

Title: Rights of Disabled Persons in Select Asia Pacific Jurisdictions

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RIGHTS OF DISABLED PERSONS IN SELECT ASIA PACIFIC JURISDICTIONS[†]

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I. INTRODUCTION

Today, disability is not relegated to being simply a physiological or psychological impairment particular to an individual. It has instead come to be understood as an impediment in the environment for the full and effective participation of disabled persons in society. Having acquired a “social” over the traditional “medical” focus, the onus has shifted from the individual to the State—the impairment being not in the person, but in the environment—and it is for the State to take appropriate measures and provide for access to services for the realisation of the human rights of such persons, and alleviate the “disability” they face in their interactions with their surroundings.

The credit for this shift goes to the first legally-binding disability convention—the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)—effected in 2008, and promoted at the regional level by the UN Economic and Social Commission for the Asia Pacific (UNESCAP).¹ The UNCRPD sets an international benchmark for the protection and promotion of all human rights and fundamental freedoms of persons with disabilities. It has been a

[†] This article reflects the position of law as on 04 April 2018.

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¹ UN, *Convention on the Rights of Persons with Disabilities*, General Assembly Resolution 61/106, UN Doc A/61/611 (13 December 2006).

catalyst for the amendment of the existing and the enactment of new disability-specific domestic laws, formulation of national programmes and policies, and establishment of independent regulatory bodies as national focal points for implementation of the UNCRPD and consultation on disability rights.

This article focuses on disability rights in the jurisdictions of Australia, China, India, Indonesia, Japan, Malaysia, Philippines, Singapore, and Thailand—all of which have committed to the UNCRPD. It identifies legislation as the main source of these rights, and provides a brief overview of the following types of statutes in each of these jurisdictions:

- i. Rights-based legislation, the infringement of which entitles the aggrieved person to seek the prescribed remedies;
- ii. Benefits legislation, which embodies a scheme for the allocation of financial and/or other benefits;
- iii. Disability anti-discrimination law; and
- iv. Programmatic legislation, which mandates the State to work towards specific goals and adopt specific measures to advance the equality of persons with disabilities but does not explicitly confer the right to seek remedy for the State's failure to carry out its obligations.²

² See UNESCAP, *Disability at a Glance 2010: A Profile of 36 Countries and Areas in Asia and the Pacific*, UN Doc ST/ESCAP/2583 (2010), available at <http://www.unescap.org/publications/disability-glance-2010-profile-36-countries-and-areas-asia-and-pacific> (last visited 04 April 2018) and Andrew Byrnes, 'Paper 3 Disability Discrimination Law and The Asian and Pacific Region' (2010) *ESCAP Social Development in Asia and Pacific* 10–12, para 3.3.2–3.3.3.

II. RIGHTS OF DISABLED PERSONS

A. Australia

In 2015, almost one in five Australians reported living with disability (18.3 percent or 4.3 million people).³ However, the Australian *Constitution* is silent on human rights, equality, and anti-discrimination protections.⁴ Making up for this inadequacy is the comprehensive and primary source of disability rights in the Commonwealth: The *Disability Discrimination Act (DDA) 1992*. Australia ratified the UNCRPD and its Optional Protocol in 2008–09.⁵

Although not explicitly characterised as a rights-based legislation, the objects of the *DDA* are to eliminate discrimination against persons on the ground of disability, to ensure that persons with disabilities have the right to equality before the law, and to promote community recognition and acceptance of the fundamental rights of persons with disabilities.⁶ The Act operates in concurrence with corresponding anti-discrimination state laws, and is administered by the Australian Human Rights Commission (AHRC) and the Disability Discrimination Commissioner.

The *DDA* provides an inclusive definition of “disability”, comprising of total and partial disabilities; temporary and permanent disabilities; physical, intellectual,

³ ABS, ‘Disability, Ageing and Carers, Australia: Summary of Findings, 2015’ *Australian Bureau of Statistics*, available at www.abs.gov.au/ausstats/abs@nsf/mf/4430.0 (last visited 04 April 2018).

⁴ As regards persons with disabilities, only section 51(xxiii) of the *Commonwealth of Australia Constitution Act 1900* makes a mention, whereby it recognises the powers of the Parliament to frame laws for “invalid and old-age pensions”.

⁵ UNESCAP, *supra* n. 2, 77.

⁶ *Disability Discrimination Act 1992* (Cth) section 3 (Australia).

sensory, neurological, learning and psychosocial disabilities; diseases or illnesses; physical disfigurement; medical conditions; and work-related injuries.⁷ It prohibits four types of discriminatory actions against persons with disabilities—direct discrimination, indirect discrimination, harassment on the basis of disability, and the asking of discriminatory questions—in employment; education; access to premises; provisions of goods, services, and facilities; accommodation; land transactions; activities of clubs and associations; sport; and the administration of federal laws and programmes.⁸

Persons discriminated against based on past or future or perceived disability are also protected by the Act.⁹ These protections extend even to those who are discriminated against because of their association with a disabled person.¹⁰ The statute makes reasonable exceptions when the discrimination in employment and services is not unlawful, on the grounds of the “inherent requirements” of the work to be performed and the imposition of “unjustifiable hardship” in avoiding the discrimination.¹¹

To enforce and protect these rights from being violated, Australia has adopted a “three-dimensional approach” to disability discrimination involving the common

⁷ *Id.* section 4(1).

⁸ *Id.* sections 5, 6, 15, 22–30, 35–39.

⁹ *Id.* section 4(1).

¹⁰ *Id.* section 7.

¹¹ *Id.* sections 21A, 21B, 29A.

effort of individuals with disabilities, the State and its instrumentalities, and the community.¹²

For the first approach, the *Australian Human Rights Commission Act (AHRCA) 1986* entitles aggrieved persons to seek redressal through individual and collective complaints. The AHRC is also empowered to undertake public inquiries into problem areas of discrimination and to conciliate. Upon failure to reach a resolution, the complainant has the alternative remedy to file an application with the Federal Court of Australia or the Federal Magistrates Court. Where the complaint is of larger public interest, the AHRC can refer it to the courts directly.¹³

The second approach is under the *DDA*, wherein the Minister can *suo motu* take cognizance of systemic discrimination, and by legislative instrument, formulate Disability Standards in relation to any area in which discrimination is unlawful on the ground of disability.¹⁴

The third approach is through the preparation and implementation of quasi-regulation—Action Plans at the organisation-level and Voluntary Codes at the industry-level—to further achieve the objects of the *DDA*.¹⁵

¹² See Lee Ann Bassler and Melinda Jones, 'The DDA and the Tripartite Approach to Operationalising Human Rights' (2002) 26(2) *Melbourne University Law Review*, available at <http://classic.austlii.edu.au/au/journals/MelbULawRw/2002/16.html> (last visited 04 April 2008).

¹³ *Australian Human Rights Commission Act 1986* (Cth) part IIB (Australia) and AHRC, 'Know Your Rights: Disability Discrimination' *Australian Human Rights Commission*, available at <https://www.humanrights.gov.au/know-your-rights-disability-discrimination> (last visited 04 April 2018).

¹⁴ *DDA*, *supra* n. 6, section 31. See Lee Ann Bassler, *supra* n. 12.

¹⁵ See Lee Ann Bassler, *supra* n. 12.

There are also several pieces of sectoral benefits and programmatic federal legislation, such as the *Disability Services Act 1986*, which provides for the funding and support services from the government, mainly for the employment of persons with disabilities; the *Social Security Act 1991*, which provides for a wide variety of social security payments such as Disability Support Pension, Sickness Allowance, Child Disability Assistance Payment, etc.; and the *National Disability Insurance Scheme Act 2013*, which sets up a scheme that funds reasonable and necessary support to persons with disability and also supports their carers.

Though mental health has not been specially singled out in federal legislation, each Australian state and territory has a *Mental Health Act*. Similarly, in each state and territory jurisdictions, there are legislative prohibitions of disability discrimination in various fields, and a statutory body with either a general human rights jurisdiction, such as the AHRC at the federal level, or a specific anti-discrimination jurisdiction.¹⁶

The national focal point for the implementation of the UNCRPD is the Disability and Carers Group under the Department of Families, Housing, Community Services and Indigenous Affairs¹⁷ and its current national policy is the National Disability Strategy (2010–2020).

¹⁶ See Andrew Byrnes, *supra* n. 2, 15, para 33.

¹⁷ UNESCAP, 'List of Government Disability Focal Points' *Making the Right Real!*, available at <http://www.maketherightreal.net/governments> (last visited 04 April 2018).

