The Case for Seychelles to Domesticate the Convention on the Rights of Persons with Disabilities

By:

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The Seychelles signed the United Nations Convention on the Rights of Persons With Disabilities (CRPD), on the 30th of March 2007 and ratified it on the 2nd of October 2009. Since then, the Seychelles has not incorporated the CRPD in its national legislation, for instance as a standalone Act. Although in Seychelles, efforts have been made to introduce policies which are consistent with the CRPD. For instance, the National Strategic Framework for Disability attempts to promote inclusivity and provide support the persons with disabilities and their families through appropriate programmes. However, more needs to be done to ensure the introduction of a Bill before the National Assembly in Seychelles. It is crucial to highlight that the Commonwealth Secretariat's Human Rights Unit in their assessment report revealed that there has been no attempt to domesticate the CRPD in the Seychelles and there is no distinct or comprehensive legislation on disability, and disability is not dealt with in a systematic way in other legislation in the country.

In 2018, the UN Committee on the Rights of Persons with Disabilities (which is a body of independent experts responsible for monitoring the implementation of the CRPD) in their *'Concluding observations on the initial report of Seychelles'* was apprehensive about the absence of a specific act or resolution for domestication of the Convention, and to date, Seychelles is yet to domesticate the CRPD. Therefore, the main argument of this article is the case for the necessity for Seychelles to domesticate the CRPD as a strategy to enhance disability rights thereby improving access to justice for people with disabilities in the Seychelles.

Seychelles will surely benefit from domestication of the CRPD, for instance, cases of infractions of the rights of people with disabilities could be brought to justice - domestication implies that courts in Seychelles can directly rely on the CRPD in relevant cases. Domestication of the CRP also entails that the relevant stakeholders in Seychelles can sue the government and governmental agencies to ensure that the CRPD is implemented. Arguably, the domestication of the CRPD in Seychelles will provide avenues for improved access to justice for people living with disabilities in the Seychelles. Also, NGOs and similar organisations in Seychelles would be able to utilise the CRPD for public campaigns and mobilisation, hence domestication will enhance the visibility of CRPD in Seychelles.

The Process of Domestication of International Law into Seychelles Law

Domestication is the process of incorporating an international treaty into a country's domestic legal system. It involves legislative action, such as passing an Act or Resolution by Parliament/National Assembly, in order to give the treaty, force and applicability within the domestic legal framework. In some countries, domestication can occur through executive action. Domestication is typically required in dualist countries whereby international law does not automatically become part of the national legal system upon ratification. For example, Seychelles like the UK is a dualist country, unlike France which is a monist country (monism and dualism are explained in the subsequent paragraph). Article 64 (4) of the Constitution of Seychelles of 1993 is the legal framework which identify Seychelles as a dualist State, and it reads as follows: -

A treaty, agreement or convention in respect of international relations which is to be or is executed by or under the authority of the President shall not bind the Republic unless it is ratified by-

(a) an Act; or

(b) a resolution passed by the votes of a majority of the members of the National Assembly.

However, the subsequent paragraph in the Constitution states that *Clause (4) shall not apply where a written law confers upon the President the authority to execute or authorise the execution of any treaty, agreement or convention.*

For ease of reading, 'monism' and 'dualism' are the two main theories that exemplifies the relationship between international law and domestic law - they are two approaches of how international law comes into effect within States. By virtue of the sovereignty and equality of States, each State is free to adopt a monist or dualist approach. For example, in monist countries once a treaty has been ratified - the international law can be applied and enforced directly in domestic courts without the need for domestication. Whereas in dualist countries like the Seychelles, after the treaty has been ratified, domestication is required in order for the treaty (i.e., international law) to be enforceable in the domestic courts e.g. in Seychelles Courts.

For domestication to take place in Seychelles, the National Assembly has to enact an enabling legislation for the purpose of specifically incorporating that treaty into Seychelles law .Therefore, for the CRPD to be enforceable in courts in Seychelles, the Seychelles National Assembly needs to enact specific legislation e.g. An Act to domesticate the Convention into Seychelles Laws. Several stakeholders especially people who are living with a disability in the Seychelles and the Disabled Rights Activists, would agree that this is long overdue - that an Act of the Rights of Persons with Disabilities in the Seychelles is essential in mitigating the discrimination and marginalisation of people with the disabilities in the Seychelles. Furthermore, the enactment of law (domesticating the CRPD) will help to protect and promote the interests of people living with disability in Seychelles.

