measures combating gender-based violence shall also protect women with disabilities. 3. Law and policy on marriage, family life, reproductive rights and divorce should take into consideration protecting and ensuring the autonomy of women with disabilities.	6	Section One: Four:	12 14
18. Elderly persons	1. Elderly persons with disabilities shall be treated with respect and be able to grow old with a sense of security and with their independence preserved to the extent possible.	--	Section One: Two:	
19. Post-onflict reconciliation mechanisms	1. Persons with disabilities shall be included in all mechanisms of reconciliation in diverse capacities such as initiators, advocates, experts who rely on lived experiences of conflict, observers, decision-makers and beneficiaries ³¹ .	11	..	11.2
20. Person with severe disabilities	1. Persons with severe disabilities who require assistance for their daily living shall be provided with home-based development programs and projects when necessary so that they have the opportunity to contribute to society.	19	Section One: Two: Three: Four:	7.2
21. Mass media	1. Information related to disability will be disseminated by all forms of mainstream and social media to educate, mobilize and activate civil society and so promote the social acceptance and inclusion of persons with disabilities. 2. The mass media will take measures to reduce stereotyping and negative social-cultural and customary beliefs and practices relating to disability, and particularly relating to women with disability.	8	Section Five: 3	7.1 12

³¹ Office for National Unity and Reconciliation, 'National Policy on Reconciliation and Coexistence' (2017) https://www.un.int/srilanka/sites/www.un.int/files/Sri%20Lanka/re-submission_of_the_national_policy_on_reconciliation_and_co-existence.pdf

National Policy area ¹⁹	Synopsis of policy linked to the CRPD ²⁰	CRPD 21	NAPD 22	NHRA P23
22. Justice	<ol style="list-style-type: none"> Persons with disabilities shall be entitled to procedural and substantive safeguards of law on an equal basis with others³². Reasonable accommodation shall be provided in an age-appropriate manner within the legal system during investigations, prosecutions and as witnesses and at all other stages of legal proceedings and in alternative dispute resolution mechanisms and processes³³. Training shall be provided to personnel in the field of administration of justice including the Police, Probation and Prison services and those in alternative dispute resolution mechanisms and processes³⁴. 	13	Section One: 6	1.1 11 15
23. Political and public participation	<ol style="list-style-type: none"> Persons with disabilities shall participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for them to vote and be elected³⁵. 	29	Section One: 5	9
24. Disaster management	<ol style="list-style-type: none"> People with disabilities shall be included in the disaster management cycle with sensitivity towards their heightened vulnerability during emergency situations³⁶. 		Section Five: 10	
25. Culture	<ol style="list-style-type: none"> Persons with disabilities shall have opportunities to develop their cultural identities as well as their talents, skills and capacities in cultural activities and the arts³⁷. 	30	Section Five: 9	10.2

³² Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 12 (1); Article 13 on 'Freedom from arbitrary arrest, detention and punishment, and prohibition of retrospective penal legislation'

³³ Draft Disability Rights Bill. Ministry of Social Services, Welfare and Livestock Development. 08 August 2015

³⁴ Ibid

³⁵ Ibid

³⁶ National Action Plan on Disability 2014 op cit 22

³⁷ National Action Plan on Disability 2014 Ibid

SECTION FOUR

Implementing Disability Policy

The contents of the preceding sections define who people with disabilities are, describe the situation they live in and list the policies³⁸ that are required to change this situation. Those sections lead on to form the basis on deciding on how policy should be implemented³⁹.

The implementation of Disability Policy is processed below

AVENUES FOR IMPLEMENTING POLICY AND APPROACH:

Two clear avenues for implementing policy emerge from the preceding sections. Policy will be therefore be implemented within a *TWIN TRACK APPROACH*. See Figure 01. Most persons with disabilities will participate in both interconnected Tracks. They are on the one hand, poor and vulnerable, and on the other they are marginalized and excluded⁴⁰.