Australia is regarded as one of the view countries in the Asia-Pacific region with extensive and well-documented disability discrimination legislation as well as rights-based legislative approach.¹⁸

B. China

On the global stage, the People's Republic of China has been an enthusiastic champion of disability rights over 30 years, and will also be playing host to the upcoming 2022 Paralympics in Beijing— making it the first city to host both the Summer and Winter Olympics. China ratified the UNCRPD in 2008¹⁹ and its current national policy for persons with disabilities is included in the 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016–2020).

Its *Constitution* guarantees equality before the law and protects the right to work for all citizens.²⁰ As regards persons with disabilities, it entitles them to material assistance from the State and society, and directs the government to develop the social insurance, social relief, and medical and health services. The State and society are also to ensure the livelihood of disabled members of the armed forces and make arrangements for the work, livelihood and education of the blind, deaf-mute and other handicapped citizens.²¹

¹⁸ Andrew Byrnes, *supra* n. 2, 12, para 24.

¹⁹ UNESCAP, *supra* n. 2, 21.

²⁰ *Zhonghua Renmin Gongheguo Xianfa* [Constitution of the People's Republic of China] (1982) articles 33, 42–43 (China).

²¹ *Id.* article 45.

The chief statute addressing the needs of persons with disabilities is the *Law on Protection of Persons with Disabilities (LPPD) (1990)*. It provides a robust and comprehensive protection of their civil rights, pledging equality in education, employment, welfare, and access.²² It defines a “person with disabilities” in medical instead of social terms, as one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure, and has lost wholly or in part the ability to perform an activity in the way considered normal. This is said to include visual, hearing, speech, physical, intellectual, or psychiatric disability; multiple disabilities, and/or other disabilities.²³ Being a rights-based and a programmatic legislation, it also contains directives for the government to make specific provisions for persons with disabilities.

The *LPPD* is also anti-discriminatory and prohibits discrimination in recruitment, employment, obtainment of permanent status, promotion, determining technical or professional titles, payment, welfare, social insurance, and other aspects.²⁴ For providing employment opportunities, the statute sanctions welfare enterprises, self-employment initiatives, and a quota scheme for hiring in government agencies, social organisations, public institutions and private enterprises.²⁵ Those who fail to meet the required quota must pay a fee to the Disabled Persons

²² *Zhonghua Renmin Gongheguo Canji Ren Baozhangfa* [Law on the Protection of Persons with Disabilities (LPPD)] (1990) article 3 and chapters 2–7 (China).

²³ *Id.* article 2. English translation as provided by China Disabled Persons’ Federation, available at http://www.cdpcf.org.cn/english/Resources/lawsregulations/201603/t20160303_542879.shtml (last visited 04 April 2018).

²⁴ *Id.* articles 3 and 38.

²⁵ *Id.* articles 32–34.

Employment Security Fund, which in turn supports vocational training and job-placement services for people with disabilities.²⁶

In the event of infringement of any of these rights, the *LPPD* also sets up mechanisms for redressal.²⁷ Victimized persons are entitled to approach organisations of persons with disabilities, who may request the relevant competent authorities to conduct investigations and take necessary action.²⁸ Alternatively, the aggrieved individuals may submit an application to arbitral institutions, or appeal to people's courts in conformity with the law.²⁹ Provision is also made for legal assistance and legal aid.³⁰

These provisions under the *LPPD* are supplemented by other statutory provisions such as the *Election Law (1979)*³¹ and are enforced by complementary regulations, as for example, the *Regulations on the Education of Persons with Disabilities (1997)*³² and the *Regulations on the Employment of Persons with Disabilities (2007)*.³³

²⁶ ILO, *Facts on People with Disabilities in China* (2008), available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_142315.pdf (last visited 04 April 2018)

²⁷ *LPPD*, *supra* n. 22, chapter 8.

²⁸ *Id.* article 59.

²⁹ *Id.* article 60.

³⁰ *Id.* and *Canjiren Jiuye Tiaoli* [Regulations on the Employment of Persons with Disabilities] (2007) article 24 (China).

³¹ *Zhonghua Renmin Gongheguo Xuanju fa* [Election Law] (1979) (China).

³² *Canjiren Jiaoyou Tiaoli* [Regulations on the Education of Persons with Disabilities] (1994) (China).

³³ *Canjiren Jiuye Tiaoli*, *supra* n. 30.

Besides these, China has enacted more than 60 laws and regulations containing provisions to safeguard disability rights.³⁴ These include the *Labour Law (1994)* which makes provision for employees becoming disabled due to work-related injuries or illnesses and entitles them to receive the full enjoyment of social insurance benefits;³⁵ and the new *Mental Health Law (2012)*, which although does not specifically define “mental disability”, provides for the treatment for patients suffering from mental disorders.³⁶

As a national focal point, the China Disability Person’s Federation, a quasi-government organisation established in 1988, represents the common interests of persons with disabilities for the protection of their lawful rights. It is responsible for the implementation of the employment of persons with disabilities in accordance with laws and regulations, or as entrusted by the government.³⁷

China has been commended for enacting a comprehensive law such as the *LLPD*.³⁸ However, academics are also of the opinion that despite China’s staunch advocacy for disability rights on the international level, the country has been reluctant to make an equivalent commitment to implementing the same standards at home, and the current situation involving the reported 83 million persons with

³⁴ UNDP China, *Equal Access to Justice for Persons with Disabilities in China* (2016) (English translation), *available at* <http://www.cn.undp.org/content/china/en/home/presscenter/pressreleases/2016/12/02/equal-access-to-justice-for-persons-with-disabilities-in-china-.html> (last visited 04 April 2018).

³⁵ *Zhonghua Renmin Gongheguo Laodongfa* [Labour Law] (1994) article 73 (China).

³⁶ *Zhonghua Renmin Gongheguo Jingshen Weishengfa* [Mental Health Law] (2012) (China). English translation as provided by Shanghai Mental Health Center (Shanghai Jiao Tong University School of Medicine), *Shanghai Archives of Psychiatry*, *available at* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4198897/> (last visited 04 April 2018).

³⁷ *Canjiren Jiuye Tiaoli*, *supra* n. 30, article 6 and *LPPD*, *supra* n. 22, article 8.

³⁸ Andrew Byrnes, *supra* n. 2, 19, para 48.

disabilities in China does not reflect the standards promulgated by the UNCRPD.³⁹

C. India

According to the 2011 census, 2.21 percent of India's population is disabled.⁴⁰ India ratified the UNCRPD in 2007⁴¹ and repealed and replaced the *Persons with Disabilities (RPWD) Act, 1995* with the *Rights of Persons with Disabilities Act, 2016* in compliance with the Convention.

The Constitution of India guarantees equality before the law and equal protection of the laws, and prohibits discrimination.⁴² Upon infringement of any of the fundamental rights guaranteed, victimised individuals are entitled to move the High Courts or the Supreme Court by filing writ petitions.⁴³ Alternatively, if the violation is against the larger public interest, the aggrieved persons may opt for a Public Interest Litigation—an innovation of the judiciary—wherein the requirement of appropriate proceedings is relaxed and proceedings can be instituted even through a letter addressed to the court, of which the court can *suo motu* take cognizance. Under the Directive Principles of State Policy, the *Constitution* mandates the State to make provisions specifically for persons with

³⁹ Michael Stein, 'China and Disability Rights' (2010) 33(1) *Loyola International and Comparative Law Review*, available at <http://digitalcommons.lmu.edu/ilr/vol33/iss1/> (last visited 04 April 2018) 26.

⁴⁰ Office of the Registrar General & Census Commissioner, India, *Census of India 2011: Data on Disability* (2011), available at [www.censusindia.gov.in/2011census/Disability_Data/Disability_2011_Data_Release_Dec_2013_PPT%20\(27.12.13\).ppt](http://www.censusindia.gov.in/2011census/Disability_Data/Disability_2011_Data_Release_Dec_2013_PPT%20(27.12.13).ppt) (last visited 04 April 2018).

⁴¹ UNESCAP, *supra* n. 2, 59.

⁴² *The Constitution of India, 1949* articles 14, 15 (India).

⁴³ *Id.* articles 32, 226.

disabilities in order to secure their right to work, to education, and to public assistance.⁴⁴

The main legislation for persons with disabilities in India is the *RPWD Act, 2016*. The Act lays stress on the empowerment of persons with disabilities through the principles of respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.⁴⁵

It identifies “persons with disability”, “persons with benchmark disability”, and “persons with disability having high support needs”. “Persons with disability” are characterised as those having long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders their full and effective participation in society equally with others, whereas “benchmark disability” is defined as being at least 40 percent of the specified disability. The Act recognises and defines 21 types of disabilities such as blindness, low-vision, leprosy-cured persons, hearing impairment (deaf and hard of hearing), locomotor disability, dwarfism, intellectual disability, mental illness, autism spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, specific

⁴⁴ *Id.* article 41.

