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**‘Out of the Shadows’:  
War-affected Women with  
Disabilities in Sri Lanka**

**Final Report**

Dinesha Samararatne,  
Karen Soldatic  
*Western Sydney University*  
and  
Binendri Perera

2018



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Ms M.H. Rasika is a woman with disabilities who is advocating for the rights of people with disabilities. This artwork is an expression of Ms M.H. Rasika's thoughts on reading *A Study of War-affected Women with Disabilities in Sri Lanka: Pre-consultation Report*. She pondered on how all the recommendations mentioned therein might not become a reality and the situation of women with disabilities in such a context. This is her first artwork.

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## **Executive Summary**

Over recent years disability has become a core concern of global, national and local development initiatives. Global development donors are increasingly targeting this area for investment as it is now well recognised that disability inclusion is integral to securing processes of community peace-building for long-term sustainable social cohesion.<sup>1</sup> A growing body of scholarly research and development practice initiatives have emerged in the area in response to this new agenda.<sup>2</sup> Despite these efforts, women with disabilities remain the most marginalised from both the nascent scholarly research and the social policy and practice of disability inclusion.<sup>3</sup>

Women with disabilities are also the most vulnerable group in post-war and post-conflict situations, experiencing the highest levels of gender-related violence, abject poverty, stigmatisation and exclusion.<sup>4</sup> There is an urgent need to understand the impact of long-term war and conflict on women with disabilities, and particularly under transitional arrangements with the end of armed conflict. There is almost no research that examines the day to day lives of women with disabilities within post-war or post-conflict contexts. Nor is there any substantive research that documents their subjective experiences of transitional governance, policy and programming, and how they are included and/or excluded from a society emerging from protracted armed conflict.

This report, drawing upon disability-inclusive methodologies of co-creation, development and engagement, maps the lived experiences of women with disabilities living within the war-affected areas of Sri Lanka. 'War affected' is defined in this work to include women from areas where sustained hostilities took place, that is the Northern and Eastern provinces; women from the 'border-villages' of the primary areas where hostilities took place; women from a community expelled from the Northern and Eastern provinces and living in Puttalam, as long-term internally

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<sup>1</sup> Economic and Social Commission for Asia and the Pacific, *Disability at a Glance 2012: Strengthening the Evidence Base in Asia and the Pacific* (Thailand: ESCAP, 2012) <<http://www.unescap.org/publications/disability-glance-2012-strengthening-evidence-base-asia-and-pacific>> accessed 13 December 2017.

<sup>2</sup> Nora Groce et al., *Poverty and Disability – A Critical Review of the Literature in Low and Middle-Income Countries*, Working Paper Series No. 16 (London: University College London, 2011).

<sup>3</sup> United Nations Commission on the Status of Women, *Rural Women and Girls with Disabilities: Economic Empowerment and Political Participation*, 56th Session of the United Nations Commission on the Status of Women (New York, 28 February 2012).

<sup>4</sup> Dinesha Samararatne and Karen Soldatic, 'Inclusions and exclusion in law: experiences of women with disability in rural and war-affected areas in Sri Lanka' *Disability & Society* 30, no. 5 (2015): 759.

displaced persons; women from the Southern Province; and women from the *Malayaha* community.

The research entailed a six-stage process that significantly focused on building the research capacity of women with disabilities and their advocates, enabling their participation in the project as expert knowers of the interstice of gender and disability under transitional arrangements. Spanning a period of more than 12 months of fieldwork, the outcome of the research is a clear set of recommendations to advance the rights of women with disabilities in law, policy and institutional practice:

1. That the Sri Lankan Government implement the United Nations Convention on the Rights of Persons with Disabilities and the Convention on the Elimination of All forms of Discrimination against Women, including ongoing periodic review to identify gaps and issues in need of redress in relation to the interstice of gender and disability.
2. That the Sri Lankan Government adopt and design mainstreaming strategies of disability inclusion across governmental departments and institutions to ensure that disability rights, accessibility and inclusion are a core consideration of national and local law, policy, infrastructure development and programming, and that this includes high-level annual parliamentary reporting of annual targets, developments and outcomes.
3. That the Sri Lankan Government undertake significant reform of the national census survey, particularly redesigning its process of categorisation and disaggregation in relation to disability identity and gender, including, but not limited to, women with congenital disabilities, women with disabilities created due to the war and women heads of household with disabilities, alongside identifying daily activity restrictions and associated levels of required support. Such rich and nuanced data is necessary to ensure the long-term development and implementation of appropriate government policy and funding for progressive disability rights realisation.
4. That the Sri Lankan Government establish a national presidential directed committee to drive the necessary institutional reform to advance disability rights realisation across all parliamentary responsibilities and portfolio areas. This will include the development of



reform strategies with allocated budgetary provisions that encompass broad-scale consultation with disability rights organisations and people with disabilities.

5. That the Sri Lankan Government establish a research and public consultation fund to develop well-grounded knowledge of the lived experience of disability, including the central role of public policy in redressing disability discrimination, poverty and disadvantage.
6. That the Sri Lankan Government recognise the unique needs of war-affected persons with disability, specifically women with disabilities, and design, develop and implement specific programs to ensure longevity of social inclusion and economic participation of this group.
7. That the Sri Lankan Government implement an 'access to justice' program to effectively facilitate processes of inclusion for women with disabilities, including physical accessibility of the built environment and sanitation facilities; institutional processes and procedures that are non-discriminatory; and the funding and provision of disability communication facilitators, such as sign interpreters, alongside material in accessible formats, such as braille and plain language formats for all local language groups, and support for people with intellectual disability, and so forth.
8. That the Sri Lankan Government implement a disability accessible training program within the national education curriculum on legal literacy to build the capacity of women with disabilities to engage with legal processes and institutions, and to develop the capacity of non-disabled citizens to identify issues of disability discrimination, exclusion and marginalisation.
9. That civil society organisations mainstream disability as a core area for programs, research and advocacy, and partner with advocates of the rights of people with disabilities and their organisations in sustained ways, paying due attention to the impact of the intersectionality of gender, disability, ethnicity and so forth, particularly in post-war contexts.
10. That international organisations and international donor agencies with human rights mandates ensure the inclusion of disability as an area of concern and identify the specific issues facing women with disabilities.

11. That future inclusive research with women with disabilities examine both public and private issues, such as the right to family, reproductive rights and sexuality; accessibility to public and private institutions, including the banking and financial sector; and service provision at key transitional points, including support for ageing.

## **Acknowledgements**

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*Dinesha Samararatne, Karen Soldatic and Binendri Perera*

## **Acronyms**

CEDAW	Convention on Elimination of All forms of Discrimination against Women
NSPD	National Secretariat for Persons with Disabilities
OHCHR	Office of the United Nations High Commissioner for Human Rights
PRC	Public Representations Committee
CRPD	Convention on the Rights of Persons with Disabilities
UN	United Nations

## 1 Background

### 1.1 Women with disabilities in the post-war context

According to the census statistics of 2012, 8.7 per cent of the Sri Lankan population have disabilities, of which about 57 per cent are women.<sup>5</sup> This includes women with visibility, audibility, mobility, cognition, self-care and communication disabilities. Prevalence of visibility, audibility, mobility and cognition difficulties in women is significantly higher compared to men.<sup>6</sup> Kandy, Trincomalee and Puttalam are the districts that report the highest populations of women with disabilities.<sup>7</sup>

Statistics on education activities of people with disabilities are not disaggregated according to gender. Therefore it remains unclear how many girls with disabilities are accessing appropriate inclusive education, which is critical to assure their transition to employment and economic independence in adult life.<sup>8</sup> Employment of persons with disabilities nationally is only at 41.1 per cent, 61.1 per cent of whom are men and only 24.4 per cent are women with disabilities.<sup>9</sup>

Gender-based statistics of the Department of Census and Statistics do not provide any details about women with disabilities.<sup>10</sup> That national census data is not disaggregated in relation to the intersection of gender and disability is clear evidence of the lack of understanding across key domains of public policy, such as transport, planning, housing, education and political participation. Consequently, women with disabilities remain invisible not only in statistical

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<sup>5</sup> United Nations Regional Meeting on Disability Measurement and Statistics in support of the 2030 Agenda for Sustainable Development and the 2020 World Population and Housing Census Programme, 'Session 6 – Approaches used to measure disability through censuses: National experiences – Sri Lanka' (2016) <<https://unstats.un.org/unsd/demographic-social/meetings/2016/bangkok--disability-measurement-and-statistics/Session-6/Sri%20Lanka.pdf>> accessed 28 October 2017.

