Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the Convention on the Rights of Persons with Disabilities

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Introduction

There is no question that the existence of regional human rights courts and commissions has been an essential element in the enforcement of international human rights in those regions of the world where such tribunals exist. In the specific area of mental disability law, there is now a remarkably robust body of case law from the European Court on Human Rights, 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.

In Asia and the Pacific region, however, there is no such body. Although the ASEAN charter refers to human rights, that body cannot be seen as a significant enforcement tool in this area of law and policy. Many reasons have been offered for the absence of a regional human rights tribunal in Asia; the most serious of these is the perceived conflict between what are often denominated as “Asian values” and universal human rights. What is clear is that the lack of such a court or commission has been a major impediment in the movement to enforce disability rights in Asia.

The absence of such a body has become even more problematical since the United Nations’ Convention on the Rights of Persons with Disabilities (sometimes “CRPD’; sometimes “the Convention”) has been ratified. Finally, there is now “hard law” clearly establishing the international human rights of persons with disabilities, but, without a regional enforcement body, we cannot be overly optimistic about the “real life” impact of this Convention on the rights of Asian and Pacific region persons with disabilities.
The research is clear. In all regions of the world, persons with mental disabilities – especially those institutionalized because of such disabilities – are uniformly deprived of their civil and human rights. The creation of a Disability Rights Tribunal for Asia and the Pacific (sometimes “DRTAP”; sometimes “the tribunal”) would be the first necessary step leading to amelioration of this deprivation. It would be a bold, innovative, progressive and important step on the path towards realization of those rights. It would also, not unimportantly, be – ultimately – a likely inspiration for a full regional human rights tribunal in this area of the world. If, however, it were to be created, it is also clear that it would be an empty victory if there were not lawyers available to represent individuals who seek to litigate there.

In this paper, I will first consider the existence and role of regional human rights tribunals in other parts of the world, and will then briefly discuss some of the important disability rights cases litigated in those regions so as to demonstrate how regional tribunals can have a significant impact on the lives of persons with disabilities. Then, I will consider why there is a need for the DRTAP, looking at the absence of such bodies in Asia and the Pacific, the need for such a body, focusing specifically on the gap between current domestic law “on the books” and how such law is practiced in “reality”, as well as the importance of what is termed the “Asian values” debate, concluding that this debate leads to a false consciousness (since it presumes a unified and homogenous multi-regional attitude towards a bundle of social, cultural and political issues), and that the universality of human rights must be seen to predominate here. I then explain why the UN Convention on the Rights of Persons with Disabilities is a paradigm-shattering Convention that, truly, is the “first day of the rest of our lives” for anyone who does work in this area, and why the creation of the DRTAP is timely, inevitable and
essential, if the Convention is to be given true life. I will then briefly summarize the work that has already been done on the creation of a DRTAP, and how this work needs to continue in the future. I will conclude by looking at the role of counsel in the representation of persons with mental disabilities, the current lack of counsel experienced in this subject matter in Asia and the Pacific, and the importance of training lawyers to provide adequate representation before DRTAP, insuring that this Tribunal has an authentic impact on social change.

I. Regional human rights bodies elsewhere
   a. An overview

   A regional human rights court is an engine that provides real and practical meanings of each provision of international human rights law to citizens, and that universalizes these meanings.\(^1\) These universalized meanings can be adopted and incorporated in an almost symbiotic way by other regional courts and tribunals. This engine of social and political change thus dynamically sharpens and clarifies a normative and practical meaning of international human rights law.

   Asia and the Pacific is the only area of the world that does not have a regional human rights court or commission. Europe established a European Court of Human Rights in 1956 that was renewed in 1998. The Inter-American Court of Human Rights was established in 1980. Africa

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established The African Court of Human Rights and People’s Rights in 2006. It is well known that the European Court has been at the forefront of regional human rights protection; its precedents are relied on regularly as a basis for the interpretation of international human rights law. The Inter-American Court of Human Rights has played a similar role for its region and international society. Its greatest contribution to the inter-American system has been in de-legitimizing nondemocratic governments by means of the monitoring conducted during its on-site visits, and as a result of the presentation of its country reports to the OAS political organs and to hemispheric public opinion in general. These country reports are presented to the political organs and have dominated the agendas of the OAS General Assemblies for many years. The documentation presented by an intergovernmental organization of human rights violations committed by states against their own populations has a credibility not achieved by reports issued by nongovernmental organizations, and every state will fight not to be censured by its peers. In summary, Prof. Goldman has concluded that “The Inter-American system has

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contributed significantly to the development of human rights in the region as well as to broader
democratic values.”

b. Disability rights cases in regional courts and commissions

Several important cases litigated in other parts of the world have had a tremendous impact on the human rights for persons with disabilities. Not only do they serve as an example for other nations to follow in assuring human rights to every person, but these cases also demonstrate the effectiveness of regional tribunals. One such case is In the Matter of Victor Rosario Congo, involving a 48 year-old Ecuadorian who, as a result of the State’s gross negligence and willful acts, died of malnutrition, hydroelectrolitic imbalance, and heart and lung failure. Specifically, Mr. Congo was beaten with a club on the scalp by a guard, deprived of any medical treatment, and placed in isolation naked and virtually incommunicado.

The Inter-American Commission on Human Rights (Inter-American Commission) found that the State violated Mr. Congo’s right to humane treatment under Article 5 of the American Convention on Human Rights (American Convention). The Inter-American Commission determined that Article 5 of the American Convention must be interpreted in light of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental

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Health Care (MI Principles). This is of particular importance because it makes the MI Principles hard law, or in other words, binding on the United Nations members who have signed it. Thus, it guarantees more extensive rights for persons with mental disabilities.

The Inter-American Commission found that the solitary confinement of Mr. Congo constituted inhuman and degrading treatment in violation of Article 5(2) of the American Convention, especially in light of the fact he was left in isolation unable to satisfy his basic needs. Thus, the State violated Mr. Congo’s right to “be treated with respect for the inherent dignity of the human person.” Further, the Commission found that the State is responsible for the physical assault committed by one of its agents and that there is a duty upon the State to ensure the physical, mental and moral integrity of persons suffering from mental illness.