⁴⁵ *Rights of Persons with Disabilities Act, 2016* preamble (India).

learning disabilities, multiple sclerosis, speech and language disability, thalassemia, haemophilia, sickle cell disease, multiple disabilities including deaf-blindness, acid attack victim and Parkinson's disease.⁴⁶

Onus is placed on the State to ensure and protect the rights of persons with disabilities such as their right to equality, dignity and respect for their integrity; personal liberty; non-discrimination; community life; equal protection and safety in situations of risk; suffrage; access to justice; barrier-free access to healthcare institutions and centres, etc.⁴⁷ It also mandates the government to take the stipulated measures for education, skill development and employment, social security and healthcare of persons with disabilities.⁴⁸ Moreover, it requires all establishments, including those belonging to the private sector, to frame and publish an Equal Opportunity Policy.⁴⁹

The statute prohibits discrimination but makes an exception if the alleged discrimination is found to be a proportionate means to achieve an aim.⁵⁰ It entitles persons or organisations who have reason to believe that an act of abuse, violence or exploitation is being committed against any person with disability, to inform the local Executive Magistrate, who is mandated to take immediate steps to stop or prevent such acts and pass appropriate order to protect the aggrieved person.⁵¹

⁴⁶ *Id.* section 2(r)–(t), (zc) and schedule (India).

⁴⁷ *Id.* chapter II.

⁴⁸ *Id.* sections 11, 12 and chapters III, IV, V.

⁴⁹ *Id.* section 21.

⁵⁰ *Id.* section 3(3).

⁵¹ *Id.* section 7(2).

It establishes Central and State Advisory Boards on Disability and District Level Committees, and appoints Chief and State Commissioners for Persons with Disabilities in consultative capacities to review and recommend laws and policies for the promotion and protection of disability rights.⁵² For ensuring speedy trials, Special Courts are to be constituted in each district to handle cases concerning violation of rights of persons with disabilities.⁵³ The Act also prescribes penalties for violations of any of the provisions therein.⁵⁴

India has also recently enacted the *Mental Health Care Act, 2017*, which repeals and replaces the *Mental Health Act, 1987*, and is in consonance with the UNCRPD. It defines “mental illness” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, and excludes mental retardation.⁵⁵ The Act empowers persons with psychosocial disabilities to make decisions regarding their mental healthcare and treatment through nominated representatives and advance directives.

In addition to these statutes, there are also the *National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999*, which provides for legal guardianship and the creation of an enabling

⁵² *Id.* chapters XI, XII.

⁵³ *Id.* chapter XIII.

⁵⁴ *Id.* chapter XVI.

⁵⁵ *Mental Health Care Act, 2017* section 2(s) (India).

environment for independent living; and the *Rehabilitation Council of India Act, 1992*, which makes provision for rehabilitation services.

The Department of Disability Affairs under the Ministry of Social Justice and Empowerment is India's national focal point for the implementation of the UNCRPD.⁵⁶

The *RPWD Act* is one of the few robust legislations in the Asia-Pacific region that are right-based, programmatic, as well as anti-discrimination and in compliance with the UNCRPD. Its principles have been noted to reflect a paradigm shift in thinking about disability from a social welfare concern to a human rights issue.⁵⁷

D. Indonesia

In 2006, the Asia-Pacific Development Center on Disability estimated the number of disabled persons in Indonesia to be about 1.38 percent of the total population recorded.⁵⁸ Indonesia ratified the UNCRPD in 2011 and was one of the first countries to implement it in partnership with the ILO, WHO, and UNESCO.⁵⁹

The *Constitution of the Republic of Indonesia (1945)* guarantees equality before the law, and the right to work and access to the means to fulfil basic needs,

⁵⁶ UNESCAP, *supra* n. 17.

⁵⁷ Laxmi Narayan Choudhary and John Thomas, 'The Rights of Persons with Disabilities Act, 2016: Does it Address the Needs of the Persons with Mental Illness and Their Families?' (2017) 59(1) *Indian Journal of Psychiatry*, available at <http://www.indianjpsychiatry.org/backissues.asp> (last visited 04 April 2018).

⁵⁸ UNESCAP, *supra* n. 2, 34.

⁵⁹ The Promoting Rights of People with Disabilities in Indonesia (UN Partnership to Promote the Rights of Persons with Disabilities)—Phase II was implemented jointly with national entities such as the Association of Indonesian Municipalities and various disability rights non-governmental organisations. See ILO, *Special Edition ILO Jakarta Newsletter* (January 2018), available at <http://www.ilo.org/jakarta/whatwedo/publications/lang--en/index.htm> (last visited 04 April 2018).

education, employment, health care and social protection.⁶⁰ It directs the State to develop a system of social security, empower the inadequate and underprivileged in society in accordance with human dignity, and provide sufficient medical and public service facilities.⁶¹

The *Law on Persons with Disabilities (No. 8 of 2016)* is the principal statute on disability rights. It adopts the UNCRPD definition of “persons with disabilities”, and includes persons who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.⁶² It comprehensively outlines 22 rights of persons with disabilities such as the right to life; privacy; justice and legal protection; education; employment; health; social welfare; accessibility; rehabilitation; and freedom from discrimination, neglect, torture and exploitation, etc.⁶³ Specific rights of women and children with disabilities are also guaranteed.⁶⁴

The legislation is also programmatic and lists the tasks of the State towards protecting and realising each of these rights.⁶⁵ It mandates the establishment of an independent National Disabilities Commission to address challenges through complaint mechanisms, and to provide recommendations to relevant stakeholders

⁶⁰ *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* [The Constitution of the Republic of Indonesia (1945)] articles 27, 28A–28J, 31 (Indonesia).

⁶¹ *Id.* article 34.

⁶² *Undang-Undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas* [Law on Persons with Disabilities (No. 8 of 2016)] article 1 (Indonesia). English translation as provided by Government of Indonesia, *Indonesia: Initial State Party report to the Committee on the Rights of Persons with Disabilities (2016)*, available at <http://www.mindbank.info/item/6647> (last visited 04 April 2018).

⁶³ *Id.* chapter III.

⁶⁴ *Id.* article 5(2)–(3).

⁶⁵ *Id.* chapter IV.

including the government.⁶⁶ It prohibits discrimination and calls for anti-discriminatory measures including imposition of penalties.⁶⁷

Indonesia also has a supplementary *Law on Human Rights (No. 39 of 1999)* that contains provisions specific to persons with disabilities along with general guarantees of rights and anti-discrimination provisions. It provides that such persons are entitled to protection; facilitation and special treatment; and special care, education, training, and assistance at the expense of the State.⁶⁸

Noting the cross-sectoral nature of the issues, the government has appointed the Directorate for Social Rehabilitation of Persons with Disabilities under the Ministry of Social Affairs as the focal point Ministry on disability issues at the national level.⁶⁹

As regards mental health, the Human Rights Watch reported that more than 57,000 people in Indonesia with real or perceived psychosocial disabilities have been shackled or locked up in confined spaces at least once in their lives.⁷⁰ To remedy this dire state of affairs in the country, the *Mental Health Act (No. 18 of 2014)* was passed. It defines “people with mental problem” as those having a physical, mental, social, growth and development disorders, and/or living quality problem, thus carrying the risk of suffering mental disorder; and “people with

⁶⁶ *Id.* chapter VI.

⁶⁷ *Id.* chapters X, XI.

⁶⁸ *Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia* [Law on Human Rights (No. 39 of 1999)] articles 5(3), 41, 42, 54 (Indonesia).

⁶⁹ See UNESCAP, *supra* n. 17.

⁷⁰ Kriti Sharma, ‘Dispatches: Shackling No Answer for People with Disabilities’ (10 December 2015) *Human Rights Watch*, available at <https://www.hrw.org/news/2015/12/10/dispatches-shackling-no-answer-people-disabilities> (last visited 04 April 2018).

mental disorder” as those suffering from psychological, behavioural, and emotional disorder manifested in a series of symptoms and/or significant changes in behaviour, and which can potentially cause suffering and detriments of such person’s performance of his/her function as a human being.⁷¹ The law guarantees better treatment of people with mental and intellectual disabilities, and outlaws *pasung*—the practice of shackling relatives with mental health problems.⁷² However, as per a March 2016 report by the CNN, the practice still remains startlingly common.⁷³

Other laws and by-laws include *Law on the National Social Security System (No. 40 of 2004)*, *Regulation concerning Efforts to Improve Social Welfare for Persons with Disabilities (No. 43 of 1998)*, *Regulation of the Ministry of Finance's Director General of Treasury on Cash Disbursement for Severely Disabled People and for Vulnerable Elderly (No. 20 of 2006)*, etc. Indonesia has also implemented mechanisms such as the National Action Plan on Human Rights (2015–2019) and the National Medium-Term Development Plan (2015–2019) to prioritise persons with disabilities on the national development framework.