<sup>6</sup> With prevalence rates of 60, 23, 47 and 21 respectively per 1,000 persons (according to n 5).

<sup>7</sup> Census of Population and Housing of Sri Lanka (Provisional Data Based on the 5% Sample), 'Information on Disabled Persons' (2012) <[http://socialemwelfare.gov.lk/web/images/content\\_image/pdf/statistics/statics.pdf](http://socialemwelfare.gov.lk/web/images/content_image/pdf/statistics/statics.pdf)> accessed 28 October 2017.

<sup>8</sup> United Nations Regional Meeting on Disability Measurement and Statistics in support of the 2030 Agenda for Sustainable Development and the 2020 World Population and Housing Census Programme (n 5).

<sup>9</sup> Calculated as the ratio of the employed to the working-age population with disabilities. Census of Population and Housing of Sri Lanka, 'Population Tables', (Department of Census and Statistics, 2012), cited in Law & Society Trust, *Response to Request for Information from the Special Rapporteur on the Rights of Persons with Disabilities in Sri Lanka* (Colombo: Law & Society Trust, 2016) 12 <[http://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Disability/ProvisionSupport/NGOs/Law%20and%20Society%20Trust%20Sri%20Lanka.docx&action=default&DefaultItemOpen=1](http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Disability/ProvisionSupport/NGOs/Law%20and%20Society%20Trust%20Sri%20Lanka.docx&action=default&DefaultItemOpen=1)> accessed 28 October 2017.

<sup>10</sup> Department of Census and Statistics, Sri Lanka, 'Gender Statistics: Tables' (2012) <<http://www.statistics.gov.lk/Gender%20Statistics/MoreInfo.php>> accessed 28 October 2017.

deliberations on the status of people with disabilities as well as the status of women, but also in core public policy debates, infrastructure development and concepts of citizenship wellbeing.

This statistical marginalisation of women with disabilities is reaffirmed by international initiatives that have focused on dimensions of war and reconciliation since 2009. International engagement in the war-related human rights issues of Sri Lanka is evident at two levels. Firstly, through the resolutions of the United Nations (UN) Human Rights Council, which call for investigation of human rights violations during the period of war.<sup>11</sup> The resolutions call for publication of these findings and establishment of national and international mechanisms for accountability and reconciliation.<sup>12</sup> UN resolution 30/1 (2015) was co-sponsored by Sri Lanka, which indicates the country's cooperation in reconciliation and accountability.<sup>13</sup> Even though these resolutions do not focus on specific issues, they emphasise the significance that should be accorded to resolving specific human rights issues in the domestic context, including rights of war-affected women with disabilities.

Secondly, there have been several reports compiled by international experts, such as the Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka (2011),<sup>14</sup> the Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka (2012)<sup>15</sup> and the Report of the Office of the High Commissioner on Human Rights (OHCHR).<sup>16</sup> These reports discuss alleged human rights violations, focusing specifically on the period of war. Understanding the nature and scope of human rights violations faced by various people during the war is crucial to identifying and examining their standing in the post-war context, that is, what types of injustices are reproduced within transitional arrangements due to historical injustices and inequalities. Nevertheless, these reports do not focus on the intersectionality of

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<sup>11</sup> Law & Society Trust, *Sri Lanka: State of Human Rights 2013* (Colombo: Law & Society Trust, 2014); Law & Society Trust, *Sri Lanka: State of Human Rights 2014* (Colombo: Law & Society Trust, 2014) <<http://lawandsocietytrust.org/publications/sri-lanka-state-of-human-rights-2014-b620b8542eff7d0cd8ea2ddf2659bd3.html>>; Law & Society Trust, *Sri Lanka: State of Human Rights 2015* (Colombo: Law & Society Trust, 2015).

<sup>12</sup> Human Rights Council, 'Promoting reconciliation, accountability and human rights in Sri Lanka', A/HRC/RES/25/1 (2014) <[http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/25/1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/1)> accessed 30 November 2017.

<sup>13</sup> Human Rights Council, 'Promoting reconciliation, accountability and human rights in Sri Lanka', A/HRC/RES/30/1 (2015) <[https://digitallibrary.un.org/record/812282/files/A\\_HRC\\_RES\\_30\\_1-EN.pdf](https://digitallibrary.un.org/record/812282/files/A_HRC_RES_30_1-EN.pdf)> accessed 30 November 2017.

<sup>14</sup> *Report of the Secretary General's Panel of Experts on Accountability in Sri Lanka* (2011) <[http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf)> accessed 30 November 2017.

<sup>15</sup> *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka* (2012) <[http://www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf)> accessed 30 November 2017.

<sup>16</sup> *Report of the OHCHR Investigation on Sri Lanka* (Geneva: OHCHR, 2015) <<http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>> accessed 30 November 2017.

disability and gender in the post-war context, and thus fail to bring into the spotlight the issues faced by war-affected women with disabilities.

Meanwhile, the government in its post-war initiatives has taken two broad approaches which are to complement each other, namely, transitional justice mechanisms and constitutional reforms. Both these approaches, however, have shown a common pattern of slow progress in terms of materialising into effective practice. The report of the Lessons Learnt and Reconciliation Commission was the first governmental effort to assess the overarching repercussions of war. While examining many areas of concern, this report recognises persons with disabilities and women as vulnerable groups and discusses them separately without sufficient appreciation of the intersectionality of gender and disability.<sup>17</sup>

However, the Report of the Public Representations Committee on Constitutional Reform (PRC Report), the first attempt in a domestic constitutional reform process to consult the public, expressly refers to women with disabilities in its suggestions on directive principles of state policy<sup>18</sup> and fundamental rights.<sup>19</sup> The PRC Report recommends affirmative action for women with disabilities, emphasising the multiple forms of discrimination faced by women and girls with disabilities.<sup>20</sup> The Report of the Sub-Committee on Fundamental Rights recommends recognition of several rights of persons with disabilities.<sup>21</sup> This is significant in that it is the first time that the rights of persons with disabilities have gained express recognition in the country's constitutional reform discourse.

The experiences of war-affected women with disabilities are captured to some extent in the Report of the Consultation Task Force on Reconciliation Mechanisms (CTF Report).<sup>22</sup> The report, based on national-level and zonal-level consultations conducted throughout the country,

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<sup>17</sup> Commission of Inquiry on Lessons Learnt and Reconciliation, *Report of the Commission of Inquiry on Lessons Learnt and Reconciliation* (2011) 293 <<http://slembassyusa.org/downloads/LLRC-REPORT.pdf>> accessed 30 November 2017.

<sup>18</sup> Public Representations Committee on Constitutional Reform, *Report on Public Representations on Constitutional Reform* (2016) 88 <[http://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](http://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)> accessed 30 November 2017.

<sup>19</sup> *ibid.* 122–123.

<sup>20</sup> *ibid.* 123.