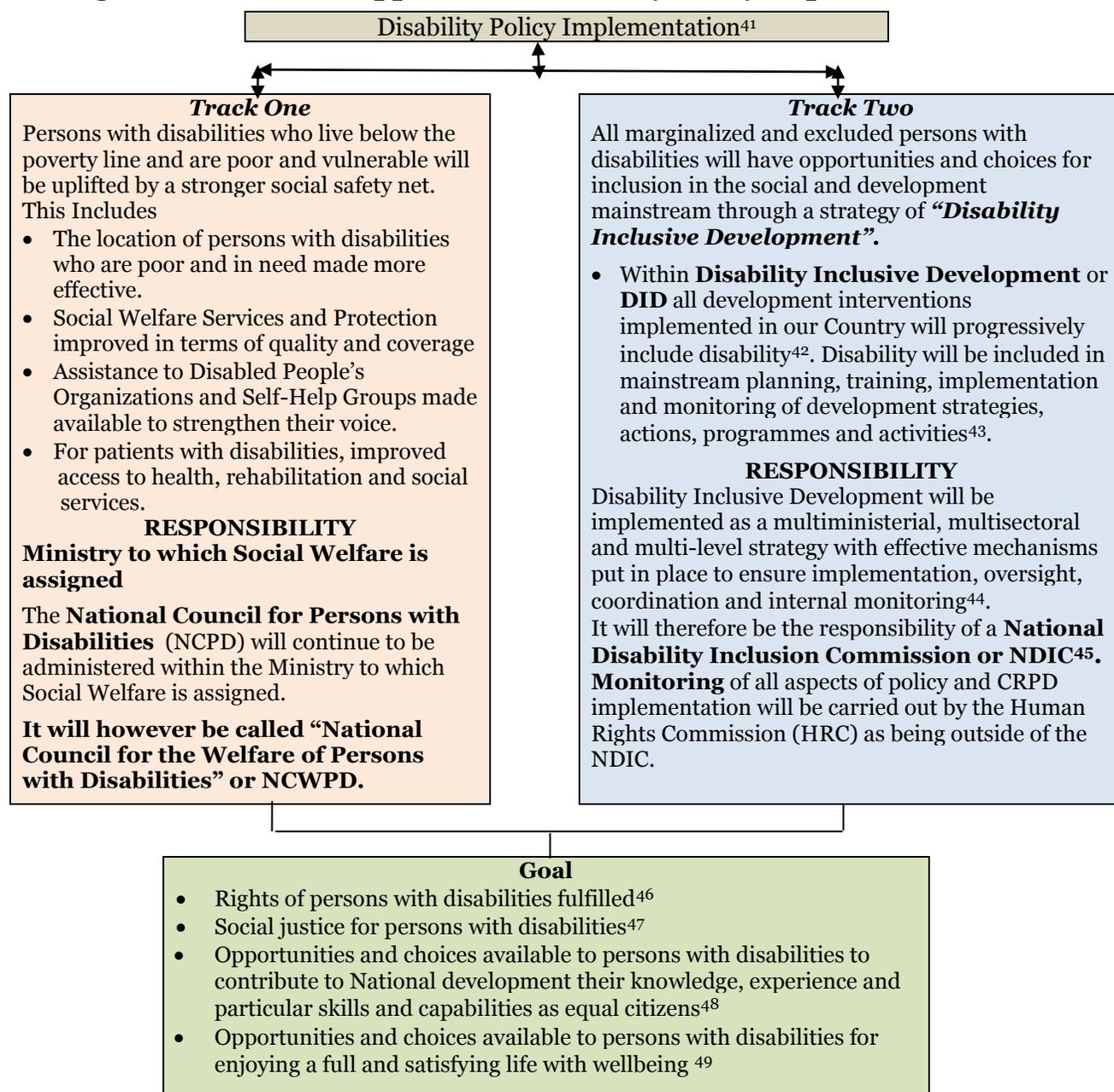
The Twin-track Approach is detailed below

³⁸ Approved by Cabinet in National Policy on Disability 2003 and in National Action Plan on Disability (2014). These took into account the rights stipulated in the CRPD

³⁹ CRPD Article 4. General Obligations re appropriate legislative, administrative and other measures

⁴⁰ See Section Two of this Policy Brief

Fig. 01: Twin Track Approach to Disability Policy Implementation



⁴¹ Based on National Policy on Disability (2003); UN Convention on the Rights of Persons with Disabilities (2006); National Action Plan on Disability (2014); National Human Rights Action Plan (2011, 2016)

⁴² CRPD Article 4 (2) “... with a view to achieving progressively the full realization of these rights, ...”