However, the country is yet to repeal domestic laws and provisions that violate the UNCRPD in terms of the rights of persons with disabilities to freedom of movement, equal treatment, and equal protection before the law, such as article 41

⁷¹ *Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa* [Law on Mental Health (No. 18 Of 2014)] article 1(2)–(3) (Indonesia). English translation as provided by WHO, *WHO MiNDbank: More Inclusiveness Needed in Disability and Development*, available at <http://www.mindbank.info/item/5193> (last visited 04 April 2018).

⁷² *Id.* article 86.

⁷³ Kathy Quiano, ‘Living in Chains: In Indonesia, Mentally Ill Kept Shackled in Filthy Cells’ (22 March 2016) *CNN*, available at <https://edition.cnn.com/2016/03/20/asia/indonesia-mental-health/index.html> (last visited 04 April 2018).

of the *Jakarta Province Regional Regulation on Public Order (No. 8 of 2007)*, which prohibits persons who “have an illness that causes unrest in the community ... from being in public places such as streets and parks” and articles 29(1)(a) and 29(3) of the *Criminal Procedure Code*, which allow for extended detention of a suspect or the accused if they have a physical or mental disability, in the interests of questioning the accused, at all stages of the trial, including investigation and on appeal.⁷⁴ Thus, although Indonesia has expressed support for the rights of persons with disabilities through the ratification and the implementation of the UNCRPD, it has been criticised for the inadequate practical progress made in the advancement of these rights.

E. Japan

Available data indicates that approximately five per cent of the population of Japan, or 7.2 million persons, are persons with disabilities.⁷⁵ The country has enacted around 70 laws concerning disability—including both disability-specific laws and sector-specific measures—which cover most aspects of the lives of persons with disabilities, such as medical treatment, education, employment, rehabilitation, welfare and care, income maintenance, housing, and transportation.⁷⁶ The UNCRPD was ratified in 2014.⁷⁷

⁷⁴ Nicola Edwards, ‘Disability Rights in Indonesia? Problems with Ratification of the United Nations Convention on the Rights of Persons with Disabilities’ (2014) 15(1) *Australian Journal of Asian Law* 6.

⁷⁵ Ryosuke Matsui, ‘Paper 6 Japan’ (2011) *UNESCAP Study on the Domestic Legislative Measures* 6, 6.1, para 1.

⁷⁶ *Id.* 8, para 10.

⁷⁷ Shirasawa Mayumi, ‘The Long Road to Disability Rights in Japan’ *Nippon.com* (02 October 2014), available at <https://www.nippon.com/en/currents/d00133/> (last visited 04 April 2018).

The Japanese *Constitution* guarantees equality and prohibits discrimination.⁷⁸ It entitles all citizens to maintain the minimum standards of wholesome and cultured living and mandates the State to endeavour for the promotion and extension of social welfare, security, and public health.⁷⁹

The *Basic Law for Persons with Disabilities (1970)* (amended and renamed in 2004 as “*Law for Employment Promotion of the Physically Disabled*”) is the main statute in the legal framework for the promotion and protection of the rights of persons with disabilities. It offers a socio-medical definition of “persons with disabilities” as those with a physical disability, or an intellectual disability, or a mental disability (including developmental disabilities), and those with disabilities affecting the functions of the body or mind, and who are in a state of facing substantial limitations in their continuous daily life or social life because of a disability or a social barrier.⁸⁰ It guarantees persons with disability the right to be respected for their individual dignity and lead a decent life, and the right to opportunities to participate in social, economic, cultural, and all other activities in the society.⁸¹

The Act is also anti-discrimination and prohibits the infringement of their rights or benefits on the basis of disability.⁸² It mandates the government to implement

⁷⁸ *Nihonkoku Kenpo* [Kenpo] [Constitution] (1946) article 11 (Japan).

⁷⁹ *Id.* article 25.

⁸⁰ *Shogaisha Kihon Ho* [Basic Law for Persons with Disabilities] (No. 84 of 1970) (last amended 2004) article 2(i) (Japan). English translation as provided by Japanese Law Translation Database System (Ministry of Justice, Japan), available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=5&re=02&dn=1&gn=99&sy=1970&ht=A&no=84&ia=03&x=52&y=16&ky=&page=1> (last visited 04 April 2018).

⁸¹ *Id.* article 3.

⁸² *Id.* article 4.

basic policies and programmes and to provide services such as medical care, pension, education, vocational counselling, employment promotion, accessible public facilities, etc.⁸³ It establishes the Central and Local Councils on Promotion of Measures for Persons with Disabilities to aid the formulation and implementation of the basic programmes.⁸⁴ Japan has delegated the Bureau for Promoting the Welfare of Persons with Disabilities under the Cabinet Office of the Prime Minister as its national focal point for disability rights.⁸⁵

Japan's *Law for Employment Promotion and Matters related to Disabled Persons (1960)* establishes a quota system and mandates employers in both, public and private enterprises, to employ a percentage of persons with physical or intellectual disabilities in the regular workforce, failing which they face sanctions. These levies are then appropriated to lessen the costs of enterprises employing persons with disabilities which may accrue when adjusting the workplaces to meet their needs.⁸⁶

Supplementary to the two Acts is the *Law to Promote the Elimination of Discrimination Based on Disability (2013)*, which classifies discrimination on the grounds of disability into “disparate and unfair discriminatory treatment” and “failure to provide reasonable accommodation”. It places the onus of eliminating

⁸³ *Id.* articles 8–22.

⁸⁴ *Id.* part IV.

⁸⁵ UNESCAP, *supra* n. 17.

⁸⁶ *Shogaisha no Koyo no Sokushin To Ni Kansuru Horitsu* [Law for Employment Promotion and Matters related to Disabled Persons] (No. 123 of 1960) (last amended 2012) chapter III (Japan).

discrimination on the government, the people of Japan, and business entities.⁸⁷ The government is mandated to formulate a Basic Policy for the Elimination of Discrimination Based on Disability, and business entities are mandated to not violate the rights of disabled persons through unfair discrimination in the workplace and to provide them with reasonable accommodation to remove social barriers, so long as doing so is not an excessive burden.⁸⁸ For resolution of disputes, the government is also to establish a System for Consultations and the Prevention of Disputes.⁸⁹ The Act requires relevant ministries and local public organisations to form a Regional Support Council for Eliminating Discrimination against Persons with Disabilities for consultations and smooth implementation of anti-discrimination measures.⁹⁰

As regards mental health, statutes such as the *Law on Mental Health and Welfare of Persons with Mental Disorders (1995)* (amended and renamed in 1995; formerly the “*Mental Hygiene Law (1950)*” and the “*Mental Health Law (1987)*”) implement the *Basic Act* to provide services and support every day and social life for those with intellectual disabilities in Japan. The Act defines “mental disability” as including schizophrenia, psychotic disorders due to psychoactive substance use, mental retardation, personality disorders, and/or other mental

⁸⁷ *Shogaisha Sabetsu Kaishoho* [Law to Promote the Elimination of Discrimination Based on Disability] (No. 65 of 2013) articles 3, 4, 5 (Japan).

⁸⁸ *Id.* chapters III, IV.

⁸⁹ *Id.* articles 14, 15.

⁹⁰ *Id.* articles 17, 18.

disorders.⁹¹ It advances the deinstitutionalisation, normalisation and rehabilitation of the mentally ill.

Prior to 2013, Japan was heavily criticised for neither developing a clear model for prohibiting discrimination against persons with disabilities nor formulating any comprehensive law prohibiting employment discrimination against such persons in order to realise the principles and purposes of the UNCRPD.⁹² With the enactment of the *Law to Promote the Elimination of Discrimination Based on Disability (2013)*, Japan remedied this lacuna before ratifying the Convention in 2014.

F. Malaysia

The Department of Statistics, Malaysia, estimates that 1.88 percent of the population has a disability.⁹³ Malaysia has ratified the UNCRPD in 2010 with reservations to articles on freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15); and on liberty of movement and nationality (article 18).⁹⁴

⁹¹ *Seishin Hoken Fukushiho* [Law on Mental Health and Welfare of Persons with Mental Disorders (1995)] (No. 123 of 1950) article 5 (Japan). English translation as provided by UNESCAP, *supra* n. 2, 25.

⁹² See Jun Nakagawa and Peter Blank, 'Future of Disability Law in Japan: Employment and Accommodation' (2010) 33(1) *Loyola International and Comparative Law Review*, available at <http://digitalcommons.lmu.edu/ilr/vol33/iss1/> (last visited 04 April 2018) 175 and Ryosuke Matsui, *supra* n. 75, 27, 6.8, para 88.