<sup>21</sup> The Steering Committee of the Constitutional Assembly, *Report of the Sub-Committee on Fundamental Rights* (2016) 21 <<http://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf>> accessed 30 November 2017.

<sup>22</sup> Consultation Task Force on Reconciliation Mechanisms, *Final Report of the Consultation Task Force on Reconciliation Mechanisms*, Vol 1 (Colombo: Secretariat for Coordinating Reconciliation Mechanisms, November 2016) <<http://www.scrn.gov.lk/documents-reports>> accessed 30 November 2017.

delineates the domestic requirements for transitional justice in Sri Lanka.<sup>23</sup> This report states the importance of considering each main mechanism of transitional justice through the perspective of gender.<sup>24</sup> Gender stereotypes, patriarchal attitudes, discrimination and violence that women grapple with on a daily basis in the post-war context is given explicit attention.<sup>25</sup> Nevertheless, how disability increases these gendered vulnerabilities is not highlighted.

The inclusion of persons with disabilities in the transitional justice process also receives special attention beyond the scope of the four main mechanisms outlined in the CTF Report. The report concludes that vulnerability has many layers, such as disability, gender, poverty, ethnicity and political identity, that is, affiliation with the Liberation Tigers of Tamil Eelam (LTTE).<sup>26</sup> Even though the CTF Report makes comprehensive recommendations to include persons with disabilities in mechanisms for transitional justice as well as in society in general, specific recommendations to assist women with disabilities in war-affected communities is lacking.<sup>27</sup>

While international recognition of war-affected women with disabilities in Sri Lanka's post-war context has, unfortunately, been minimal, governmental recognition of women with disabilities has been inconsistent and inadequate. The National Policy on Reconciliation is an example of this gap as there is no recognition of disability as a critical factor that needs to be acknowledged and addressed in the reconciliation process.<sup>28</sup>

## ***1.2 Law, policy and disability***

While Sri Lanka has accepted obligations under international human rights law in relation to disability, incorporation of these obligations into domestic law has been limited. Such incorporation is further hindered by the executively and legislatively entrenched charity-based approach to disability. This section considers the status of law and policy on disability and the hindrances encountered in their formulation and practice.

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<sup>23</sup> *ibid*, Executive Summary, 115–16, 159, 195, 269–76.

<sup>24</sup> *ibid* 88.

<sup>25</sup> *ibid*. 351.

<sup>26</sup> *ibid*.

<sup>27</sup> *ibid*. 353–354.

<sup>28</sup> Office for National Unity and Reconciliation, 'National Policy on Reconciliation and Coexistence' (2017) <<http://www.onur.gov.lk/images/download/NationalPolicy-English.pdf>> accessed 1 December 2017.



### *1.2.1 Disability and gender in international law*

Ratification and accession to international treaties gives rise to legal obligations which the state parties are bound to give effect to.<sup>29</sup> Sri Lanka has actively recognised disability under international law through ratification and accession of treaties on disability. The United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>30</sup> was signed by Sri Lanka in 2007<sup>31</sup> and ratified in 2016.<sup>32</sup> This is the chief treaty which emphasises the gamut of rights enjoyed by persons with disabilities and lays down comprehensive mechanisms for their implementation.

The CRPD recognises multiple forms of discrimination faced by women with disabilities, and that often these are compounding in their effects, in the preamble itself and also through a stand-alone article. Article 6 sets out twofold obligations upon the state to eliminate aggravated discrimination faced by women with disabilities and to take positive measures to ensure their liberty, rights, participation and empowerment. Additionally, equality among men and women is a guiding principle as per Article 3 of the CRPD. General Comment 3 of the CRPD elaborates the scope of rights enjoyed by women with disabilities and delineates general and specific obligations of the state to respect, protect and fulfil these rights.<sup>33</sup> General Comment 3 highlights that women with disabilities suffer heightened vulnerabilities during humanitarian emergencies and armed conflicts.<sup>34</sup> These women are more susceptible to sexual violence and they have the least access to assistance and justice.<sup>35</sup>

The Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), which Sri Lanka ratified in 1981,<sup>36</sup> prohibits discrimination based on gender and disability in Article 3. This is emphasised in General Recommendation No. 18 of the CEDAW which

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<sup>29</sup> MN Shaw, *International Law*, 6th ed (Cambridge: Cambridge University Press, 2008) 133–137.

<sup>30</sup> (adopted 24 January 2007, entry into force 3 May 2008) 2515 UNTS 3 (UNCRPD).

<sup>31</sup> United Nations, Office of the High Commissioner for Human Rights, 'Ratification Status for Sri Lanka' <[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN)> accessed 28 October 17.

<sup>32</sup> *ibid.*

<sup>33</sup> Committee on the Rights of Persons with Disabilities, 'General comment No. 3 on women and girls with disabilities' (2016) <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en)> accessed 1 December 2017.

<sup>34</sup> *ibid.* 12–13.

<sup>35</sup> *ibid.*

<sup>36</sup> (adopted 18 December 1979, entry into force 3 September 1981) 1249 UNTS 13 (CEDAW).

specifically relates to women with disabilities.<sup>37</sup> General Recommendation No. 30 depicts state obligations towards women in post-conflict situations through reference to the elimination of violence, displacement and disarray, all prevalent in post-war contexts and through promotion of access to tri-generational rights.<sup>38</sup> In its Concluding Observations on the eighth periodic report of Sri Lanka, the CEDAW Committee states that temporary special measures need to be implemented to uphold the rights of women with disabilities.<sup>39</sup> The Concluding Observations further highlight the gender-based and sexual violence faced by women with disabilities in war-affected communities.<sup>40</sup> Furthermore, lack of education, employment opportunities and political participation by women with disabilities is elaborated in the Concluding Observations. They evidence the extent to which women with disabilities are denied the enjoyment of their economic, social and cultural rights.

Sri Lanka also acceded to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty')<sup>41</sup> in 2016.<sup>42</sup> This treaty combines intellectual property law and human rights law to promote accessibility to books and other printed materials in formats required by persons with visual impairments.<sup>43</sup> This treaty is significant in the promotion of tri-generational rights, as mentioned earlier.

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<sup>37</sup> Committee on the Elimination of Discrimination Against Women, 'General recommendation No. 18: Disabled women' (1991)  
<[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_4729\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4729_E.pdf)> accessed 1 December 2017.

<sup>38</sup> Committee on the Elimination of Discrimination Against Women, 'General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations' (2013)  
<<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>> accessed 1 December 2017.

<sup>39</sup> Committee on the Elimination of Discrimination against Women, 'Concluding observations on the eighth periodic report of Sri Lanka', CEDAW/C/LKA/CO/8 (2017)  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/LKA/CO/8%20&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/LKA/CO/8%20&Lang=En)> accessed 1 December 2017.

<sup>40</sup> *ibid.*; prevalence of gender-based and sexual violence against women is noted in the Committee on Economic, Social and Cultural Rights, 'Concluding observations on the fifth periodic report of Sri Lanka', E/C.12/LKA/CO/5 (2017)  
<[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLKA%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fLKA%2fCO%2f5&Lang=en)> accessed 1 December 2017.

<sup>41</sup> 'The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled' ('the Marrakesh Treaty') (2013)  
<[http://www.wipo.int/wipolex/en/treaties/text.jsp?file\\_id=301016#art3](http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=301016#art3)> accessed 22 July 2017.

<sup>42</sup> The Official Governmental News Portal of Sri Lanka, 'Sri Lanka Accedes to the Marrakesh Treaty to Increase Access to Print Materials for Print Disabled Persons' (6 October 2016)  
<<https://www.news.lk/news/world/item/14622-sri-lanka-accedes-to-the-marrakesh-treaty-to-increase-access-to-printed-materials-for-print-disabled-persons>> accessed 28 October 2017.