⁴³ UNDP. DID in UNDP. 2018. https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Human%20Rights/UNDP-Disability_Inclusive_Development_accessible.pdf

⁴⁴ As in Article 33 of the CRPD and expanded in the Thematic study by the UN OHCHR UN General Assembly A/HRC/13/29

⁴⁵ CRPD Article 33.1, National Focal Point

⁴⁶ UN Convention on the Rights of Persons with Disabilities ; <http://www.un.org/disabilities/default.asp?id=150>. op cit 4

⁴⁷ National Policy on Disability. Ministry of Social Welfare, NPD 2003, op cit 12

⁴⁸ National Policy on Disability. Ministry of Social Welfare, NPD 2003, Ibid

⁴⁹ National Policy on Disability. Ministry of Social Welfare, NPD 2003, Ibid

TRACK ONE OF POLICY IMPLEMENTATION:

OBJECTIVE:	Uplift the situation and wellbeing of those who live below the poverty line and are poor and vulnerable
STRATEGY:	Two-fold strategy includes - <ul style="list-style-type: none">• more effective and efficient ways of locating persons with disabilities who are poor and in need• improved social safety net in terms of both quality and coverage.
ACTIONS:	Social welfare services and protection which include – Monthly cash transfers; Provision of assistive devices and assistive technologies; Opportunities for special vocational training; Grants to facilitate education, self-employment, medical care, construction of houses, accessibility within the home and improvement of sanitary facilities; Assistance to Disabled People’s Organizations and Self-Help Groups to strengthen their voice; For patients with disabilities, improved access to health, rehabilitation and social services;
RESPONSIBILITY FOR TRACK ONE IMPLEMENTATION	The provision of social welfare, services and protection has always been with the Social Welfare Sector and it will remain so.

The National Council for Persons with Disabilities (NCPD) will continue to be administered within the Ministry to which Social Welfare is assigned. It will however be called “National Council for the Welfare of Persons with Disabilities” (NCWDP).

There is therefore no change in responsibility for the implementation of Social Welfare, Services and Protection for persons with disabilities.

The National Council for Persons with Disabilities (NCPD) will remain within the Ministry to which the subject of Social Welfare is assigned. It will however be called “National Council for the Welfare of Persons with Disabilities” (NCWDP).

TRACK TWO OF POLICY IMPLEMENTATION

OBJECTIVE: All marginalized and excluded persons with disabilities will have opportunities and choices for inclusion in the social and development mainstream and have their rights fulfilled through a strategy of “**Disability Inclusive Development**”⁵⁰.

With Track Two, a second strategy for disability policy implementation is being introduced as Disability Inclusive Development (DID). Further elaboration of DID is given below

WHAT IS DISABILITY INCLUSIVE DEVELOPMENT?

Disability Inclusive Development or DID means that all development interventions implemented in our Country will progressively include disability. Disability will be included in mainstream planning, training, implementation and monitoring of development strategies, actions, programmes and activities⁵¹.

DID further includes effective mechanisms put in place including focal points in key areas to ensure oversight, coordination and monitoring⁵²and the enactment of related legislation⁵³.

STRATEGY DID IMPLEMENTATION:

Reflection of the policy areas documented in the previous section makes it clear that the DID strategy required for their implementation is one that is multiministerial, multisectoral and multilevel.

⁵⁰ UNDP. Disability Inclusive Development in UNDP. 2018. https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Human%20Rights/UNDP-Disability_Inclusive_Development_accessible.pdf
CBM Toolkit for Inclusive Development. <https://www.cbm.org/article/downloads/54741/CBM-DID-TOOLKIT-accessible.pdf>

⁵² CRPD Article 33 expanded in OHCHR Training Guide. Module Four. Measures for Implementation; https://www.ohchr.org/Documents/Publications/CRPD_TrainingGuide_PTS19_EN%20Accessible.pdf

⁵³ CRPD Article 4. General Obligations re appropriate legislative, administrative and other measures
There is no legislation as yet that takes into account the implementation of this Disability Policy and the CRPD. Such legislation is essential to implement Disability Inclusive Development and as the enabling law for the implementation of the CRPD which Sri Lanka ratified on 08th February 2016. New Laws will be needed to implement CRPD Article 33.1, 33.2 and 33.3 locally as described in this section. The drafting process must be started again so that CRPD rights will be taken into account through the implementation of National Policies. Also, to be taken into accounts are new implementing and monitoring mechanisms with the participation of persons with disabilities. Since the law required will be complex, it is suggested that the Law Commission of Sri Lanka may be requested to draft the new law. See Legislation as described further on this section.