The Inter-American Commission also found that the State violated Article 4(1) of the


American Convention because the State failed to take measures in its power to ensure the right to life of a person who “partly because of his state of health and in part owing to injuries inflicted on him by a State agent, was defenseless, isolated and under its control.” Under Article 25(1) of the American Convention Mr. Congo had a right to judicial protection which the State violated since there were no judicial proceedings opened to investigate and establish the responsibilities for the injuries to and death of Mr. Congo. As a result of this case, the Commission recommended that the persons responsible for the violations be punished, that the family of Mr. Congo be compensated, that medical and psychiatric care for persons suffering from mental illness be provided, and that specialists be assigned to penitentiary system to identify psychiatric disorders of those confined.

In Purohit and Moore v. The Gambia, the African Commission on Human and Peoples’ Rights (African Commission) found that Gambia violated various provisions of the African Charter on Human and Peoples’ Rights (African Charter) in the way persons with mental disabilities were treated in Gambia and by the Lunatic Detention Act of the Gambia (LDA). Although communications are not received by the African Commission until local remedies are exhausted, in this case the Commission found that the existent remedies were not realistic for persons with mental disabilities.

In determining the merits of Purohit and Moore the African Commission found that when

11 Id.

12 On how Congo “[broke] new ground” in this area of the law, see PERLIN, supra note 7, at 12.


States ratify the African Charter they undertake a responsibility to bring its domestic laws and practice in conformity with the African Charter. Further, the Commission found that Articles 2 and 3 guaranteeing equal protection and anti-discrimination are non-derogable rights. Thus, Gambia violated these rights through the implementation of LDA which detained more people from poor backgrounds and provided only those charged with capital offenses with legal assistance.

The LDA was not in conformity with the African Charter by its classification of persons with mental disabilities as “lunatics” and “idiots.” The African Commission found that these terms dehumanized and took away their inherent right to human dignity in violation of Article 5. Like the Inter-American Commission, the African Commission turned to the MI Principles in reaching this conclusion. In addition, the African Commission found that the LDA violated Article 6 of the African Charter because the LDA authorized detention on the basis of opinions by general medical practitioners, did not have fixed periods of detention, and did not provide for review or appeal. In Purohit and Moore, the Commission also found that the right to health is crucial and persons with mental disabilities, as a result of their condition and by virtue of their disabilities, should be accorded special treatment that would enable them to sustain the optimum level of independence in accordance with both the African Charter and MI Principles.15

Another success story of the effectiveness of litigation in other parts of the world arose in Paraguay in 2003 in which the Inter-American Commission granted immediate, life-saving

15 But see Frans Viljoen & Linette Louw, State Compliance with the Recommendations of the African Commission on Human and Peoples’ Rights, 1994-2004, 101 AM. J. INT’L L. 1, 5 (2007), and id. n. 22 (alleging that state parties did not implement the Commission’s recommendations); see generally, Frans Viljoen, State Compliance with the Recommendations of the African Commission on Human Rights, in Six DECADES, supra note 2, at 411.
measures to protect the lives and physical, mental, and moral integrity of 460 individuals detained in the state-run Neuro-Psychiatric Hospital. Mental Disability Rights International (MDRI) investigated the abuses in Paraguay’s Neuro-Psychiatric Hospital and documented the atrocious treatment and conditions for all 460 people. The investigation included two teenage boys, Julio and Jorge who had been detained in six-by-six foot isolation cells, naked and without access to bathrooms for over four years. The conditions were found to violate the right to community integration, the right to life, the right to humane treatment, the right to personal liberty, and the rights of the child.

As a result of this case, MDRI and Center for Justice and International Law (CEJIL) worked through the Inter-American Commission to ensure that Paraguay develops a system of community-based mental health in order to prevent such abuses in the future. In late February 2005, MDRI and CEJIL signed a groundbreaking agreement with the Paraguayan government which “required the state to develop a plan for deinstitutionalization and creation of community-based mental health services, along with the guarantees of funding for such a plan by Paraguay’s President and Minister of Health.”

There have also been multiple cases in Europe that have had a significant impact on mental disability rights. In *Winterwerp v. Netherlands*, the European Court of Human Rights (ECHR)

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18 Id. at 28.

found that in order to detain “persons of unsound mind” in accordance with Article 5 of the European Convention, there must be a finding that the disorder requires confinement and the disorder must be diagnosed using objective medical expertise.\textsuperscript{20} The ECHR also found that it is essential for the person concerned to have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. In Herczegfalvy v. Austria, the ECHR noted that the position of inferiority and powerlessness typical of patients confined to psychiatric hospitals calls for increased vigilance.\textsuperscript{21} Although ultimately the ECHR did not find a violation of Article 3, it noted that use of handcuffs and security bed were “worrying.”\textsuperscript{22}

Scholars are divided on the ultimate impact of the ECHR’s caselaw on the population in question. Prof. David Hewitt has concluded that that that Court has interpreted the European Convention “very restrictively in psychiatric cases,”\textsuperscript{23} looking specifically, inter alia, at Herczegfalvyi. On the other hand, Prof. Gerard Quinn has concluded that the due process protections of the “negative right to liberty ... are very robust under the Convention”).\textsuperscript{24} Under

\textsuperscript{20} 2 EHRR 387 (1979).

\textsuperscript{21} 15 EHRR 437 (1991).

\textsuperscript{22} Id.


any interpretation, however, these cases show through litigation, regional tribunals, at the least, have the capacity to further define and enforce human rights for persons with mental disabilities.  

II. The need for a DRTAP

a. The absence of such a body in the Pacific

Asia and the Pacific have not established a regional human rights court. Although there have been some historical attempts to establish a regional human rights body in this region,  

25 But see PERLIN, supra note 7, at 50:

This litigation notwithstanding, it should not be presumed that the judicial process has served as a full palliative for conditions in European communities and psychiatric institutions. A New York Times article from 2009, by way of example, concluded, “Across Central and Eastern Europe, many people with mental illnesses or disabilities are sequestered without rights or recourse under Communist-era rules that put their fates in the hands of legal guardians, often regardless of the severity of their disabilities, according to human rights groups.”