<sup>43</sup> Kaya Koklu, 'The Marrakesh Treaty – Time to End the Book Famine for Visually Impaired Persons Worldwide', *International Review of Intellectual Property and Competition Law* 45, no. 7 (2014) 737–739, <https://doi.org/10.1007/s40319-014-0266-z>.

### 1.2.2 Constitutional and legislative incorporation of rights of persons with disabilities

The Sri Lankan legal framework on the rights of persons with disabilities has been weak. The Second Republican Constitution of 1978 does not enshrine rights of persons with disabilities as a stand-alone provision. Disability is not recognised as a prohibited ground of discrimination under Article 12 (2). Neither are persons with disabilities recognised as entitled to equality of opportunities stated under Article 27 (2) (6) of directive principles of state policy. Article 12 (4) is the only legal provision which recognises the interests of persons with disabilities in relation to 'special provisions' to be made for their 'advancement'. However, *Re Local Authorities Elections (Amendment) Bill* states that 'special provisions' does not amount to affirmative action,<sup>44</sup> which can be demanded by the state as of right.

Judicial interpretation of the fundamental rights of persons with disabilities has been limited to one case which highlights the invisibility of persons with disabilities in the justice system. In *Dr. Ajith Perera v Attorney General*<sup>45</sup> the court ordered that accessibility regulations of 2006 and 2009 should be immediately implemented. Despite this, such implementation has not yet been achieved.

It must be noted, however, that in the ongoing constitutional reform process some progress has been achieved. Recommendations have been made for comprehensive recognition of fundamental rights and language rights of persons with disabilities in the PRC Report<sup>46</sup> and in the Report of the Sub-Committee on Fundamental Rights.<sup>47</sup>

Current legislative recognition of persons with disabilities is by way of *Protection of the Rights of Persons with Disabilities Act*, No. 28 of 1996, amended by Act No. 33 of 2003 and *Elections (Special Provisions) Act*, No. 28 of 2011. The former legislation is outdated in comparison to international human rights law standards in two ways. Firstly, the definition of disability in terms of dependency<sup>48</sup> gives rise to negative connotations contrary to the dignity, liberty and autonomy of persons with disabilities. Secondly, recognition of the rights of persons with disabilities is

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<sup>44</sup> *Re Local Authorities Elections (Amendment) Bill* SC (Special Determination) 6/2010.

<sup>45</sup> SC FR No 221/2009 SC Minutes 27 April 2011.

<sup>46</sup> Public Representations Committee on Constitutional Reform (n 12) 122–124.

<sup>47</sup> The Steering Committee of the Constitutional Assembly (n 15) 4–5, 14–15.

<sup>48</sup> *Protection of the Rights of Persons with Disabilities Act*, No. 28 of 1996, Section 37.

limited to accessibility and opportunities in educational and employment spheres.<sup>49</sup> However, these provisions have been implemented as Sri Lankan education policy continues to segregate children with disabilities in special schools for the 'disabled' or in special units available in schools.<sup>50</sup> Furthermore, Public Administration Circular No. 27/88, which states that 3 per cent of all government bodies should consist of employees with disabilities, has not been implemented.<sup>51</sup>

The *Elections (Special Provisions) Act* attempts to ensure that franchise, which is a means by which sovereignty of people is exercised in terms of Article 3 of the 1978 Constitution, is enjoyed by persons with disabilities. The Act provides that persons with visual impairment may vote through an accompanying person. This provision in fact violates the confidentiality of such person's ballot and jeopardises their opportunity to exercise their franchise.

Whereas new legislation on par with international human rights standards is a need of the hour given the country's ratification of the CRPD, such legislation has still not seen the light of day. The latest version of the *Protection of the Rights of Persons with Disabilities Bill 2017*, which is a draft produced by the Ministry of Social Welfare, does not adequately consider the views of persons with disabilities and advocates.<sup>52</sup> The Ministry only released it when the Right to Information Commission ordered its immediate disclosure to protect the public interest, particularly the interests of persons with disabilities.<sup>53</sup> Information as to when this draft will be submitted for Cabinet approval was not provided.<sup>54</sup>

The *Protection of the Rights of Persons with Disabilities Bill 2017* that was released is progressive in its attempt to recognise disability as a broader issue that should be resolved by the Prime Minister as well as Cabinet of Ministers. Accordingly, Secretaries of the Prime Minister's

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<sup>49</sup> *ibid*, Section 23.

<sup>50</sup> Law & Society Trust (n 9) 11.

<sup>51</sup> Padmani Mendis, *Training and Employment of People with Disabilities: Sri Lanka 2003* (Bangkok: International Labour Organization, 2004) 18 <[http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_113197.pdf](http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_113197.pdf)> accessed 13 December 2017; National Human Resources and Employment Policy, 'Employment Opportunities for Vulnerable Groups, Disabled Persons and those in Under Developed Regions' (Secretariat for Senior Ministers, Sri Lanka, 2017) <[http://www.nhrep.gov.lk/index.php?option=com\\_content&view=article&id=82&Itemid=59&lang=en](http://www.nhrep.gov.lk/index.php?option=com_content&view=article&id=82&Itemid=59&lang=en)> accessed 18 December 2017.

<sup>52</sup> International Centre for Ethnic Studies, 'Equality for Persons with Disabilities' (Colombo: ICES, 2016) <<http://ices.lk/wp-content/uploads/2016/08/ICES-Disability-Brief-29-Aug-16.pdf>> accessed 28 October 2017.

<sup>53</sup> *Dr. Mario Gomez v Ministry of Social Empowerment, Welfare and Kandyan Heritage* RTIC Appeal 51/2018 <[http://www.rticommission.lk/web/index.php?option=com\\_content&view=article&id=380:mario-gomez-v-ministry-of-social-empowerment-welfare-and-kandyan-heritage-rticappeal-051-2018&catid=48:completed-in-person-hearings-2018&lang=en&Itemid=383](http://www.rticommission.lk/web/index.php?option=com_content&view=article&id=380:mario-gomez-v-ministry-of-social-empowerment-welfare-and-kandyan-heritage-rticappeal-051-2018&catid=48:completed-in-person-hearings-2018&lang=en&Itemid=383)> accessed 23 June 2018.

<sup>54</sup> *ibid*.

Office and ministries of health, finance, education and vocational training are ex officio members of the National Council for Persons with Disabilities, alongside representatives of persons with disabilities and their advocates.<sup>55</sup> A Coordinating Committee of Public Officers is to be established to promote the rights of persons with disabilities in diverse government sectors.<sup>56</sup> However, the rights of persons with disabilities only receive indirect recognition in the bill as principal functions of the Council,<sup>57</sup> which relegates the autonomous entitlement of such rights by persons with disabilities. And the Minister of Social Welfare still retains significant power in the appointments made to the Disability Secretariat,<sup>58</sup> and the power to make regulations under Section 58.

### *1.2.3 State policies on disability*

Policy documents such as the National Policy on Disability of 2003<sup>59</sup> have progressively combined international human rights law standards with the status and needs of persons with disabilities in the domestic context. Meanwhile, the Accessibility Regulations of 2006 and 2009<sup>60</sup> and the National Action Plan for Disability of 2013<sup>61</sup> lay down detailed plans for implementation

The National Human Rights Action Plan 2011–2015 and the National Human Rights Action Plan 2016–2020 explore the rights of persons with disabilities in the broader context of human rights. The National Policy on Reconciliation and Coexistence of 2017 also emphasises gender sensitivity as a cross-sectional principle of reconciliation.<sup>62</sup> Yet the impact of these policies has not been felt on the ground by persons with disabilities.