Multiministerial: because implementation must be the responsibility of any and all ministries that have a mandate for providing goods and services for the general public.

Multisectoral: because implementation must be the responsibility of any and all development sectors within government.

Multilevel: because implementation must reach persons with disabilities where they live in their homes, and they should be supported by development administrations at the local, provincial and central levels.

RESPONSIBILITY FOR IMPLEMENTATION

An Implementing Mechanism placed at the highest level of Government, within the Office of the President is required to implement the multiministerial, multisectoral and multi-level strategy. It's location at the highest level of Government is suggested in Fig 02.

The Implementing Mechanism may be called the **National Disability Inclusion Commission** or **NDIC** to reflect its location and overall role as the National Focal point for implementation of policy including the CRPD⁵⁴.

FUNCTIONS OF THE NDIC

Overall functions will include the following;

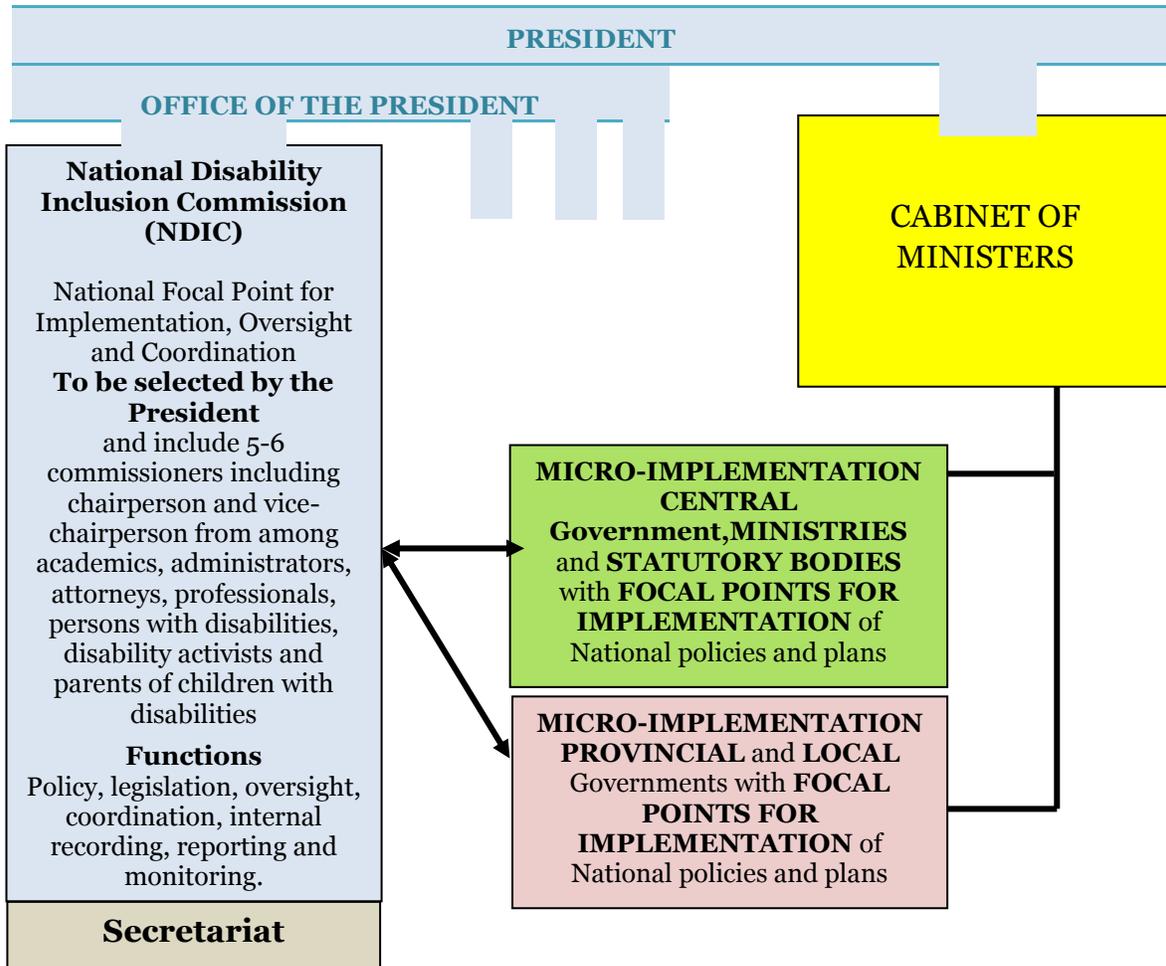
- progressive macro implementation of disability policy⁵⁵
- recommendations to the President in matters related to policy
- drafting and ensuring enactment of legislation necessary for implementing policy
- support and follow-up for implementation with oversight and coordination⁵⁶
- develop and maintain internal recording, reporting and monitoring systems