27 For example, a “Seminar on Human Rights in Developing Countries” was held in 1964, and a “Southeast Asia & Pacific Conference of Jurists” was held in 1965. And some resolutions on a human rights regional body in Asia this region were consecutively adopted by the General Assembly of the UN beginning in the late 1970s. The “Colombo Seminar on Human Rights” was held in 1982. This addressed the need for a human rights body in this region, but there were not any movements in this field of law during the 1980s and 1990s that achieved significant success. See Michael L. Perlin & Yoshikazu Ikehara, Creation of a Disability Rights Tribunal for Asia and the Pacific: Its Impact on China?i NYLS Legal Studies Research Paper No. 10/11 #19. Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744196&.

no movements in this field of law during the 1980s and 1990s achieved significant success.\(^2\)\(^8\)

Although ASEAN has adopted a “Charter of ASEAN” providing for the establishment of a human rights body,\(^2\)\(^9\) critics have dismissed the mandate as merely “aspirational,”\(^3\)\(^0\) and “toothless.”\(^3\)\(^1\)

Partially because of this, the failure to create a court or commission in Asia is harmful to social justice in multiple ways. For the purposes of this paper, consider the gaps between domestic

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\(^{28}\) Jalal, supra note 27; Colm Campbell & Avril McDonald, Practice to Theory: States of Emergency and Human Rights Protection, in HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA 249 (Michael Jacobsen & Ole Bruun, eds. 2006).


\(^{31}\) Tom Ginsburg, Eastphalia as the Perfection of Westphalia, 17 IND. J. GLOBAL LEG. STUD. 27, 32 (2010). For a more optimistic response, see Diane Desierto, ASEAN’s Constitutionalization of International Law: Challenges to Evolution under the New ASEAN Charter, 49 COLUM. J. TRANSNAT’L L. 268 (2011), and see id. at 319 (the “constitutionalization” of international law “has a revolutionary potential for enriching the rule of law across all of Southeast Asia’s diverse politics”). On constitutionalism in East Asia in general, see Jiunn-Rong Yeh & Wen-Chen Chang, The Emergence of East Asian Constitutionalism: Features in Comparison, 59 AM. J. COMP. L. 805 (2011). On the frustrations of creating regionalist projects in Asia and the Pacific, see Deepak Nair, Regionalism in the AsiaPacific/East Asia: A Frustrated Regionalism? 31 CONTEMP. SOUTHEAST ASIA 110 (2008).
law and the state of international law as reflected in the CRPD (which I will discuss in detail subsequently).

b. Lack of comprehensive legislation

There is no comprehensive disability law that states non-discrimination principle in many countries in this region. Some examples follow:\footnote{See generally, Yoshikazu Ikehara, What is DRTAP and its Future? Paper presented to the International Conference on Disability Rights Tribunal in Asia & the Pacific (Oct. 22, 2010), powerpoint slides accessible at, http://tokyo-advocacy.com/drtapeng/conference_bangkok.html (discussing all statutes).}

- Only seven governments (Australia, Hong Kong China, India, Japan, Philippines and Republic of Korea) in the region reported to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) that they do have anti-discrimination laws. The Japanese law, however, is neither comprehensive nor effective.\footnote{In employment law, Japan focuses on the special considerations owed to persons with disabilities, rather than outlawing employment discrimination per se. It also only focuses on persons with physical disabilities and does not address persons with mental disabilities. Cerise Fritsch, Right to Work? A Comparative Look At China And Japan’s Labor Rights For Disabled Persons 6 LOYOLA U. CHI. INT’L L. REV. 403 (2009).}

- 31 out of 36 Governments surveyed by UNESCAP have some definition of disability in their laws. But, several governments -- Azerbaijan, Bangladesh, China -- define disability as an “abnormality,” a definition flatly rejected by the CRPD. \footnote{See generally as to all nations, http://www.unescap.org/esid/psis/disability/policy_central/index.asp (last accessed, August 23, 2011).}
At least nine governments define disability as attributed to one’s impairment, a definition based on a medical model that is rejected by the CRPD, which firmly endorses a social model; only two nations in Asia – Malaysia and Thailand – define disability from the social model perspective.

Some disabilities are excluded from the concept of disabilities in several Governments. By way of examples:

- persons with autism are not included in Bangladesh.
- often, the definition of “mental disabilities” does not make clear whether it includes persons with developmental disabilities and/or persons with psycho-social disabilities.
- Mongolia, for instance, uses the phrase “mental problems”; Azerbaijan, “mental abnormalities”.

Few Governments have clearly operational definitions of discrimination. Definitions of discrimination are not clear and not consistent in this region.

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Again, by way of example, the Fiji Constitution prohibits discrimination on the ground of disability, but there are no laws that actually define discrimination.

In the Philippines and Turkmenistan, comprehensive disability laws prohibit discrimination against persons with disabilities, but there are no definitions of discrimination.

Many nations’ laws are inconsistent with other CRPD requirements. In Korea, for example, the broadcasting law does not require sign language interpretation, and the family health law gives priority to the institutionalization of persons with disabilities. Cambodia’s Marriage and Family Law forbids certain persons with disabilities from marrying, such as impotent men, persons who have leprosy, tuberculosis, cancer or venereal disease, and persons with mental defects. A Hong Kong case reflected the government’s position that it could lawfully reject an applicant for a public job because that person was related

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to a person with mental illness (on the theory that “such applicants cannot be trusted to perform the job safely.” 37

These examples make it clear that it is highly unlikely that most individual Asian nations will comply with the CRPD willingly.38

b. The “Asian values” debate39

The “Asian values” debate is a form of cultural relativism.40 However, cultural relativism should not and cannot be used as a defense in ignoring human rights. Cultural relativism is not [a] sufficient justification for the denial of the universal application of human rights


40 Cultural relativism has been defined as an approach to rights which “posits that culture is the source of validity of rules and that, since cultures vary, rules that are valid within one culture will not necessarily be valid in others.” Ann Elizabeth Mayer, Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?, 15 MICH. J. INT’L L. 307, 382 (1994), as quoted in Timothy G. Burroghs, Turning Away from Islam in Iraq: A Conjecture as to How the New Iraq Will Treat Muslim Apostates, 37 HOFSTRA L. REV. 517, 539 n. 120 (2008).
standards. There is a difference between “adhering less to some global standard of human rights in order to promote overall human rights in socioeconomic realms and not adhering to certain rights because of a lack of political will or hiding behind the mask of cultural relativism.”