It is vital to highlight that research from numerous countries have indicated that persons with disabilities face disproportionate socio-economic marginalisation such as limited employment prospects, and they are at greater risk of being subjected to abuse than their contemporaries without a disability. The Seychelles National Assembly needs to take steps towards the domestication process, even though there have been deliberation in the National Assembly about inclusion for persons with disabilities, but this is yet to lead to the domestication of the CRPD. For example, the National Assembly in Seychelles is yet to introduce a Bill in this regard. The Seychelles National Assembly is the Legislative branch of Government and is a unicameral Parliament (consisting of one house).

Lessons that Seychelles can Learn from Mauritius Relating to the Domestication of the CRPD

Mauritius, which is a neighbouring country of Seychelles, domesticated the CRPD in 2024 by enacting the Protection and Promotion of the Rights of Persons with Disabilities Act 2024. The Mauritius Protection and Promotion of the Rights of Persons with Disabilities Bill was introduced in December 2023. The members of the Assembly debated on the Bill harmoniously and enacted it in a timeframe of only four months, mainly due to pressure from specific NGOs advocating for the rights of persons with disabilities in Mauritius – using social media such as Facebook to disseminate their messages; as well as the families of the persons with disabilities and the persons with disabilities themselves using social media to shame Mauritius' Government Departments of their ineffectiveness. The members of the National Assembly did not prolong the process of enacting the Bill into Law like it was the case with the introduction of the Bill - from ratification of the Convention in 2010 to the introduction of the Bill in 2023, a huge delay of thirteen years.

Section 5 of Part II of the Mauritius Protection and Promotion of the Rights of Persons with Disabilities Act addresses "*prohibition from discrimination*". Section 5 (1) and (2) state: *(1) No person shall discriminate against another person on the basis of his disability. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.* It is remarkable that the Act puts forward strict penalties for offences

related to discrimination against people with disabilities in Mauritius. More importantly, Section 5 enables persons with disabilities in Mauritius to seek remedies when their rights have been violated. It is pertinent that National Assembly of Seychelles when drafting the Bill for the domestication of the CRPD into Seychelles Laws should include a provision similar to Section 5 of the Mauritius Protection and Promotion of the Rights of Persons with Disabilities Act.

Several legal practitioners and relevant stakeholders in the Seychelles affirm that the rights of the people with disabilities in the Seychelles are protected under the Seychelles Constitution especially Article 36 of the Constitution of the Seychelles provides for special protections for persons with disabilities. Article 36 states that: -

The State recognises the right of the aged and the disabled to special protection and with a view to ensuring the effective exercise of this right undertakes-

a) to make reasonable provision for improving the quality of life and for the welfare and maintenance of the aged and disabled;

b) to promote programmes specifically aimed at achieving the greatest possible development of the disabled.

Indeed, they (i.e. the legal practitioners) are right to assert so. However, the CRPD consists of 50 Articles which outline a wider range of rights for persons with disabilities. For example, Article 5 emphasises that persons with disabilities have the right to equality and non-discrimination in all aspects of life. Article 9 addresses the need for accessibility in various settings - including physical environments, transportation, information, and communication technologies. Article 13 addresses access to justice - it mandates that States Parties ensure effective access to justice for persons with disabilities on an equal basis with others. Article 16 guarantees protection from exploitation, violence, and abuse. Arguably, it will be difficult for a country's constitution to able to protect the rights of the persons with disabilities like CRPD does. Besides, Article 36 of the Constitution of the Seychelles is vague as it does not specify what '*special protection*' entails.

In conclusion, this article has explored the necessity for Seychelles to domesticate the CRPD and this is against the backdrop that 16 years have elapsed since Seychelles ratified the Convention. The absence of a comprehensive or stand-alone domestic legislation embodying the CRPD means that many of the Convention's rights remain largely aspirational than enforceable in Seychelles. Domestication of the CRPD in Seychelles is essential to give full legal effect to the Convention's principles and to ensure consistency with international obligations in the country. Also, domestication of the CRPD is required to provide persons with disabilities in Seychelles with clear, justiciable rights, for instance, cases of breaches of the rights of people with disabilities could be brought to justice. The delay in the domestication of CRPD risks undermining Seychelles obligations to equality, non-discrimination and inclusive development under the Convention.

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