⁵⁴ CRPD Article 33 expanded in “Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities”. UN General Assembly A/HRC/13/29

⁵⁵ CRPD Article 4 (2) “... with a view to achieving progressively the full realization of these rights,” Plans of Action for implementation (NAPD, NHRAP 2011 and 2016) have been made and may be used in the first instance so that implementation is not delayed. Later, appropriate plans of action may be made ensuring greater relevance to the situation at the time

⁵⁶ CRPD Article 33 expanded in “Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities”. UN General Assembly A/HRC/13/29 op cit 52

**Fig. 02: NATIONAL DISABILITY INCLUSION COMMISSION (NDIC)⁵⁷
Suggested Implementation structure with functions and relationships**



ADMINISTRATION OF DECISIONS OF THE NDIC:

will be through a Secretariat for the NDIC located within the Office of the President.

STRUCTURE OF THE NDIC

5-6 Commissioners to be appointed by the President and include the Chairperson and Vice-Chairperson from among professionals, academics, attorneys, administrators, persons

⁵⁷ This mechanism and structure in keeping with CRPD Article 33.1 was approved by the sub-committee of the NCPD appointed to recommend strategy for CRPD implementation (report in NCPD Minutes of 22.04.2016) and the Consultative Committee on the CRPD appointed by the NCPD at the joint meeting held April/May 2016 chaired by the then Additional Secretary Development of the relevant ministry. Minutes of this meeting are unavailable but the joint decision is referred to in NCPD Minutes of 25 May 2016

with disabilities, parents of children with disabilities and disability activists

RELATIONSHIP TO THE CRPD:

The NDIC through this Policy and supportive legislation (see Legislation below) will progressively implement the UN Convention on the Rights of Persons with Disabilities (UN CRPD).

The CRPD was ratified by our country on 08th February 2016, but no formal steps have as yet been taken to initiate action on this.

IMPLEMENTATION AT MINISTRY LEVEL

Any Ministry which has any of the substantive policy areas listed in Section Three included in the subjects and functions assigned to it will take responsibility for including these in its own policies and action plans including budgeting⁵⁸.

MONITORING OF POLICY IMPLEMENTATION

Will be carried out by the Human Rights Commission (HRC) as being outside of the NDIC and the Social Welfare Sector⁵⁹.

The Vision of the HRC is stated to “ensure human rights for all, and to promote and protect the rule of law”⁶⁰. The Mission of the HRC includes “protecting human rights for all in law, policy and in practice”⁶¹. The HRC therefore concerns itself about all citizens. The inclusion of monitoring of the implementation of disability policy by the HRC reinforces the equality of persons with disability as citizens of this country in all matters related to Human Rights as it does in law. Within its mandate the HRC may set up a Committee or similar to monitor Disability Policy including the fulfillment of rights. Persons with disabilities will be represented on this committee (or similar) as key stakeholders⁶².

Some have expressed a preference for an independent Disability Rights Commission to carry out the monitoring function. It will then be the only marginalized group of citizens having its own independent commission. One needs therefore to be aware of the danger of such an action moving people with disability away from inclusion and equality to be marked as a

⁵⁸ National Policy on Disability, op cit 12

⁵⁹ CRPD Article 33.2

⁶⁰ Human Rights Commission of Sri Lanka <http://hrcls.lk/english/about-us/>

⁶¹ Human Rights Commission of Sri Lanka <http://hrcls.lk/english/about-us/>

⁶² CRPD Article 33.3

separate group of citizens. This could be considered to be segregating them once again.

LEGISLATION FOR POLICY IMPLEMENTATION

The legislation in force at the present time is the “Protection of the Rights of Persons with Disabilities Act, No. 28 of 1996⁶³. This does not take into account any policy developments since that time or of the CRPD and is therefore no longer valid.