As Arati Rao has stated:

the notion of culture favoured by international actors must be unmasked for what it is: a falsely rigid, ahistorical, selectively chosen set of self-justificatory texts and practices whose patent partiality raises the question of exactly whose interests are being served and who comes out on top.

While it is important to take cultural differences into consideration when involved in international relations, in practice cultural relativism rarely is a sincere call for tolerance.

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The “Asian values” debate began in the early 1990s as challenges from several of the States themselves, in particular Singapore, Malaysia, and Indonesia, who argued that international human rights law should not necessarily be applied to them because it was Western and did not conform to Asian culture.45 “Asian values” generally refer to Confucianism, respects for elders, emphasis on order and social harmony, group orientation, and the collective interests of the society and State.46 “The implication is that not to share these values is to be less than “Asian”, to have lost one's bearings and to become “Westernized”.47

Proponents of the “Asian values” debate “argue that if ‘Western’ human rights treaties are respected in a given situation, the public will be worse off—thrown into civil war, vulnerable to insurgents, or, alternatively, unable to engage in the practices they value.”48 In other words, having human rights obligations interferes with the government’s welfare promoting activities, and these welfare promoting activities should take precedence.49 Many Asian countries, in a justification of their claim that economic rights are more important than political rights, argue that at different stages of a country’s development, it is necessary to

45 Engle, supra note 41.


47 Tay, supra note 41. But see Tomuschat, supra note 39, at 230 (“From the very outset, the assumption that human rights was a Western concept was erroneous”); see also, Christian Tomuschat, Human Rights in a world-Wide Framework: Some Current Issues, 45 HEIDELBERG J. INT’L L. 547, 550 (1985); CHRISTIAN TOMUSCHAT, HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM 85 (2d ed. 2008) (same).


49 Id. at 1771.
focus on different rights. In addition, many Asian governments complain “vehemently that international human rights should not be an excuse for strong-arm politics and interference in the domestic affairs of a country.”

Some scholars argue that the better interpretation of the “Asian values” debate is not a philosophical debate about the universality of human rights. Rather, the better interpretation is that “virtually all governments concede that they have a ‘universal’ obligation to advance the welfare of their populations, but, given local conditions and traditions, they cannot advance the welfare of their populations if they are constrained by human rights treaties.” Regardless of how the “Asian values” debate is interpreted, the crux of the argument is whether “Asian values” really do exist and if so, can they be an excuse to disregard universal human rights.

In fact, the “Asian values” debate leads to false consciousness because it presumes a unified and homogenous multi-generational attitude towards a bundle of social, cultural, and political issues. The “Asian values” argument fails to account for “the richness of values discourse in Asia.” For this reason some argue that there is no such thing as an “Asian

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52 Posner, supra note 48, at 1771.

53 Of course, on the other hand, some opponents of the “Asian values” debate are guilty of constructing an overly unified and idealized “West.” See Peerenboom, supra note 51 (arguing that “Asian values” debate no longer fruitful).

54 Davis, supra note 41, at 148.
value.” Further, assuming that there are uniform “Asian values” leads to generalizations and stereotypes of what is “Asian.” One such generalization is that Asian countries favor the community over the individual. Opponents of the “Asian values” debate question whether Asian governments are really interested in promoting communities. The broad state sovereignty claims of Asian governments are undermined given the “increasing reach of international law and the participation of all countries in the international legal order.” In addition, the “Asian values” debate assumes that culture is static, rather than something that varies generation to generation.

The universalist position consists of two main variants: extreme moral universalism and moderate moral universalism. Extreme moral universalism is the concept that moral issues do not depend on culture or the views of any group or individual. Moderate moral universalism holds that “culture is irrelevant to the correctness of some, but not necessarily all, issues.” Both variants underscore the importance of basic human rights that must be universally applied irrespective of cultural differences.

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55 Engle, supra note 41, at 313.
56 Tay, supra note 41, at 758.
57 Peerenboom, supra note 51, at 39.
58 Id. at 41.
59 Tay, supra note 41, at 759.
60 Peerenboom, supra note 51, at 12.
61 Id.
The universality of human rights must predominate. “Individuals everywhere want the same essential things: to have sufficient food and shelter; to be able to speak freely; to practice their own religion or to abstain from religious belief; to feel that their person is not threatened by the state; to know that they will not be tortured; or detained without charge, and that if charged, they will have a fair trial.”62 To deny persons with mental disabilities these basic human rights on the basis of “Asian values” is an attempt to hide behind the mask of cultural relativism.

III. The UN Convention

Disability rights have taken center stage at the United Nations in the most significant historical development in the recognition of the human rights of persons with mental disabilities: the drafting and adoption of a binding international disability rights convention.63 In late 2001, the United Nations General Assembly established an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities. . . ."64 The Ad Hoc Committee drafted


a document over the course of five years and eight sessions, and the new CRPD\textsuperscript{65} was adopted in December 2006 and opened for signature in March 2007.\textsuperscript{66} It entered into force - thus becoming legally binding on States parties - on May 3, 2008, thirty days after the 20th ratification.\textsuperscript{67} One of the hallmarks of the process that led to the publication of the UN Convention was the participation of persons with disabilities and the clarion cry, "Nothing about us, without us."\textsuperscript{68} This has led commentators to conclude that the Convention "is regarded as having finally empowered the 'world's largest minority' to claim their rights, and to participate in international and national affairs on an equal basis with others who have achieved specific treaty recognition and protection."\textsuperscript{69}


See, for example, Statement by Hon Ruth Dyson, Minister for Disability Issues, New Zealand Mission to the UN, for Formal Ceremony at the Signing of the Convention on the Rights of Persons with Disability, 30 March 2007: "Just as the Convention itself is the product of a remarkable partnership between governments and civil society, effective implementation will require a continuation of that partnership." The negotiating slogan 'Nothing about us without us' was adopted by the International Disability Caucus, available at: http://www.un.org/esa/socdev/enable/documents/Stat_Conv/nzam.doc [last accessed August 23, 2011]