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<sup>55</sup> Section 2, *Protection of the Rights of Persons with Disabilities Bill 2017*.

<sup>56</sup> Section 37, 38.

<sup>57</sup> Section 14, *ibid*.

<sup>58</sup> Section 27, *ibid*.

<sup>59</sup> Ministry of Social Welfare, 'National Policy on Disability for Sri Lanka' (Colombo: Government of Sri Lanka, 2003) <[http://socialwelfare.gov.lk/web/images/content\\_image/pdf/legislation/disability\\_policy.pdf](http://socialwelfare.gov.lk/web/images/content_image/pdf/legislation/disability_policy.pdf)> accessed 30 November 2017.

<sup>60</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, 'Regulations' (17 October 2006) <[http://www.hrcsl.lk/PFF/Library\\_Domestic\\_Laws/regulations/1467\\_15%20Disability%20Rights.%20E.pdf](http://www.hrcsl.lk/PFF/Library_Domestic_Laws/regulations/1467_15%20Disability%20Rights.%20E.pdf)> accessed 30 November 2017; The Gazette of the Democratic Socialist Republic of Sri Lanka (18 September 2009) <[http://www.socialwelfare.gov.lk/web/images/content\\_image/pdf/legislation/1619-24e.pdf](http://www.socialwelfare.gov.lk/web/images/content_image/pdf/legislation/1619-24e.pdf)> accessed 30 November 2017.

<sup>61</sup> Office of the Cabinet of Ministers, Sri Lanka, 'Press Briefing of Cabinet Decision taken on 2013-12-16: Implementation of the National Action Plan for Disability' (2013) <[http://www.cabinetoffice.gov.lk/cab/index.php?option=com\\_content&view=article&id=16&Itemid=49&lang=en&ID=5312](http://www.cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&ID=5312)> accessed 30 November 2017.

<sup>62</sup> Office for National Unity and Reconciliation (n 28).

Budgetary proposals for 2018 make specific allocations for entrepreneurship of women, specifically war-affected women.<sup>63</sup> Further finances are allocated for special programs to address the needs of women with disabilities in the North and East.<sup>64</sup> This is the first time that budgetary allocations have been made with the specific focus of empowering war-affected women with disabilities.

#### *1.2.4 Entrenchment of charity-based approach*

Disability is executively and legislatively considered to be a matter under the sole responsibility of the Ministry of Social Empowerment, Welfare and Kandyan Heritage. The positioning of the National Council on Disability, which is the legislative mechanism established to take decisions on disability, and the National Secretariat for Persons with Disabilities (NSPD), which is to assist the former body within the Ministry, is a formal affirmation of the Ministry's responsibility.<sup>65</sup> The segregation is further entrenched by other governmental bodies that do not consider persons with disabilities in their administrative outreach.<sup>66</sup> Such segregation fuels the perception that persons with disabilities are recipients of welfare rather than holders of rights.

Several disability-specific benefits are available from the Ministry of Social Empowerment, Welfare and Kandyan Heritage for persons with disabilities by way of financial and other aids. A monthly payment of Rs. 3,000 is given to persons with disabilities in economic need.<sup>67</sup> A further Rs. 250,000 is granted for the construction of a house. Furthermore, aids are provided by way of a lump sum for self-employment assistance, educational assistance, medical assistance and medicine and travelling expenses.<sup>68</sup> Under other aids, assistive devices are provided based on individual need.<sup>69</sup> Furthermore, the NSPD conducts courses on sign language and braille.<sup>70</sup> These financial aids link disability with poverty and also subject persons with disabilities to

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<sup>63</sup> Minister of Finance, *Budget Speech 2018* (Colombo: Government of Sri Lanka, 2017) 16, 49  
<<https://www.parliament.lk/files/pdf/budget/2018/budget-speech-2018.pdf>> accessed 1 December 2017.

<sup>64</sup> *ibid* 67.

<sup>65</sup> Ministry of Social Empowerment, Welfare and Kandyan Heritage, 'National Council & National Secretariat for Persons with Disabilities' (2017)  
<[http://www.socialemwelfare.gov.lk/web/index.php?option=com\\_content&view=article&id=6&Itemid=117&lang=en](http://www.socialemwelfare.gov.lk/web/index.php?option=com_content&view=article&id=6&Itemid=117&lang=en)> accessed 30 November 2017.

<sup>66</sup> Law & Society Trust (n 9) 14.

<sup>67</sup> Ministry of Social Empowerment, Welfare and Kandyan Heritage, 'Services for Persons with Disabilities' (2017)  
<[http://www.socialemwelfare.gov.lk/web/index.php?option=com\\_content&view=article&id=30&Itemid=151&lang=en#sign-language-courses](http://www.socialemwelfare.gov.lk/web/index.php?option=com_content&view=article&id=30&Itemid=151&lang=en#sign-language-courses)> accessed 28 October 2017.

<sup>68</sup> *ibid*.

<sup>69</sup> *ibid*.

<sup>70</sup> *ibid*.

cumbersome procedures in terms of proving eligibility. Discretion accorded to local administrative officers, such as the district secretaries, results in inconsistent procedures that might not meet the required purposes of stipulated financial aid and assistance in all instances.<sup>71</sup>

### *1.2.5 Status of women with disabilities in transitional justice mechanisms*

Out of the four transitional justice mechanisms that Sri Lanka undertook to implement, two have been legislated for. The *Office of Missing Persons Act 2016* was passed while the CTF Report was being compiled.<sup>72</sup> And whereas the CTF Report states the importance of focusing on the consequences faced by women in the event their family is subjected to enforced disappearances,<sup>73</sup> the Act does not identify women or persons with disabilities within its legislative framework.

The *Office of Reparations Bill 2017*<sup>74</sup> contains progressive references to women and persons with disabilities. International human rights legal standards are explicitly incorporated by way of reference to the Sri Lankan Constitution's fundamental rights as well as those rights contained in international treaties that Sri Lanka has ratified, which necessarily includes the CRPD.<sup>75</sup> Further, Section 2 (d) states that there is a requirement for 'specialised' reparation policies to be designed and implemented on behalf of women victims and persons with disabilities.<sup>76</sup> This objective is reiterated in Section 7 (2) (b), which states that the Office of Reparations consult in the formulation of reparation policies for women and persons with disabilities. Given that the legislation is yet to be passed at the time of writing, it is difficult to ascertain their effectiveness in responding to the needs of women and persons with disabilities.

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<sup>71</sup> Law & Society Trust (n 5) 7.

<sup>72</sup> Consultation Task Force on Reconciliation Mechanisms (n 22) Executive summary xii.

<sup>73</sup> *ibid.* 195.

<sup>74</sup> Office of Reparations Bill 2017 < <http://www.rticommission.lk/web/images/pdf/18052018/saroor-reparation-draft.pdf>> accessed 23 June 2018. This bill was initially accessed by way of an appeal to the RTI Commission and the order issued thereupon, *Shreen Saroor v Prime Minister's Office RTIC Appeal 01/2018* <[http://www.rticommission.lk/web/index.php?option=com\\_content&view=article&id=417&ItemId=389&Itemid=389&lang=en](http://www.rticommission.lk/web/index.php?option=com_content&view=article&id=417&ItemId=389&Itemid=389&lang=en)> accessed 23 June 2018. Subsequently published in The Gazette of Democratic Socialist Republic of Sri Lanka Part II of June 22, 2018 (issued on 25 June 2018) <[http://www.documents.gov.lk/files/bill/2018/6/500-2018\\_E.pdf](http://www.documents.gov.lk/files/bill/2018/6/500-2018_E.pdf)> accessed 2 June 2018.