Development of Disability law: Following approval of the National Policy for Disability in 2003⁶⁴ the responsible ministry appointed an independent committee⁶⁵ in 2004 to draft the first Disability Rights Bill (DRB)⁶⁶. A preliminary draft translated into Sinhala and Tamil was open to the general public and relevant changes suggested were incorporated into the first draft. This was presented to Cabinet by the responsible Ministry as required at the time and approval was obtained for the first draft of the DRB (2006)⁶⁷. The committee continued assisting the ministry to negotiate first with the Legal Draftsman (LD) and then the office of the Attorney General until 2009⁶⁸.

In 2009 a new minister rejected the existing draft and had it re-written by an attorney whose name was not disclosed. Succeeding ministers have had sequential drafts re-written anew, with numerous redrafts and revisions made over time by various individuals (often unknown) and groups with many being submitted to the Legal Draftsman. None of these draft bills have gone any further than the Legal Draftsman. Mostly these drafts were available only to members of the National Council for Persons with Disabilities (NCPD)⁶⁹.

The most recent draft made in 2019 by another committee appointed by the ministry is presently again with the Legal Draftsman⁷⁰. This draft bill of 2019⁷¹ fails to take into account

⁶³ Protection of the Rights of the Persons with Disabilities Act, No 28 of 1996 (Ministry of Social Welfare)

⁶⁴ National Policy on Disability (2004) op cit 12

⁶⁵ Members of the committee were appointed in their individual capacities and received no instructions from the Ministry except for the broad mandate. They were accountable to the Ministry Secretary.

⁶⁶ Committee appointed by the Minister included Dr. Padmani Mendis Disability Activist, Chairperson, and four Attorneys-at-Law namely Mrs. Lakmali Cabral, Dr. Mallika Ganasinghe, Ms. Maheshwary Velauthan and Mr. R.M.P.H. Gunaratne. Mr. Gunaratne also represented the disability sector.

⁶⁷ Disability Rights Bill (DRB) draft of January 31 2006. Ministry of Social Welfare

⁶⁸ Padmani Mendis: interactions with the responsible ministry and members of the National Council for Persons with Disabilities 2004 - 2019

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ draft 28 March 2019 (revised again and submitted to Legal Draftsman)

the implementation mechanism called for in Article 33.1 of the CRPD.

This is the ad-hoc process by which the current draft came to be. Clearly a cancellation of all previous drafts of the Disability Rights Bill, which has, at various times, been called by various names, is called for. The costs incurred are regretted, but persons with disabilities deserve the best that the Government can provide. With this it is essential that protective and promotive national legislation is appropriate and relevant and takes into account the maximum that the state can offer in relation to its will and its national and international commitments (NPD and CRPD), while taking into account also all available resources, financial and otherwise.

Recommendation regarding legislation: The process of drafting a Disability Rights law be started again from the beginning as a new draft bill. Designed to be the enabling legislation for the CRPD⁷², it may be based on this Policy Brief which contains a synopsis of the National Policy on Disability (Section Three). It needs also to legislate for the implementing and monitoring mechanisms described in this section.

Taking into consideration the complexity of the proposed multidimensional content of a Disability Rights Bill (DRB), it is also recommended that the Law Commission of Sri Lanka be requested to draft the new Bill. It can be expected then that proper and open procedures will be followed in the preparation of a new Disability Rights Bill.

⁷² Following articles in the CRPD have not been included here as Policy. They are first generational rights that do not require positive actions by the state and are to be included in enabling legislation; Articles 10, 12, 14 – 18, 21- 23.

Disability Policy Brief

Padmani Mendis and Binendri Perera

Sri Lanka has had a Rights-based National Policy on Disability since 2003. The UN Convention on the Rights of Persons with Disabilities (CRPD) was ratified in 2016. To implement these a National Action Plan on Disability was approved in 2014 and two National Human Rights Action Plans (2011 – 2015 and 2016 – 2020) have included disability. Yet no meaningful steps have been taken to date to alleviate disadvantage and distress and improve the quality of life of persons with disabilities in the country through the achievement of their Rights.

This publication is meant to be used by law makers, administrators and other senior decision makers to assist them in deciding on appropriate rights-based policies and how these may be implemented. It informs persons with disabilities and all interested parties about the current status of the ongoing Dialogue on Disability Rights. In so doing it aims to further enhance continuing discourse, discussion, debate and consensus leading to action that will draw closer the realization of the Rights of Persons with Disabilities in Sri Lanka.



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