\textsuperscript{69}Id., n. 17 (See, for example, statements made by the High Commissioner for Human Rights, Louise Arbour, and the Permanent Representative of New Zealand and Chair of the Ad-Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights
This Convention is the most revolutionary international human rights document – ever - that applies to persons with disabilities.\(^70\) The Disability Convention furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in most every aspect of life.\(^71\) It firmly endorses a social model of disability – a clear and direct repudiation of the medical model that traditionally was part-and-parcel of mental disability law.\(^72\) It furthers the human rights approach to disability and recognizes the right of people with disabilities to equality in most aspects of life. “The Convention responds to traditional models and situates disability within a social model framework\(^73\) and sketches the full range of human rights that apply to all human beings, all with a particular application to the lives of persons with disabilities.”\(^74\) It provides a framework for insuring that mental health laws “fully recognize the rights of those with mental illness.”\(^75\)

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\(^72\) See generally, Perlin, *supra* note 35.


\(^74\) Janet E. Lord & Michael A. Stein, *Social Rights And The Relational Value Of The Rights To Participate In*
The CRPD categorically affirms the social model of disability\textsuperscript{76} by describing it as a condition arising from "interaction with various barriers [that] may hinder their full and effective participation in society on an equal basis with others" instead of inherent limitations,\textsuperscript{77} reconceptualizes mental health rights as disability rights,\textsuperscript{78} and extends existing human rights to take into account the specific rights experiences of persons with disabilities.\textsuperscript{79} To this end, it calls for "respect for inherent dignity"\textsuperscript{80} and "non-discrimination."\textsuperscript{81} Subsequent articles declare "freedom from torture or cruel, inhuman or degrading treatment or punishment,"\textsuperscript{82} "freedom from exploitation, violence and abuse,"\textsuperscript{83} and a right to protection of the "integrity of the person."\textsuperscript{84}


\textsuperscript{76} See Lord, Suozzi & Taylor, supra note 73, at 568; Kaiser, supra note 73; Perlin, supra note 9; Michael L. Perlin, "There’s Voices in the Night Trying to be Heard": The Potential Impact of the Convention on the Rights of Persons with Disabilities on Domestic Mental Disability Law, in \textit{Evolving Issues in Discrimination: Social Science and Legal Perspectives} (R. Wiener et al eds., 2011) (in print).

\textsuperscript{77} CRPD, art. 1 and pmbl., para. e.,

\textsuperscript{78} Phillip Fennel, \textit{Human Rights, Bioethics, and Mental Disorder}, 27 MED. & L. 95 (2008).

\textsuperscript{79} Megret, \textit{Disability Rights}, supra note 63; see PERLIN, supra note 7, at 143-58.

\textsuperscript{80} CRPD, Article 3(a).

\textsuperscript{81}Id., Article 3(b).

\textsuperscript{82}Id., Article 15.

\textsuperscript{83}Id., Article 16.

\textsuperscript{84}Id., Article 17.
The CRPD is unique because it is the first legally binding instrument devoted to the comprehensive protection of the rights of persons with disabilities. It not only clarifies that States should not discriminate against persons with disabilities, but also sets out explicitly the many steps that States must take to create an enabling environment so that persons with disabilities can enjoy authentic equality in society.\textsuperscript{85} One of the most critical issues in seeking to bring life to international human rights law in a mental disability law context is the right to adequate and dedicated counsel. The CRPD mandates that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”\textsuperscript{86} Elsewhere, the convention commands:

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.\textsuperscript{87}

“The extent to which this Article is honored in signatory nations will have a major impact on the extent to which this entire Convention affects persons with mental disabilities.”\textsuperscript{88}


\textsuperscript{87} CRPD, Article 13.

\textsuperscript{88} Perlin, supra note 86, at 253.
only if, there is a mechanism for the appointment of dedicated counsel,\(^89\) can this dream become a reality.

The ratification of the CRPD is the most important development – ever – in institutional human rights law for persons with mental disabilities. The CRPD is detailed, comprehensive, integrated and the result of a careful drafting process. It seeks to reverse the results of centuries of oppressive behavior and attitudes that have stigmatized persons with disabilities. Its goal is clear: to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, and to promote respect for their inherent dignity.\(^90\) Whether this will actually happen is still far from a settled matter.

IV. The structure of the DRTAP

If there is no tribunal to adjudicate cases of persons with disabilities in the Asia-Pacific region, it is unlikely – exceedingly unlikely – that individuals in that region will have a forum to which they can bring their grievances. In such case, the CRPD will be little more than an empty shell. In this section, I sketch out a preliminary blueprint for the DRTAP.\(^91\) I believe that

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\(^{90}\) CRPD, Article 1.


The project to create a DRTAP, funded by Toyota Foundation, has been directed by the Tokyo Advocacy Law Office since it began in 2008. From 2008 to 2009, project leaders researched domestic disability rights cases in which plaintiff with disabilities were unsuccessful, and used these as a prism through which to examine the necessity and potential of a regional disability rights tribunal. An international planning conference was held in Tokyo in July 2009, regional meetings were held in Thailand, South Korea, and Australia in 2010, and papers were presented on the need for such a Tribunal at international conferences in Hong Kong, China, Denmark, Australia and New Zealand in 2010-2011 (all
the creation of a DRTAPDRTAP would be a definite quantum leap in the quest for an Asian human rights mechanism.