<sup>75</sup> Section 19, Office of Reparations Bill 2017.

<sup>76</sup> *ibid.*

## **2 Methodology and Research Design**

The methodological design of the project was grounded in disability-inclusive research principles and practices. Disability-inclusive research methodologies have been developed in direct response to the disability rights movement's demands for research that actively includes people with disabilities in all its stages, from initial identification of the research problem and guiding questions, to approaches to the collection of data and other empirical information, participation in the analysis of the findings and, finally, as key advocates in the dissemination of the research results. Thus, disability-inclusive research methodologies recognise that disabled people are 'expert knowers' of the everyday experiences of disability exclusion, discrimination and marginalisation, and therefore should be actively involved throughout, and directly inform, the core components of the research process.

In their extensive work with people with disabilities across the UK and Australia, Jan Walmsley and Kelley Johnson define disability-inclusive research methodologies as consisting of: 'a range of research approaches that traditionally have been termed "participatory", "action" or "emancipatory" ... Such research involves people who may otherwise be seen as subjects for the research as instigators of ideas, research designers, interviewers, data analysts, authors, disseminators and users.'<sup>77</sup>

To adopt such an inclusive research methodological approach, a number of guiding principles are central throughout the research process:

1. The research questions, methods and processes must be fully accessible to all persons with disabilities of whom the research has relevance
2. People with disabilities are treated with respect, and are acknowledged as experts, within the area of disability lived experience
3. People with disabilities are active participants within the research process, contributing to the formation of questions, the gathering of data and relevant information, the analysis and construction of findings, and finally, dissemination of results

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<sup>77</sup> Jan Walmsley and Kelley Johnson, *Inclusive Research with People with Learning Disabilities* (London: Jessica Kingsley, 2003), 10.



4. Materials, findings and processes are made fully accessible to all disability types, such as the development of plain language ethics forms and research questions, and the presentation of material in a range of alternative formats, such as braille, multiple languages, sign language and so forth.

To ensure the research project met these principles, the research design contained both a capacity developmental component and intensive training in disability policy knowledges and practices. In turn, the research design was staged throughout the project, as outlined below.

***Stage 1: Training on conducting semi-structured interviews with women with disabilities***

Research into the area of disability has increasingly highlighted the need to develop the capacity of persons with disabilities in order to ensure their vital participation in the research process as co-producers of disability knowledge and frameworks. This has been identified as critically important to ensure that disability research:

- examines issues of significance for persons with disabilities within their local context
- explores the ways in which persons with disabilities experience unique forms of discrimination, marginalisation and exclusion
- gives meaning and voice to persons with disabilities and their personal narratives of their individual lived experiences
- illuminates broader issues that persons with disabilities collectively experience due to social structures of exclusion and discrimination
- begins to document such experiences in order to fully realise strategies of intervention to further disability rights in law, policy and practice.

To this end, the full-week workshop held from 12 December to 16 December 2016 engaged, trained and developed the capacities of local-level disability advocates and service providers in a range of core skills and competencies with the aim to facilitate and sustain highly effective disability research beyond the life of the project.

### ***Stage 2: Training on disability rights and policy knowledges***

An inclusive training program was held over five days in December 2016 for researchers interested in participating in the research and data collection components. The following core areas of disability training were conducted with local disability advocates and service providers from across Sri Lanka. Training was provided by leading international and national disability and research specialists with extensive expertise in:

- global disability rights and practice
- international and national disability law and policy
- locally adaptive, applied social research methodologies
- disability-inclusive research methods.

The interdisciplinary research training was aimed at building the capacity of local disability advocates and service providers in new disability knowledges and frameworks, and building their capacity to apply these skills as social researchers and as co-producers of locally grounded disability research.

The program was designed and delivered as a partnership between the Law & Society Trust, Dr Dinesha Samararatne from the Faculty of Law, University of Colombo, Dr Karen Soldatic from Western Sydney University and Andi Schubert, Mark Schubert and Shashik Silva of the Social Scientists' Association, Sri Lanka. This multilayered partnership specifically targeted the rich diversity of skills that are required so that disability advocates and service providers can undertake highly effective disability research.

### ***Stage 3: Conducting the interviews in partnership with local organisations***

The third stage of the project involved reaching out to women with disabilities and interviewing them for the purpose of gathering qualitative research material. Semi-structured interviews were carried out in partnership with organisations and persons engaged in promoting the rights of people with disabilities at the regional level. AKASA (Association of Women with Disabilities), Viluthu, Navajeevana (Tangalle) and Women's Development Centre (Kandy) collaborated with the Law & Society Trust in the North Central, North, East, North West, South and Central provinces respectively in this endeavour. Members of these organisations who participated in the workshop in December carried out the interviews with women with disabilities who were

identified from the organisation's local-level disability advocacy. Interviews in the Central and East provinces were carried out by a trainee at the workshop in her individual capacity.

Interviews were carried out in accordance with the ethics of research, subject to the informed consent of the participants. They capture the life stories of women with disabilities of different ages and from different walks of life, their passion towards human rights and how they experienced the enormities of war. A total of 23 interviews were conducted with women with disabilities from the following districts: Anuradhapura, Polonnaruwa, Matara, Kandy, Batticaloa, Nuwara Eliya, Jaffna, Puttalam, Mannar and Mullaitivu.

#### ***Stage 4: Workshop and debrief on 26 May 2017***

A workshop and debrief session was conducted subsequent to carrying out the interviews with women with disabilities in war-affected areas. The session took place on 26 May 2017 at Helpage Sri Lanka, Raththanapitiya, Boralesgamuwa. While sharing experiences, certain trends and similarities were identified, which were documented to contribute to the final analysis of the data and the reporting of the key findings captured here in this report.

#### ***Stage 5: Dissemination of pre-consultation report***

The next component of the research design involved the written reporting of the research findings, drawing upon the data gathering and analysis stages, as outlined above. Multiple dissemination audiences were identified and relevant written reporting formats and styles, such as plain language summaries, braille and short reports, were developed in response to each of the various audiences. The languages used for dissemination are English, Sinhala and Tamil, alongside broad-scale electronic dissemination.

The process of dissemination engaged directly with the field interviewers of the study, who were often women with disabilities. Copies of the pre-consultation report were sent out to each of the participant organisations in each of the relevant languages (Sinhala, Tamil, English and/or braille), dependent on the accessibility requirements of the local participants who they initially interviewed for the project. These organisations then worked with the original participants to review the findings and to ensure that they captured the information provided by the participating women with disabilities accurately and appropriately. The women with disabilities who were

interviewed for the study were also able to provide feedback on the findings and the pre-consultation report directly to the researchers.

The pre-consultation report is accessible online as well as being available in print at the library of Law & Society Trust in multiple language formats (English, Tamil, Sinhala and braille).<sup>78</sup>

### ***Stage 6: Workshop on pre-consultation report***

A final consultative workshop was held in early June 2018 to incorporate both organisational and individual feedback into the final report. In-depth feedback from organisations and individual interviewees, alongside field observations from the field researchers were discussed. Moreover, issues surrounding the translation of findings and areas for clarification with the multiple language formats were extensively reviewed. The information obtained through this final research engagement process have been incorporated into this final report. To close the workshop, there was extensive discussion on the potential for further research in the area, alongside the potential use of this final report for disability rights advocacy for the women participants and their organisations.

### ***Stage 7: Final report release and dissemination***

The main launch of the report has been organised to take place on 24 July 2018. The launch will be attended by all the contributors to the report, including some of the women with disabilities who participated in the research, as well as stakeholders from different institutions, departments and organisations that have an impact on and influence the lives of women with disabilities. The event aims to share the experiences of women with disabilities who actively participated in the research as well as critically evaluate the substance and potential of the report to advance the rights of war-affected women with disabilities.