⁹³ Department of Statistics, Malaysia, *Approaches Used to Measure Disability through Censuses: Malaysian Experience* (July 2016), available at <https://unstats.un.org/unsd/demographic-social/meetings/2016/bangkok--disability-measurement-and-statistics/Session-6/Malaysia.pdf> (last visited 04 April 2018).

⁹⁴ Suruhanjaya Hak Asasi Manusia Malaysia (SUHAKAM), *Human Rights Commission of Malaysia Official Portal*, 'Persons with Disabilities', available at <http://www.suhakam.org.my/areas-of-work/pendidikan/orang-kurang-upaya-oku/> (last visited 04 April 2018).

Its *Constitution* does not contain any specific provisions for persons with disabilities but guarantees the liberty, equality before the law and equal protection of the law of all persons and prohibits discrimination.⁹⁵

Specific disability rights are supplemented by the *Persons with Disabilities Act (PWDA) 2008*. The Act draws directly on the UNCRPD for its preamble and its definitions of critical concepts.⁹⁶ “Persons with disabilities” are defined as including those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society.⁹⁷ The statute provides for the registration, protection, rehabilitation, development, and well-being of such persons.⁹⁸

The *PWDA* is also a benefit and a programmatic legislation that guarantees the right of access and directs the government to further ease accessibility to public facilities, amenities, services and buildings; transport facilities; education; employment; information, communication and technology; cultural life; recreation, leisure and sport; rehabilitation; health; lifelong protection and social support system; and assistance.⁹⁹ It seeks to provide for these rights in conjunction with the National Policy for Persons with Disabilities and the National Plan of Action for Persons with Disabilities.¹⁰⁰ A National Council for Persons with Disabilities is established to implement the national policy and the

⁹⁵ *The Federal Constitution 1957* articles 5, 8, 12 (Malaysia).

⁹⁶ Andrew Byrnes, *supra* n. 2, 19, para 50.

⁹⁷ *Persons with Disabilities Act 2008* section 2 (Malaysia).

⁹⁸ *Id.* preamble.

⁹⁹ *Id.* part IV.

¹⁰⁰ *Id.* preamble.

national plan, to make legislative and administrative recommendations to the government, and to develop appropriate programmes and strategies for the furtherance of its objectives.¹⁰¹

While the statute is silent on specific remedies for infringement of rights,¹⁰² the *Human Rights Commission of Malaysia Act 1999* empowers the national Human Rights Commission (SUHAKAM) to inquire into complaints regarding contraventions of all the fundamental human rights enshrined in the *Constitution*.¹⁰³ The SUHAKAM can be seen as playing the role of an independent monitoring mechanism for the rights of persons with disabilities, although it has not been officially appointed as such under the *Persons with Disabilities Act 2008*.¹⁰⁴

Malaysia's *Mental Health Act 2001* came into force only in 2010, along with the *Mental Health Regulations 2010*. It defines "mental disorder" to mean any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired.¹⁰⁵ It provides for comprehensive care, treatment, control, protection and rehabilitation of those with mental disorders.

Malaysia also has a number of programmatic regulations for accessibility such as the *MS 1184 Code of Practice for Access for Disabled Persons to Public*

¹⁰¹ *Id.* part III.

¹⁰² However, under section 41, the Act bars any suit and legal proceeding to be filed to the courts in any event of act, omission, neglect or default done in good faith towards government especially to the council members.

¹⁰³ *Human Rights Commission of Malaysia Act 1999* section 4 and chapter III (Malaysia).

¹⁰⁴ SUHAKAM, *supra* n. 94.

¹⁰⁵ *Mental Health Act 2001* section 2 (Malaysia).

Buildings 1991, the Uniform Building By-Law 34A of the Street, Drainage and Building Act 1991, the MS 1131 Code of Practice for Access for Disabled Persons Outside Buildings 1993, and the Guidelines on Building Requirements for Disabled Persons 1999.

The national focal point for the UNCRPD is the Department of Social Welfare under the Ministry of Women, Family and Community Development,¹⁰⁶ and the national action plan being implemented presently is the Persons with Disabilities Policy and Action Plan (2015–2022).

Although Malaysia has been applauded for closely following the language of the UNCRPD in the *PWDA*,¹⁰⁷ it has been criticised for the significant omissions in the statute. For one, the non-remedial nature of the Act makes it unenforceable in certain conditions. The Act also does not contain explicit anti-discrimination and anti-harassment provisions. It lacks a comprehensive monitoring mechanism against parties who violate the Act or the rights of persons with disabilities and does not provide for any penalties in the event of such infringements.¹⁰⁸ These factors that render this statute weak for effective implementation of the UNCRPD.

¹⁰⁶ UNESCAP, *supra* n. 17.

¹⁰⁷ Andrew Byrnes, *supra* n. 2, 19, para 50.

¹⁰⁸ See Nurhidayah Binti Abdullah *et al*, 'The Rights of Persons with Disabilities in Malaysia: The Underlying Reasons for Ineffectiveness of Persons with Disabilities Act 2008' (2017) 1(January) *International Journal for Studies on Children, Women, Elderly and Disabled* 130–133, 4.0–6.0.

G. Philippines

Philippines has 1.44 million disabled persons as per its 2010 census undertaken by the Philippine Statistics Authority.¹⁰⁹ Ahead of the ratification of the UNCRPD in 2008,¹¹⁰ the country had already established the necessary legal mechanisms for the promotion and protection of the rights of persons with disabilities as well as a national implementing body. Its current policy strategy for persons with disabilities is the National Decade for Persons with Disabilities (2013–2022).

The *Constitution of the Republic of Philippines* guarantees the right to equality before the law.¹¹¹ Its Bill of Rights provides for general rights of all citizens. It also recognises specific rights of persons with disabilities, such as their right to suffrage.¹¹² The State is mandated to endeavour to make essential goods, health, and other social services affordable for persons with disabilities and establish a special agency for their rehabilitation, self-development and self-reliance, and integration into the mainstream of society.¹¹³

The *Magna Carta for Disabled Persons of 1992* along with its amendments is the principal national disability law in the country.¹¹⁴ It incorporates all the essential

¹⁰⁹ PSA, ‘Persons with Disability in the Philippines (Results from the 2010 Census)’ *Philippine Statistics Authority*, available at <https://psa.gov.ph/tags/persons-disability> (last visited 04 April 2018).

¹¹⁰ UNESCAP, *supra* n. 2, 43.

¹¹¹ *Constitution of the Republic of the Philippines* (1987), article III section 1 (Philippines).

¹¹² *Id.* article V.

¹¹³ *Id.* sections 11–13.

¹¹⁴ *An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration into the Mainstream of Society and for other Purposes* (the “Magna Carta for Disabled Persons”), Republic Act No. 7277 (1992) (Philippines).

provisions of earlier national laws including the *Accessibility Law of 1982*,¹¹⁵ and the latest *Implementing Guidelines of Republic Act of 2017*,¹¹⁶ which provides for medical and health-related discounts and special privileges.

The *Magna Carta* leans towards a medical definition of “disabled persons” and includes those suffering from restriction of different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being. “Impairment” is defined as any loss, diminution or aberration of psychological, physiological, or anatomical structure or function, and “disability” is said to include either a physical or mental impairment substantially limiting psychological, physiological or anatomical functions or activities of an individual; or a record of such an impairment; or being regarded as having such an impairment. The Act also defines “handicap”, as a disadvantage for a given individual resulting from an impairment or a disability, that limits or prevents the functions or activity, that is considered normal given the age and sex of the individual.¹¹⁷ The Act grants rights and privileges on such persons with disabilities in the fields of employment, education, health, and social services, and contains anti-discrimination provisions.¹¹⁸

¹¹⁵ *An Act to Enhance the Mobility of Disabled Persons by Requiring Certain Buildings, Institutions, Establishments, and Public Utilities to Install Facilities and Other Devices*, Batas Pambansa Blg. 344 (1982) (Philippines).

¹¹⁶ *Implementing Guidelines of Republic Act 10754* (“An Act Expanding the Benefits and Privileges of Persons with Disability”), DOH AO 2017–0008 (2017) (Philippines).

¹¹⁷ *Magna Carta*, *supra* n. 114, section 4(a)–(d).

¹¹⁸ *Id.* titles two and three.