Although the structure of the tribunal is still inchoate, the incorporating documents will include sections covering at least these issues:

- General Structure:
  - Hybrid tribunal benefits
    - Collaboration among nation states
  - Composition – number of nations to be involved
  - Rules of procedure and pleading
  - Voluntariness of tribunal
  - Language – all languages of each Asia-Pacific country
    - Official language(s)
  - Location
  - Competency – jurisdiction to hear any matter relating to a State
  - Coordination with other international and regional bodies
  - Coordination with other Asian bodies
  - Relationship between nations that have signed the CRPD and those that have not
  - Legitimacy – independence from national oversight

papers on file with the author; see generally, Perlin, supra note 1; Perlin, supra note 39; Perlin & Ikehara, supra note 27; Perlin & Ikehara, supra note 38). See Perlin & Ikehara, supra note 27, manuscript at 9. At the Korean meeting, in which the author participated, it was decided that the tribunal should “launch” as a voluntary one and that, initially, it would be a sub-regional one (the Pacific Rim, Oceania and Thailand).
• General sense of accountability, respect
• Fair procedures

• Judges
  • Designated seats for specific nations
  • Designated seats for persons with disabilities
    ▪ Backgrounds – lawyers, advocates, judges
      ▪ Known and respected by national judges
      ▪ Awareness of audience
      ▪ Autonomy from political interests, impartial
      ▪ Expertise in disability law
        • Lawyers trained in disability rights
          ▪ Court appointed if client indigent

• Funding – government
  ▪ UN funding
  ▪ Voluntary contributions
  ▪ NGOs
    ▪ Standing
    ▪ Members should not serve on tribunals
    ▪ Ability to bring claims before tribunal
      • Ability to request advisory opinions
      • Ability to file amicus briefs

• Reporting – precedent from other transnational tribunals
Use of advisory opinions

Free access to cases online

- Remedies – sanctions, reparations, injunctions
  - Enforcing compliance – binding authority not necessary
  - The role of mediation
  - Inclusion of persons with physical disabilities.

This proposal raises many related, still unresolved issues. Some of the most contentious will be:

- What will the impact of voluntariness be on the ultimate success of such a tribunal?
- Will the judges be independent?
- How will the tribunal be funded?

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92 Prof. Carole Petersen has urged the inclusion of a mediation mechanism in DRTAP in an article otherwise about the CRPD’s mandate for a right to inclusive education. See Carole Petersen, Inclusive Education and Conflict Resolution: Building a Model to Implement Article 24 of the Convention on the Rights of Persons with Disabilities in the Asia Pacific, 40 HONG KONG L. J. 481, 511 (2010):

It has been proposed that the Asia-Pacific region establish a Disability Rights Tribunal, which would have the capacity to hear complaints, issue decisions and provide remedies for violations of the rights of persons with disabilities. This idea is certainly worth pursuing. However, given the historic reluctance of governments in the Asia Pacific to create a regional mechanism with enforcement powers, it might be wise to include a voluntary mediation program under the auspices of the proposed tribunal.


93 See generally, Naomi Weinstein, Establishing the Disability Rights Tribunal for Asia and the Pacific (unpublished paper; on file with author).

94 See e.g., Julian G. Ku, International Delegations and the New World Court Order, 81 WASH. L. REV. 1, 31 (2006).

95 See e.g., Gilbert Guillaume, Some Thoughts on the Independence of International Judges Vis-à-Vis States, 2 L. & PRAC. INT’L CT & TRIBUNALS 163 (2003).
✓ How many nations will be involved (initially and eventually)?

✓ Will the tribunal’s jurisdiction extend to private and public cases?

✓ Will there be co-ordination with other international bodies?

✓ Will there be coordination with other Asian/Pacific tribunals?

✓ What will the relationship be between those nations that have signed the CRPD and those that have not?

✓ What will the standing be of NGOs before the tribunal?

✓ What is the expected scope of the remedies available to the tribunal?

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96 See e.g., Lindsey Raub, Positioning Hybrid Tribunals in International Criminal Justice, 41 INT’L L. & POLITICS 1014 (2009).

97 See supra note 91. [Jessica to fill]


100 See e.g., Beatriz Garcia, Exercising a Community of Interests: A Comparison between the Mekong and the Amazon Legal Regimes, 39 HONG KONG L. J. 421 (2009).

101 As of August 31, 2011.


✓ Will there be a difference in the way such a tribunal would operate in monist and dualist nations?\textsuperscript{104}

✓ Will there be a difference in nations that have common law and civil law traditions?\textsuperscript{105}

✓ What sanctions are there if a defendant refuses to comply?\textsuperscript{106}

✓ How will the issue of appointment of counsel be handled?\textsuperscript{107}

VI. A question of timing.

The time is right. A recent law review article urging the creation of a Southeast Asian Court of Human Rights, concludes, “It is about time that the region moved ahead and acted towards that goal.”\textsuperscript{108} And I agree. Until such a court is created, activists and advocates have begun work on efforts to create a court focused on the sole subtopic of disability rights, the Disability Rights Tribunal for Asia and the Pacific, or DRTAP.\textsuperscript{109} For multiple reasons, the


\textsuperscript{106} See e.g., Anna Spain, \textit{Using International Dispute Resolution To Address the Compliance Question in International Law}, 40 GEO. J. INT’L L. 807 (2009).

\textsuperscript{107} See generally, \textit{PERLIN, supra} note 7, at 186-96.

Students in the author’s Project-Based Learning course at New York Law School (“The Creation of a Disability Rights Tribunal for Asia and the Pacific”) have been preparing a set of “white papers” on many of the topics listed \textit{supra} text accompanying notes 93-106.

\textsuperscript{108} Hao Duy Phan, \textit{A Blueprint for a Southeast Asian Court of Human Rights}, 10 ASIAN-PACIFIC L. & POL’Y J. 384, 431 (2009).

\textsuperscript{109} See Perlin & Ikehara, \textit{supra} note 38; Perlin, \textit{supra} note 39.
creation of a DRTAP would be the single best way to insure that the Convention on the Rights of Persons with Disabilities (CRPD) be given authentic life.

First, experiences in other regions show that similarly-situated courts and commissions have been powerful forces in mandating the practical implementation both of other UN Conventions and treaties, and even of “soft law. It defies credulity to suggest that there is any knowledgeable person who believes, by way of example, that the high courts of Ecuador or Gambia would have decided the Congo or the Purohit cases the way that the interregional bodies did.\textsuperscript{110}

Second, those of us who believe in the universality of human rights – and who recognize the false consciousness of the specious “Asian values” arguments that seek to reject that universality – understand that a DRTAP that spans multiple nations (in diverse geographic regions, with diverse populations comprised of diverse ethnicities, races, religions and cultures) will make the enforcement of these human rights far more likely than reliance on state-by-state enforcement.\textsuperscript{111}

Third, the \textit{language} of the Convention -- the invocation of a social model and the repudiation of a medical model; the empowering of people with disabilities to be the masters of their own fates; the focus on dignity and non-discrimination\textsuperscript{112} -- tells us that the time is

\textsuperscript{110} See \textit{supra} text accompanying notes 8-14.