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<sup>78</sup> D Samararatne, K Soldatic and B Perera *A study of war-affected women with disabilities in Sri Lanka: Pre-consultation report*, (Sydney: Western Sydney University, Institute for Culture and Society, 2018). <[https://www.westernsydney.edu.au/\\_\\_data/assets/pdf\\_file/0011/1345583/a\\_study\\_of\\_war\\_affected\\_women\\_with\\_disabilities\\_in\\_sri\\_lanka.pdf](https://www.westernsydney.edu.au/__data/assets/pdf_file/0011/1345583/a_study_of_war_affected_women_with_disabilities_in_sri_lanka.pdf)> accessed 9 July 2018.

### **3 Research Findings**

The lived experiences of war-affected women with disabilities, as described in the interviews, provide an in-depth account of their status within the post-war context. These findings are discussed in the following themes.

#### ***3.1 Need for public recognition and acknowledgement***

The post-war public debates, discussions and attempts at law reform – particularly with regard to reconciliation and/or transitional justice – have acknowledged disability only in very marginal ways. There is an urgent need for disability to be recognised and acknowledged in all post-war efforts to improve the quality of life of individuals and wider society. At present people with disabilities are marginalised in the narratives of collective post-war memories.

#### ***3.2 Physical disability caused due to the war***

Disability caused due to the war, whether as a combatant, being shot at or being caught in a bomb blast, for example, is problematic for several reasons. One is that people who acquire disability due to armed conflict are compelled to learn to live with a disability overnight. Another is that the physical disability may be visible while others are invisible, such as embedded shrapnel/bullets or metal plates, clips that are inserted during surgery and so on. The invisibility of the disability takes away from the recognition and accommodation that is sometimes afforded to people who have acquired disabilities that are visible.

The numerous forms of disability that can be caused due to armed conflict should be recognised and taken into account in the determination of post-war policies for reconstruction and reconciliation. Taking disability into account is particularly significant in the development of policies with regard to reparation.

#### ***3.3 Psychological trauma caused due to war, disability, harm and loss to life***

Several types of psychological trauma have been reported by war-affected persons with disability. The severity of the trauma varies widely and is caused by a varied set of incidents. This includes the trauma of facing the war, such as when being displaced or fleeing hostilities. It includes the trauma due to damage to one's own body – physically or mentally. Trauma is

experienced individually, collectively and more widely, for example, as a deeply affected ethnic community or village.

### ***3.4 Stigma associated with disability caused due to the war***

War-related disability has been stigmatised, particularly for women. Former women combatants state that their disability is a permanent public mark of their involvement in the war. War-related disability is stigmatised not only by those outside the community but even within the person's own community. These disabilities also pose a security threat to the individual and their families and communities if they are subjected to military surveillance.

### ***3.5 Stigma associated with disability – culture, religion, gendered norms***

Other forms of stigma experienced by women with disability arise from cultural and/or religious practices. In some communities women with disability are not considered as being suitable for marriage, except perhaps for a man's second marriage or to a man who is socially considered to be lacking in something – such as a man with a disability. Furthermore, superstition considers women with disability as an ill omen to be avoided, particularly during significant celebrations of a family and/or a community. Due to these negative perceptions, women with disability sometimes experience a sense of shame and rejection by their family and community on account of their disability.

### ***3.6 Religion as a source of empowerment and peace***

Particularly war-affected women from the South state that practising Buddhism has been an effective method of dealing with the fear and anxiety related to the war. They note that they feel marginalised from religious institutions due to stigma and lack of physical access. Their response has been to organise their own religious observance ceremonies but also to participate in mainstream religious observances when possible. They state that these engagements have provided them with a sense of peace and wellbeing.

### ***3.7 The individual and the collective dimension of disability***

The experiences of the war for women with disability have an individual and a collective dimension. The widespread nature of their experiences compounds their negative aspects and

often makes these issues seem very difficult to resolve. On the other hand, mobilising collectively has been a positive experience for many women with disabilities, through which they experience a strong sense of empowerment.

### ***3.8 Resilience, empowerment and hopefulness***

Amid the numerous difficulties that war-affected women with disability face, the life experiences of many of them are evidence of resilience. They cope to the best of their ability with the physical, economic, political and social barriers that they have to face. Particularly through collective action, they seek to empower themselves and some of them even nurture hope for a better future. Particularly the war-affected women from the North demonstrate a strong need for justice and accountability for the harm and injustices that they experienced.

### ***3.9 Eligibility for welfare services***

The requirements to be satisfied to receive welfare services and financial grants are sometimes not very clear to target communities. Women with disability are often confused as to their entitlements and are unable to understand the criteria that is applied. They report that there is a lack of uniformity in how eligibility is determined.

### ***3.10 Weaknesses in delivery of welfare services***

Lack of physical access and lack of adequate transport facilities are identified as factors that prevent women with disability from accessing welfare services. Consequently even services that are made available may not be availed of by many deserving individuals due to weaknesses in their delivery.

### ***3.11 Excellent emergency health care coupled with weak regular health care***

Almost all women interviewed for this study stated that the emergency health care they received from state hospitals was excellent. The medical services were professional, efficient and effective. There were no reports of any form of discrimination based on disability, ethnicity or gender. Yet accessing regular healthcare services was difficult due to lack of physical access, lack of adequate transport facilities and delays in the provision of health care.

### ***3.12 Privatisation of burdens associated with living with disability***

Due to the above described reasons, the 'burden' of caring for persons with disability remains primarily within the immediate family. Women with disability are required to care and provide for their family regardless of their disability. In the context of poverty and the marginalisation experienced due to rural living, disability has a very severe compounding impact on their lives.

### ***3.13 Contrasting experiences in the post-war period due to variables such as ethnicity***

The study points to contrasting experiences of women with disability in the post-war period. Sinhalese women commonly spoke of feeling a sense of relief that the war was no more and that risks to life due to the war need not be feared anymore. Women from minority communities living in the North or women who were displaced express continued feelings of anxiety. Some express lack of hope and frustration due to lack of improvement in their quality of life even after the cessation of hostilities.

### ***3.14 Fatigue in engagement***

War-affected women from the North and from the long-term displaced community in Puttalam referred to fatigue in seeking interventions on their own behalf. They described being interviewed multiple times regarding similar issues with minimal benefit or outcomes for themselves or for their community. The lack of progress on the ground seems to have given rise to negative perceptions of studies that are being carried out regarding war-affected communities.

### ***3.15 Reparations***

Reparations for disability caused due to the war and the impact of the war on persons with disability has not been discussed adequately in Sri Lanka. An evidence-based understanding of the nexus between disability, the war and reparations has to be developed prior to a determination of the forms of reparation. Women with disability who have been directly affected by the war anticipate some form of reparation on the grounds of their disabilities.

### ***3.16 Access to justice***

People with disabilities find it extremely difficult to access the legal system as there are no specific facilities to ensure that they are accommodated. The police stations, court houses and



court proceedings are beyond their reach. For people with disabilities, delays in law, prolonged detention of family members, disappearances of family members, land issues and domestic violence are nearly insurmountable legal problems.

### ***3.17 Legal illiteracy***

Legal literacy is poor in general in Sri Lanka but among the community of people with disabilities this illiteracy is acute. They are unable to access even basic explanations of the law, legal procedures and administrative procedures due to their marginalisation from the public sphere. Their access to information is weak and their ability to access different service providers depends on the support that is extended to them by their immediate family.

### ***3.18 Lack of awareness of human rights, transitional justice and constitutional reforms***

Women with disabilities who were interviewed for this study had no awareness of their human rights or about the concept of human rights in general. They were not aware of the idea of transitional justice or about any specific initiatives that were being taken by the government for reconciliation. None of them were aware of the process underway for constitutional reforms.