In the event of disability right infringements, it empowers the Secretary of Justice to investigate the alleged violations and commence legal action in the appropriate court.¹¹⁹ The court is entitled to grant equitable temporary, preliminary or permanent relief as it deems fit, or provide for an auxiliary aid or service, modification of policy, practice or procedure, or alternative method, and make facilities readily accessible to and usable by individuals with disabilities.¹²⁰ The Act also penalises breaches of any of the provisions therein.¹²¹

Apart from this umbrella legislation, Philippines is also currently in the process of passing the House Bill No. 6452, or the “*Comprehensive Mental Health Act*”. This proposed Act takes a socio-medical stance and defines “mental disability” as impairments, activity limitations, and individual and participatory restrictions denoting dysfunctional aspects of interaction between an individual and his environment.¹²² Its object is to establish a mental health policy to efficiently deliver integrated services and promote and protect persons who utilise such psychiatric, neurologic and psychosocial health services.¹²³

Other statutes include the *Vocational Rehabilitation Act of 1954*¹²⁴ and *An Act to Promote the Education of the Blind in the Philippines of 1963*.¹²⁵

¹¹⁹ *Id.* section 44.

¹²⁰ *Id.* section 45.

¹²¹ *Id.* section 46.

¹²² *Comprehensive Mental Health Act*, House Bill No. 6452 (2017) section 4(i) (Philippines).

¹²³ *Id.* preamble

¹²⁴ *An Act to Provide for the Promotion of Vocational Rehabilitation of the Blind and Other Handicapped Persons and Their Return to Civil Employment* (the “*Vocational Rehabilitation Act*”), Republic Act No. 1179 (1954) (Philippines).

¹²⁵ *An Act to Promote the Education of the Blind in the Philippines*, Republic Act No. 3562 (1963) (Philippines).

The Philippine government has established the National Council on Disability Affairs (formerly the “National Commission Concerning Disabled Persons”) under the Department of Social Welfare and Development as the focal point.¹²⁶ The Council frames disability-related policies, co-ordinates with the stakeholders involved, and monitors the implementation of national and international policies concerning disability rights, including the UNCRPD. Moreover, the Amending Republic Act No. 10070 of 2010 modifies the *Magna Carta* and provides for the establishment of Persons with Disability Affairs Offices (PDAOs) and focal persons in lieu of PDAOs to ensure the implementation of programmes and services for persons with disabilities at the local level—in every province, city, and municipality.¹²⁷

The consensus is that Philippines is moving in the right direction with its comprehensive domestic mechanisms and implementation of the UNCRPD. However, it has been felt that the government needs to set up more PDAOs or focal person(s) all over the country for more effective implementation at the local level.¹²⁸

¹²⁶ UNESCAP, *supra* n. 17.

¹²⁷ *Establishing Institutional Mechanism to Ensure the Implementation of Programs and Services for Persons with Disabilities in Every Province, City and Municipality, Amending Republic Act No. 7277, Otherwise Known as the Magna Carta for Disabled Persons, as Amended, and for Other Purposes*, Republic Act No. 10070 (2010) (Philippines).

¹²⁸ John Paul Cruz, ‘Understanding CRPD Implementation in Philippines’ in Derrick L Cogburn and Tina Kempin Reuter (eds.) *Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN* (1st edn Lexington Books Maryland 2017) 25–38.

H. Singapore

Based on a 2015 sample survey done by the National Council of Social Service and

the Ministry of Education, there are approximately 733,000 disabled individuals in

Singapore.¹²⁹ Unlike other developed countries, there is no purpose-built legislation or anti-discrimination Act in Singapore that specifically promotes or protects the rights of the disabled.¹³⁰ Singapore ratified the UNCRPD in 2013 and has reserved the right to place restrictions on several of its articles such as access to voting (article 29); specifically exclude private insurers from covering persons with disabilities in health and life insurance (article 25); and represents that issues of capacity are respected (article 12).¹³¹

The *Constitution of the Republic of Singapore* guarantees equality before the law and equal protection of the law for all. It prohibits discrimination but does not specify “disability” as being one of the grounds.¹³² The only specific laws that provide further support to persons with disabilities are the *Mental Capacity Act (2008)*, which safeguards the interests of those who lose their mental capacity,

¹²⁹ MSF, ‘Number and Profile of Persons with Disabilities’ *Ministry of Social and Family Development*, available at <https://www.msf.gov.sg/media-room/Pages/Number-and-profile-of-persons-with-disabilities.aspx> (last visited 04 April 2018).

¹³⁰ Wong Meng Ee *et al*, ‘Chapter 9 Navigating Through the ‘Rules’ of Civil Society: In Search of Disability Rights in Singapore’ in Jiyoung Song (ed.) *A History of Human Rights Society in Singapore 1965–2015* (1st edn Routledge London 2017) 158.

¹³¹ Meng Ee Wong *et al*, ‘Understanding CRPD Implementation in Singapore’ in Derrick L Cogburn and Tina Kempin Reuter (eds.) *Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN* (1st edn Lexington Books Maryland 2017) 147.

¹³² *Constitution of the Republic of Singapore (1965)* article 12 (Singapore).

including persons with intellectual disability; the *Central Provident Fund Act (2011 Amendment)*, which implements the Special Needs Savings Scheme seeking to ensure that the financial needs of children with disabilities are taken care of through their deceased parents' Central Provident Fund monies; and the *Building Construction Authority's Code on Accessibility 2013*, which requires building owners to cater to people with different impairments.¹³³

There is no uniform definition of “disability” in Singapore.¹³⁴ However, Singapore's current definition of “persons with disabilities”, as adopted in its five-year Enabling Masterplan (EM), has been formulated by the 1988 Advisory Council for the Disabled and amended by the Ministry of Community Development, Youth and Sports in 2004. It defines them as individuals whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual, and developmental impairments.¹³⁵ As for “mental disability”, the *Mental Capacity Act (2008)* states that a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the

¹³³ Government of Singapore, *Singapore: Initial State Party report to the Committee on the Rights of Persons with Disabilities (2016)*, UN Doc CRPD/C/SGP/1 (June 2016), available at <http://www.mindbank.info/item/6623> (last visited 04 April 2018) 23, para 1.15.

¹³⁴ *Id.* 20, para 1.2.

¹³⁵ Ministry of Social and Family Development, ‘1st Enabling Masterplan 2007–2011’ *Disabilities & Special Needs*, available at <https://www.msf.gov.sg/policies/Disabilities-and-Special-Needs/Pages/default.aspx> (last visited 04 April 2018) 1.1–1.2, para 1–7.

particular matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.¹³⁶

Prior to Singapore's commitment to the UNCRPD, the focus on disability rights was through the EM, comprising of recommendations and proposed strategies for empowering persons with disabilities and promoting greater inclusiveness in the society. The first EM (2007–2011) was the initial framework that set the ball rolling for national disability issues in Singapore. The second EM (2012–2016) was improvised further and adopted a life-long approach for persons with disabilities starting from infant detection, early pre-school years, education, employment, to aging years.¹³⁷ It is currently in its third edition (2017–2021) and is endorsed by a 22-member Steering Committee comprising persons with disabilities, caregivers, leaders and professionals in the disability field, voluntary welfare organisations and government agencies. The Committee has identified the broad areas of improving the quality of life of persons with disabilities, supporting caregivers, building the community, and building an inclusive society. The strategic directions and recommendations made by the Committee under these broad areas complement Singapore's efforts to progressively realise its obligations under the UNCRPD.¹³⁸

As for the remedial provisions in the event of infringement of rights, the government in its 2016 Initial State Party Report to the Committee on the Rights

¹³⁶ *Mental Capacity Act (2008)* section 4(1) (Singapore).

¹³⁷ Meng Ee Wong *et al*, *supra* n. 131, 143.

¹³⁸ 3rd Enabling Masterplan Steering Committee, *3rd Enabling Masterplan 2017–2021: Caring Nation, Inclusive Society*, available at <https://www.sgenable.sg/pages/content.aspx?path=/about-us/enabling-masterplan/> (last visited 04 April 2018).

of Persons with Disabilities states that where any legislation or policy contravenes the provisions of the *Constitution*, all persons, including persons with disabilities, may apply to the High Court to seek a judicial review of that particular legislation on the grounds of it being *ultra vires*. It also adds that violations of the law can be reported to the relevant authorities who will investigate the complaint and take appropriate action to enforce the laws. A police report can also be lodged by or on behalf of an affected victim. Aggrieved persons are entitled to seek assistance from free legal clinics or bring the matter before the courts.¹³⁹

The national focal point is the Disability Division under the Ministry of Community Development, Youth and Sports.¹⁴⁰ The other bodies responsible for monitoring and implementing the UNCRPD and the EM are the Inter-Agency Standing Committee on Disability, SG Enable, and the Enabling Masterplan Implementation Committee.