\textsuperscript{111} See \textit{supra} text accompanying notes 39-61.

\textsuperscript{112} See \textit{supra} text accompanying notes 62-88.
especially right for such a Tribunal. Just as the African Charter on Human and Peoples’ Rights calls for a pledge to achieve a better life for the peoples of Africa, to recognize that human rights stem from attitudes of human beings, to imply duties on the part of everyone, so would a DRTAP similarly recognize these important principles necessary to achieve human rights.\textsuperscript{113} Just as the European Convention on Human Rights aims at “securing the universal and effective recognition and observance of the Rights therein declared” so too would the DRTAP seek universal human rights.\textsuperscript{114} Just as the Inter-American Convention on Human Rights recognizes that “the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states,”\textsuperscript{115} so too would DRTAP.

Fourth, without establishing DRTAP persons with mental disabilities will continue to suffer severe violations of their human rights by the States as there is no way to enforce these rights nor any way for persons with mental disabilities to address these violations. \textsuperscript{116}

\textsuperscript{113} \textit{African Charter}, preamble. On the role of a national judiciary in Africa in the promotion of human rights through judicial review, see Ben Kiromba Twinomugisha, \textit{The Role of the Judiciary in the Promotion of Democracy in Uganda}, 9 AFR. HUM. RTS. J. 1 (2009).

\textsuperscript{114} \textit{European Convention}, preamble

\textsuperscript{115} \textit{Inter-American Convention}, preamble

Fifth, from a perspective of economics, the timing is right. If signatory nations such as China and Thailand want to demonstrate their commitment to human rights as other major nations around the world have, one significant and compelling way would be to support the establishment of the DRTAP as a means of fostering and promoting better international relations.

V. Role of counsel

If this Tribunal is to have real meaning, there must be a mechanism for the appointment of counsel to litigants. Without such a mechanism, any Tribunal would lose much of its potential value. Without the assignment of dedicated, knowledgeable counsel, meaningful and ameliorative change is almost impossible to achieve. There is no question that one of the most critical aspects of law reform is the presence of dedicated and knowledgeable counsel. But for adequate counsel, no judicial system can work effectively to protect human rights for a person when his/her human rights are infringed. It is obvious that persons with disabilities

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118 On the appointment of counsel to persons with mental disabilities in the United States, see generally, 1 MICHAEL L. PERLIN, MENTAL DISABILITY LAW: CIVIL AND CRIMINAL, §§ 2B-1 et seq. (2d ed. 1998).

119 See Perlin, supra note 70, at 496.

120 For consideration of this issue in the specific context of the South Pacific, see SUE FARRAN, HUMAN RIGHTS IN THE SOUTH PACIFIC: CHANGES AND CHALLENGES (2009). Professor Terry Carney has taken issue with this position, concluding that he would “put [more] lawyers last on the ‘wish list’ of needed reforms.”
strongly need adequate counsel to protect and realize their rights, because of their powerlessness and vulnerability.\textsuperscript{121} This makes the issue in question all the more critical.

One of the reasons this is especially important in this area of the law and policy is the omnipresence of “sanism.”\textsuperscript{122} Sanism is an irrational prejudice of the same quality and character of other irrational prejudices that cause (and are reflected in) prevailing social attitudes of racism, sexism, homophobia, and ethnic bigotry. \textsuperscript{123} It permeates mental disability law, affecting all participants in the mental disability law system: litigants, fact finders, counsel, and expert and lay witnesses. Its corrosive effects have warped mental disability law jurisprudence both domestically and internationally \textsuperscript{124}

I believe that sanism -- closely entwined with pretextuality\textsuperscript{125} -- has controlled--and continues to control--modern mental disability law. Just as importantly (perhaps, more

\textsuperscript{121} On how persons with mental disabilities have always been relegated to a position of political powerlessness, see Michael L. Perlin, \textit{For the Misdemeanor Outlaw}: The Impact of the ADA on the Institutionalization of Criminal Defendants with Mental Disabilities, 52 ALABAMA L. REV. 193, 219 (2000).


\textsuperscript{123} \textit{Id.} at 486.

\textsuperscript{124} Perlin, \textit{supra} note 65, at 487.

\textsuperscript{125} The pretexts of the forensic mental health system are reflected both in the testimony of
importantly), they continue to exert this control invisibly. This invisibility means that the most important aspects of mental disability law—not just the law “on the books,” but, more importantly, the law in action and practice—remains hidden from the public discussions about mental disability law.126 Dedicated, trained and knowledgeable lawyers are needed to combat the contamination thus caused by sanism.127

In Asia as elsewhere, public interest litigation in other aspects of substantive law has had a transformative impact as an “effective tool for the enforcement of fundamental rights, as well as for creating a legal and social environment in which justice could be made available to [the marginalized].”128 In the context of a regional human rights tribunal, such litigation also, in the words of Cavallaro and Brewer, is more likely to “translate into substantive improvements...
in the lives not only of petitioners to their systems, but of the far larger universe of individuals who will never see the inside of a supranational court”.129

Litigation such as the sort that would be brought before this Tribunal requires dedicated counsel, a circumstance that is rare at an international level:

Globally, there is little good news. In many nations, there is no mental health law at all. In others, there is simply no provision for counsel. In others, counsel appears to be present in name only, what is referred to disparagingly in the literature as the “warm body” problem. In only a few instances does counsel appear to be doing a remotely adequate job.... Although there is a right to counsel in India, research has revealed no such right in a range of other Asian nations including, inter alia, Afghanistan, China, Indonesia, Pakistan, South Korea, Sri Lanka, Thailand, and Vietnam

This is troubling for many reasons, not the least of which is that, without the availability of such counsel, it has been “virtually impossible” to imagine the existence of the bodies of involuntary civil commitment law, right to treatment law, right to refuse treatment law, or any aspect of forensic mental disability law that are now taken for granted in the United States. Without the presence of counsel, legal reform—in nations with developing economies, at least—“will all too often be a hollow shell.” 130


Again, reflect on the CRPD mandate that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity,”\textsuperscript{131} and its command that “States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, … in all legal proceedings…”\textsuperscript{132} “The extent to which this Article is honored in signatory nations will have a major impact on the extent to which this entire Convention affects persons with mental disabilities.”\textsuperscript{133} If and only if, there is a mechanism for the appointment of dedicated counsel, can the dreams spawned by the CRPD become a reality.\textsuperscript{134}

On the question of the need for law schools--internationally--to commit themselves to the creation of clinical programs to train lawyers to provide legal representation to indigent persons facing involuntary civil commitment,\textsuperscript{135} I have also previously written:

\begin{quote}
Institute for Trial Advocacy 2007).
\end{quote}

\textsuperscript{131} CRPD, Article 12.