### ***3.19 Collective mobilisation and support of civil society organisations***

Most women with disability noted that organising themselves to work together, often with the support of civil society organisations, had been their primary source of empowerment. Often it was this support that enabled them to overcome their fears of leaving their home, public engagements and so on. They stated that they were able to face the numerous hardships they experienced due to the support that they received from their local organisations.

### ***3.20 Disability-inclusive and accessible research***

When the pre-consultation report was released to the interviewees for their feedback and review, most interviewees spoke very positively about their participation in the research project. Some observed that being consulted on the report before its publication was a refreshing experience in comparison to other instances in which they had been interviewed but not had the opportunity to engage with the progression of the research and its analytical findings, nor learn of the final outcome of the research project. It was pointed out by one of the participants with a vision

impairment that this project was the first time she had ever received a document in braille from a third party. The participants were extremely pleased with the research engagement strategy as it gave them an opportunity to ensure fair and just representation of their views. In turn, the research participants stated that they felt a high level of ownership of the research findings as it treated the women with disabilities with respect and dignity throughout the research process, from conceptualisation to design, implementation, consultative report back on the analysis of findings, through to multilingual dissemination and engagement.

One of the core benefits of this research engagement strategy for the participants, as two of the women with disabilities articulated, was the opportunity to identify with other women with disabilities who had similar life experiences to their own. These participants spoke of developing a wider sense of community due to the knowledge they had gained from engaging in the research process and, importantly, participating in the development of the final report through the pre-consultative process and workshops.

The interviewers noted that consulting the interviewees on the pre-consultation report was a unique experience as this was the first time they had been involved in an engaged disability-inclusive research project. The interviewers noted that this was the first time they had gone back to a person they had interviewed for a particular project. They observed that this process was more participatory and inclusive, ensuring that the research participants were equal partners in the research project through the engaged disability-inclusive research strategy.

### ***3.21 Need to link research with advocacy***

During the consultation on the pre-consultation report, it was noted that the launch of the report should be linked with a broader advocacy strategy to raise general public awareness on the rights of women with disabilities. It was suggested that at least one short-term goal, as identified within the research, should be taken up and that effective advocacy measures be developed to work collectively towards this identified shared goal.

It was further pointed out that the report must be disseminated widely so that it contributes to a general awareness on the status of women with disabilities in Sri Lanka and in the context of the low literacy levels of some research participants due to lack of accessibility.

## **4 Recommendations**

The following recommendations for government, civil society and international donors should be considered in addressing the findings discussed in the previous section.

### ***4.1 Implement CRPD and CEDAW***

Constitutional, legislative, policy and administrative reforms should be introduced to ensure that Sri Lanka's obligations under the CRPD and CEDAW are fulfilled. Periodic review of these reforms should be carried out to identify gaps and weaknesses in implementation. Respect for the human rights of women with disability as per international human rights treaty law must be assured.

### ***4.2 Mainstream disability with a multisectoral approach***

Disability needs, supports and programs should be mainstreamed to ensure that all sectors address and include disability accessibility and participation within their mandate. Disability should be mentioned specifically and addressed in a targeted manner in all programmatic and policy interventions. This could be through legislative structures that require departmental annual targets and reporting to improve public accountability and outcomes. Disability Access and Inclusion Plans, such as those legislative instruments administered via Western Australian Parliament, are one example that can potentially be adopted.<sup>79</sup>

Furthermore, the heterogeneity of women with disability should be taken into account in policy and programmatic interventions. For instance, ex-combatants with disability, women with disability who faced the last stage of the war and women heads of household with disability are examples of specific groups that require targeted intervention by the state.

### ***4.3 Redesign the national census survey to capture disaggregated disability data***

The national census survey should be redesigned, particularly its process of categorisation and disaggregation in relation to disability identity and gender, including, but not limited to, women

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<sup>79</sup> See Government of Western Australia, Disability Services Commission, 'Section Two – Legislation, Codes and Standards' (Perth, no date) <<http://www.disability.wa.gov.au/Global/Publications/For%20individuals%20families%20and%20carers/legislation.pdf>> for a full discussion of DAIPs and the high level of parliamentary accountability and transparency adopted within the legislative framework.

with congenital disabilities, women with disabilities created due to the war and women heads of household with disabilities, alongside identifying daily activity restrictions and associated levels of required support. Such rich and nuanced data is necessary to ensure the long-term development and implementation of appropriate government policy and funding for progressive disability rights realisation.

#### ***4.4 Shift from welfare to rights-based approach with required institutional reform and design***

An Inter-Ministerial Committee should be established under the President to ensure a high level of recognition is provided to the committee. This committee should ensure that disability is no longer a matter for social welfare but that it is recognised as a human rights concern. Departmental inclusion should encompass planning and infrastructure, local government, national statistics and census bureau, education and training, employment and industrial relations, and social welfare.

#### ***4.5 Develop grounded knowledge of disability***

Disability should be understood from the point of view of persons living with disability. This would help avoid stereotyping of people with disabilities and also contribute to developing more meaningful responses to their needs.

#### ***4.6 Develop specific programmes for war-affected persons with disability***

As demonstrated in this report, the experience of acquiring disability due to war, living with disability acquired due to the war, and the experience of the war due to disability is traumatic and gives rise to specific concerns. These should be acknowledged and taken into account in determining post-war programs, policies and legislation, including policies for accountability, justice, reparation and reconciliation.

#### ***4.7 Access to justice***

A specific program must be designed and implemented to ensure access to justice for women with disabilities. Such a program must address physical access, accessibility of services (such as welfare services) and accessibility of institutions, such as the police and the judiciary. Training

for police personnel, administrators and the judiciary must involve sensitisation with regard to disability, women's issues and issues related to the armed conflict. The Legal Aid Commission must be made accessible and further strengthened to ensure that people with disabilities have access to justice.

#### ***4.8 Legal literacy***

Public education programs that are accessible must be implemented immediately to address the lack of legal literacy, lack of awareness of measures taken to ensure transitional justice and the current constitutional reform process. Human rights education must be made available throughout the island.

#### ***4.9 Mainstream disability in civil society organisations***

Civil society organisations should mainstream disability as a core area for programs, research and advocacy, and partner with advocates of the rights of people with disabilities and their organisations in sustained ways. The impact of the intersectionality of gender, disability, ethnicity and so forth, particularly in post-war contexts, must be considered.

#### ***4.10 Include disability in the agendas of international human rights organisations***

International organisations and international donor agencies that exercise a mandate with regard to human rights must ensure the inclusion of disability as an area of concern.

#### ***4.11 Future research: private and public lives***

The private lives of women with disabilities is a core area of neglect within the research, particularly in relation to the role of public provisioning of disability services and supports in realising the familial and sexual citizenship of women with disabilities. To enable full citizenship of women with disabilities, issues of sexuality and intimacy, care for elderly women with disabilities, and greater financial control of their resources and access to the financial sector and banking institutions emerged as important areas needing greater inclusive and engaged research.

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**Annexure 1: List of interviews, March 2017 – October 2017**

<b>Interview</b>	<b>District</b>
1	Anuradhapura
2	Anuradhapura
3	Polonnaruwa
4	Polonnaruwa
5	Polonnaruwa
6	Matara
7	Matara
8	Matara
9	Kandy
10	Kandy
11	Batticaloa
12	Batticaloa
13	Batticaloa
14	Nuwara Eliya
15	Jaffna
16	Jaffna
17	Jaffna
18	Jaffna
19	Jaffna
20	Jaffna
21	Jaffna
22	Puttalam
23	Puttalam

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### **ARTWORK**

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