Singapore lacks formal and comprehensive legislation for the promotion and protection of disability rights and anti-discrimination provisions. It has also been behind the curve in keeping up with the evolving perception of “disability” from the medical to the social model. Taking this into consideration, Singapore has been commended for not been immune to global trends on norms and standards for disabled populations, especially from international organisations and the

¹³⁹ Government of Singapore, *supra* n. 133, 27.

¹⁴⁰ See UNESCAP, *supra* n. 17.

developed world.¹⁴¹ Academicians have noted that disability rights in Singapore have progressed from near non-existence to a less peripheral position in the human rights scene.¹⁴²

I. Thailand

According to the 2007 Survey on Health and Welfare by the National Statistics Office, it is estimated that three percent of Thailand's population has a disability.¹⁴³ The country's disability movement has been active and dynamic since the 1980s¹⁴⁴ and it has also been the proud recipient of the Franklin Delano Roosevelt International Disability Award in 2001 for its achievements in supporting persons with disabilities.¹⁴⁵ It ratified the UNCRPD in 2008¹⁴⁶ and is currently implementing the Fifth National Plan of Empowerment of Persons with Disabilities (2017–2021).

The *Constitution of the Kingdom of Thailand BE 2560* [2017] guarantees equality before the law, equal rights and liberties, and equal protection of the law.¹⁴⁷ It also provides for the right and liberty to life; to privacy, dignity, reputation; to

¹⁴¹ See Reuben Wong and Wong Meng Ee, 'Chapter 9 Social Impact of Policies for the Disabled in Singapore' in Chan David (ed.) *50 Years of Social Issues in Singapore* (1st edn World Scientific Publishing Co Pte Ltd Singapore 2015) 148 and 163.

¹⁴² See Wong Meng Ee *et al*, *supra* n. 130, 159.

¹⁴³ ILO, *Inclusion of People with Disabilities in Thailand: Fact Sheet* (2009), available at http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_112307.pdf (last visited 04 April 2018).

¹⁴⁴ Donruedee Srisuppaphon *et al*, 'Effective Implementation of the UNCRPD by Thailand State Party: Challenges and Potential Remedies' (2017) *BMC International Health and Human Rights*, available at <https://doi.org/10.1186/s12914-017-0123-5> (last visited 04 April 2018).

¹⁴⁵ See Naparat Kranrattanasuit *et al*, 'Understanding CRPD Implementation in Thailand' in Derrick L Cogburn and Tina Kempin Reuter (eds.) *Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN* (1st edn Lexington Books Maryland 2017) 43.

¹⁴⁶ UNESCAP, *supra* n. 2, 47.

¹⁴⁷ *Constitution of the Kingdom of Thailand (Interim) Act 2557 Amendment (No. 4) BE 2560* [2017] section 27 (Thailand).

engage in an occupation; and to public health services.¹⁴⁸ It condemns unjust discrimination on grounds including “disability”, and sanctions positive discrimination on the part of the State.¹⁴⁹ Upon violation of rights and liberties, the aggrieved person is entitled to bring a lawsuit in the court, and alternatively to seek remedy or assistance from the State, as prescribed by the law.¹⁵⁰

The *Constitution* also comprehensively lists the duties of the State such as providing compulsory quality education and efficient universal public health services, and provides that such duties are actionable in a court of law.¹⁵¹ Under the Directive Principles of State Policies, the government is mandated to provide assistance to persons with disabilities to be able to have quality living, to protect them from violence or unfair treatment, and to provide them with medical treatment, rehabilitation, and remedies.¹⁵² Additionally, it makes provision for the establishment of an independent National Human Rights Commission in conjunction with the *National Human Rights Commission Act BE 2542* [1999].¹⁵³

Thailand’s chief legislation, the *Persons with Disabilities Empowerment Act (PDEA) BE 2550* [2007], repeals and replaces the *Rehabilitation of Disabled Persons Act BE 2534* [1991]. It recognises persons with disabilities as holders of human rights and provides a social definition of “persons with disabilities” as individuals who have limitations to perform their daily activities or to fully

¹⁴⁸ *Id.* sections 28, 32, 40, 47.

¹⁴⁹ *Id.* section 27.

¹⁵⁰ *Id.* section 25.

¹⁵¹ *Id.* sections 51, 54, 55.

¹⁵² *Id.* section 71.

¹⁵³ *Id.* chapter XII part 6.

participate in society due to visual, hearing, mobility, communication, mental, emotional, behavioural, intellectual, learning and/or other impairments, resulting in different types of barriers, and have special needs in order to perform their daily activities and fully participate in society according to the types and criteria of disabilities prescribed by the Minister of Social Development and Human Security.¹⁵⁴ Such persons are entitled to access and use public facilities, welfare, and assistance provided by the State such as services of medical rehabilitation, education, occupational rehabilitation, access to necessary facilities, and legal assistance.¹⁵⁵

The Act is anti-discrimination and allows discrimination for academic, traditional purposes or for public interests only when deemed necessary based on the circumstances of the situation.¹⁵⁶ It also entitles victimised individuals to request the Committee to revoke or prohibit any discriminatory or unfair practice. It further provides an alternate remedy of filing a suit in a court of law for indemnity and makes provision for punitive indemnity up to four times the actual damages.¹⁵⁷ Persons with disabilities or their carers are entitled to approach disabled persons organisations to file a petition or a lawsuit on their behalf, and such lawsuits are exempt from court fees.¹⁵⁸

¹⁵⁴ *Persons with Disabilities Empowerment Act BE 2550* [2007] section 4 (Thailand). English translation as provided by Department of Empowerment of Persons with Disabilities, Thailand, available at <http://dep.go.th/sites/default/files/files/news/2.pdf> (last visited 04 April 2018).

¹⁵⁵ *Id.* section 20.

¹⁵⁶ *Id.* section 15.

¹⁵⁷ *Id.* section 16.

¹⁵⁸ *Id.* section 17.

The *PDEA* sets up the National Committee for Empowerment of Persons with Disabilities, headed by the Prime Minister as the Chairperson and the Minister of Social Development and Human Security as Vice-Chairperson.¹⁵⁹ It also sets up the National Office for Empowerment of Persons with Disabilities to assist the Committee and act as the national focal point.¹⁶⁰ The Department of Empowerment of Persons with Disabilities (DEP), established pursuant to section 12 of the *PDEA* under the Ministry of Social Development and Human Security, interacts and cooperates with government and non-government agencies at both national and international levels.¹⁶¹

Thailand's mental health legislation is the *Mental Health Act BE 2551* [2008]. It defines "mental disorder" as any symptom of mental disorder exposed through behaviour, mood, thought, memory, intelligence, neuro-perception or perception of time, place or person, including any symptom of mental disorder resulting from alcoholic drinks or other psychotropic substances.¹⁶² The Act establishes a National Mental Health Board and an Infirmary Board, guarantees patients' rights, and lays down procedures for treatment.

Disability rights are further supplemented by policies and by-laws such as the *Declaration on Rights for People with Disabilities in Thailand (3 December 1998)*, which—approved and signed by then former Prime Minister—is a pledge

¹⁵⁹ *Id.* sections 5–11.

¹⁶⁰ *Id.* sections 12–14.

¹⁶¹ Naparat Kranrattanasuit *et al*, *supra* n. 145, 46–47.

¹⁶² *Mental Health Act BE 2551* [2008] section 3 (Thailand). English translation as provided by WHO, *WHO MiNDbank: More Inclusiveness Needed in Disability and Development*, available at <http://www.mindbank.info/item/4790> (last visited 04 April 2018).

made by the people of Thailand to persons with disabilities, and is now used as a reference in the provision of services for people with disabilities;¹⁶³ the *Ministerial Regulations on Accessibility BE 2548* [2005]; and the *Persons with Disabilities Education Act BE 2551* [2008], which promotes equality in access to education and vocational training for all such persons.

Even though the Thai government has made an effort to facilitate the enjoyment of rights of persons with disabilities, the findings and views of academics suggest that there are still gaps between the vision of the UNCRPD and its implementation through domestic mechanisms that need to be bridged for the complete realisation of rights of persons with disabilities in Thailand.¹⁶⁴

¹⁶³ ILO, *supra* n. 143.

¹⁶⁴ See Donruedee Srisuppaphon *et al*, *supra* n. 144 and Naparat Kranrattanasuit *et al*, *supra* n. 145, 42 and Disabilities Thailand and Network of Disability Rights Advocates, *Thailand CRPD Alternative Report: For the UN Committee on the Rights of Persons with Disabilities (2016)*, available at http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/THA/INT_CRPD_CSS_THA_23388_E.doc (last visited 04 April 2018).