\textsuperscript{132} Id., Article 13.

\textsuperscript{133} Perlin, supra note 86, at 253.


\textsuperscript{135} See PERLIN, supra note 7, at 104-11.
In the civil commitment context, any sanism-inspired blunders by lawyers can easily be fatal to the client's chance of success. If a lawyer rejects the notion that his client may be competent (indeed, if s/he engages in the not-atypical “presumption of incompetency” that is all too often de rigeur in these cases), the chances are far slimmer that s/he will advocate for such a client in the way that lawyers have been taught—or, at the least, should be taught—to advocate for their clients. In nations with no traditions of an “expanded due process model” in cases involving persons subject to commitment to psychiatric institutions or those already institutionalized, sanism in lawyers can be fatal to an individual's chance for release or for a judicial order mandating amelioration of conditions of confinement and/or access to treatment and/or to be free from unwanted treatment interventions. 136

The creation internationally of clinical programs to train law students in these issues137 would be the best way to prevent such “sanist-inspired blunders.” In short, the presence of counsel is the lynchpin to authentic change in this area of the law. 138 A regional human rights

136 Perlin, supra note 86, at 262.

137 See PERLIN, supra note 7, at 104-11.

138 On how online education can serve as an engine for social change in the context of international human rights law, see Michael L. Perlin, Ain't No Goin' Back: Teaching Mental Disability Law Courses on Line, 51 N.Y.L. SCH. L. REV. 991 (2006); Michael L. Perlin, An Internet-based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies, 40 FORDHAM INT’L L.J. 435 (2007). It is essential that cadres of trained lawyers be created if there is to be meaningful representation before the DRTAP; online education offers the promise of an economic and efficient way of providing this level of high-quality legal training. See Perlin, supra note 1, manuscript at 23. On legal education in Asia in general, see STACEY STEELE & KATHRYN TAYLOR, eds., LEGAL EDUCATION IN ASIA: GLOBALIZATION, CHANGE AND CONTEXTS (2010).
court/tribunal must thus provide adequate counsel to help persons with disabilities to file, present and argue cases. 139

In their thorough and thoughtful analysis of the treatment of mental disability issues under the European Convention on Human Rights, Peter Bartlett and his colleagues lay down the gauntlet: the challenge of the next 25 years will be “to breathe life into Convention provisions as they apply to [persons with mental disabilities] and to press for full implementation of the standards that are won through litigation and political advances.” 140 The provision of competent and knowledgeable counsel is the best means of “breath[ing] this “life” into the Convention, especially in Asia. 141

139 See generally, Perlin, supra note 86.


141 One of the most important legal theoretical developments of the past two decades has been the creation and dynamic growth of therapeutic jurisprudence (TJ) Initially employed in cases involving individuals with mental disabilities, but subsequently expanded far beyond that narrow area, therapeutic jurisprudence presents a new model for assessing the impact of case law and legislation, recognizing that, as a therapeutic agent, the law that can have therapeutic or anti-therapeutic consequences. The ultimate aim of therapeutic jurisprudence is to determine whether legal rules, procedures, and lawyer roles can or should be reshaped to enhance their therapeutic potential while not subordinating due process principles. See e.g., DAVID B. WEXLER, THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT (1990); DAVID B. WEXLER & BRUCE J. WINICK, LAW IN A THERAPEUTIC KEY: RECENT DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE (1996); BRUCE J. WINICK, CIVIL COMMITMENT: A THERAPEUTIC JURISPRUDENCE MODEL (2005);; David B. Wexler, Two Decades of Therapeutic Jurisprudence, 24 TOURO L. REV. 17 (2008); Michael L. Perlin,” You Have Discussed Lepers and Crooks”: Sanism in Clinical Teaching, 9 CLINICAL L. REV., 683 (2003); Michael L. Perlin, “My Best Friend, My Doctor, Won’t Even Say What It Is I’ve Got”: The Role and Significance of Counsel in Right to Refuse Treatment Cases, 42 SAN DIEGO L. REV. 735 (2005); see also, for a transnational perspective, Kate Diesfeld & Ian Freckelton, Mental Health Law and Therapeutic Jurisprudence, in 91 (Ian R. Freckelton & Kerry Anne Peterson eds., 2006). On the potential use of therapeutic jurisprudence in the resolution of matters arising from the CRPD, see PERLIN, supra note 7, at 203-28. On the relationship between therapeutic jurisprudence and the practice of mental disability law in Central and Eastern Europe, see Winick, supra note 24. On the need for human rights scholarship to embrace social science insights, see Ryan Goodman, Derek Jinks & Andrew K. Woods, Social Science and Human Rights, in UNDERSTANDING SOCIAL ACTION, PROMOTING HUMAN RIGHTS
Conclusion

The Convention on the Rights of Persons with Disabilities is, potentially, the single most transformative legal initiative – ever -- affecting persons with disabilities, especially mental disabilities. However, under current conditions, it is unlikely that it will have any significant impact on this population in Asia and the Pacific because of the lack of a regional court or commission in that area. The creation of a Disability Rights Tribunal for that region offers the most likely redemptive solution to this dilemma. Yet, the creation of the tribunal alone may not have its hoped-for impact if there is not a coherent means of training lawyers and providing lawyers for persons with disabilities who would appear before that body.


Dedicated counsel would best be able to infuse DRTAP proceedings with a therapeutic jurisprudence perspective. See Perlin, supra, note 9; Perlin, supra note 76.