III. CONCLUDING REMARKS

The UNCRPD has set into motion a worldwide law reform movement for disability rights. Being legally-binding, it establishes the human rights of persons with disabilities and the obligations of the State for their provision through hard law. For it to not be demoted as a paper tiger, it must be strictly enforced and any deprivation of human rights for persons with disabilities must be rectified.

On the other side of the globe is a remarkably robust body of case law in the area of disability law from the European Court on Human Rights (ECtHR), some significant and transformative decisions from the Inter-American Commission on Human Rights, and at least one major case from the African Commission on Human Rights.¹⁶⁵ However, the expansive region of the Asia-Pacific falls short since it lacks a regional human rights court, and this has been a major hurdle in the faithful implementation of the UNCRPD.

There have been several unsuccessful attempts in the past to establish a body for enforcing human rights and dealing with complaints of infringements in this region, such as the proposal for a Pacific Charter by the Law Association for Asia and the Pacific, which unfortunately failed due to political, social, cultural, and practical pressures.¹⁶⁶ Although the Association of Southeast Asian Nations

¹⁶⁵ Michael Perlin, 'Promoting Social Change in the Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the U.N. Convention on the Rights of Persons with Disabilities' (2012) 44(1) *George Washington International Law Review* 1, para 1.

¹⁶⁶ *Id.* 11 citing P Imrana Jalal, 'Why Do We Need a Pacific Regional Human Rights Commission?' (2008) VIII *Victoria University of Wellington Law Review* 180–182, available at <https://www.victoria.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-viii,-2008> (last visited 04 April 2018). See Patricia Hyndman, 'Report on a Proposed Pacific Charter of Human Rights Prepared Under the Auspices of LAWASIA, May 1989' (1992) 22(2) *Victoria University of Wellington Law Review* 99.

(ASEAN) has established the ASEAN Intergovernmental Commission on Human Rights, it is not as efficient as the institution of a Disability Rights Tribunal for Asia and the Pacific (DRTAP) would be for the remediation of disparities between the international and domestic laws in this region.

The Asia-Pacific region has a long way to go in the field of disability rights and a strengthened need for the establishment of a DRTAP has been felt by several academicians since the ratification of the UNCRPD. As Professor Emeritus Michael L Perlin of the New York Law School believes, a DRTAP would not only be a bold, innovative, progressive, and important step on the path towards realisation of disability rights, but would also be, ultimately, a likely inspiration for a full regional human rights tribunal in this area of the world.¹⁶⁷

¹⁶⁷ Michael Perlin, *supra* n. 165, 2.

SCHEDULE

IMPORTANT STATUTORY DEFINITIONS

A. Australia

Disability Discrimination Act 1992

Section 4:

(1) ***disability***, in relation to a person, means:

(a) total or partial loss of the person's bodily or mental functions;

or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

To avoid doubt, a *disability* that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

B. China

Law on the Protection of Persons with Disabilities (LPPD) (1990)

Article 2:

A *person with disabilities* refers to one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal.

The term “*a person with disabilities*” refers to one with visual, or hearing, or speech, or physical, or intellectual, or psychiatric disability, multiple disabilities and/or other disabilities.

The criteria for classification of disabilities shall be established by the State Council.¹⁶⁸

C. India

Rights of Persons with Disabilities Act, 2016

Section 2:

- (r) “*person with benchmark disability*” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;
- (s) “*person with disability*” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;
- (t) “*person with disability having high support needs*” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support.

Mental Health Care Act, 2017

Section 2:

- (s) “*mental illness*” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment,

¹⁶⁸ English translation as provided by China Disabled Persons’ Federation, *available at* http://www.cdpcf.org.cn/english/Resources/lawsregulations/201603/t20160303_542879.shtml (last visited 04 April 2018).

behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

D. Indonesia

Law on Persons with Disabilities (No. 8 of 2016)

Article 1:

[Adopts the UNCRPD definition of “*persons with disabilities*”, and includes persons who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.]¹⁶⁹

Law on Mental Health (No. 18 Of 2014)

Article 1:

- (1) ***People With Mental Problem***, or PWMP, is a person having a physical, mental, social, growth and development disorders, and/or living quality problem, thus carrying the risk of suffering mental disorder.

¹⁶⁹ English translation as provided by Government of Indonesia, *Indonesia: Initial State Party report to the Committee on the Rights of Persons with Disabilities (2016)*, available at <http://www.mindbank.info/item/6647> (last visited 04 April 2018).

(2) *People With Mental Disorder*, or PWMD, is a person suffering from psychological, behavioral, and emotional disorder manifested in a series of symptoms and/or significant changes in behavior, and which can potentially cause suffering and detriments of such person's performance of his/her function as a human being.¹⁷⁰

E. Japan

Basic Law for Persons with Disabilities (1970) (amended and renamed in 2004 as “Law for Employment Promotion of the Physically Disabled”) (Law No. 84 of 1970)

Article 2:

(i) *“Person with a disability”* refers to a person with a physical disability, a person with an intellectual disability, a person with a mental disability (including developmental disabilities), and other persons with disabilities affecting the functions of the body or mind (hereinafter referred to collectively as "disabilities"), and who are in a state of facing substantial limitations in their continuous daily life or social life because of a disability or a social barrier.¹⁷¹

¹⁷⁰ English translation as provided by WHO, *WHO MiNDbank: More Inclusiveness Needed in Disability and Development*, available at <http://www.mindbank.info/item/5193> (last visited 04 April 2018).

¹⁷¹ English translation as provided by Japanese Law Translation Database System (Ministry of Justice, Japan), available at <http://www.japaneselawtranslation.go.jp/law/detail/?ft=5&re=02&dn=1&gn=99&sy=1970&ht=A&no=84&ia=03&x=52&y=16&ky=&page=1> (last visited 04 April 2018).

**Law on Mental Health and Welfare of Persons with Mental Disorders (1995)
(amended and renamed in 1995; formerly the “Mental Hygiene Law (1950)”
and the “Mental Health Law (1987)” (No. 123 of 1950)**

Article 5:

“**Mental disability**” includes schizophrenia, psychotic disorders due to psychoactive substance use, mental retardation, personality disorders, and/or other mental disorders.¹⁷²

F. Malaysia

Persons with Disabilities Act 2008

Section 2:

“**Persons with disabilities**” include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society.

Mental Health Act 2001

Section 2:

“**Mental disorder**” means any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and

“**mentally disordered**” shall be construed accordingly.

G. Philippines

¹⁷² English translation as provided by UNESCAP, *supra* n. 2, 25.

Magna Carta for Disabled Persons of 1992

Section 4:

- (a) ***Disabled Persons*** are those suffering from restriction of different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being;
- (b) ***Impairment*** is any loss, diminution or aberration of psychological, physiological, or anatomical structure of function;
- (c) ***Disability*** shall mean (1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.
- (d) ***Handicap*** refers to a disadvantage for a given individual resulting from an impairment or a disability, that limits or prevents the functions or activity, that is considered normal given the age and sex of the individual.

House Bill No. 6452, or the “Comprehensive Mental Health Act”

Section 4:

- (i) ***Mental disability*** refers to impairments, activity limitations, and individual and participatory restrictions denoting

dysfunctional aspects of interaction between an individual and one's environment.

H. Singapore

1st Enabling Masterplan 2007–2011

Persons with disabilities are those whose prospects of securing, retaining places and advancing in education and training institutions, employment and recreation as equal members of the community are substantially reduced as a result of physical, sensory, intellectual, and developmental impairments.

Mental Capacity Act (2008)

Section 4:

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to—
 - (a) a person's age or appearance; or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

(4) In proceedings under this Act (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

I. Thailand

Persons with Disabilities Empowerment Act (PDEA) BE 2550 [2007]

Section 4:

“Persons with disabilities” means individuals who have limitations to perform their daily activities or to fully participate in society due to visual, hearing, mobility, communication, mental, emotional, behavioral, intellectual, learning and/or other impairments, resulting in different types of barriers, and have special needs in order to perform their daily activities and fully participate in society according to the types and criteria of disabilities prescribed by the Minister of Social Development and Human Security.¹⁷³

¹⁷³ English translation as provided by Department of Empowerment of Persons with Disabilities, Thailand, available at <http://dep.go.th/sites/default/files/files/news/2.pdf> (last visited 04 April 2018).

Mental Health Act BE 2551 [2008]*Section 3:*

“Mental disorder” means any symptom of mental disorder exposed through behavior, mood, thought, memory, intelligence, neuro-perception or perception of time, place or person, including any symptom of mental disorder resulting from alcoholic drinks or other psychotropic substances.¹⁷⁴

¹⁷⁴ English translation as provided by WHO, *WHO MiNDbank: More Inclusiveness Needed in Disability and Development*, available at <http://www.mindbank.info/item/4790> (last visited 04 April 2018).