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Creating a "Building a Disability Rights Information Center for Asia and the Pacific Clinic": Pedagogy and Social Justice

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Creating a "Building a Disability Rights Information Center for Asia and the Pacific Clinic": Pedagogy and Social Justice

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Michael L. Perlin, Catherine Barreda, Katherine Davies, Meghan Gallagher, Nicole Israel, and Stephanie Mendelsohn

CREATING A “BUILDING A DISABILITY RIGHTS INFORMATION CENTER FOR ASIA AND THE PACIFIC CLINIC”: OF PEDAGOGY AND SOCIAL JUSTICE

Michael L. Perlin,* Catherine Barreda, Katherine Davies, Meghan Gallagher, Nicole Israel, and Stephanie Mendelsohn**

This article describes the work done by the lead author and his students in the creation of the Disability Rights Information Center for Asia and the Pacific (DRICAP), as part of the work the lead author has been doing with colleagues (especially Yoshikazu Ikehara, Esq., director of the Tokyo Advocacy Law Office) for several years to create a Disability Rights Tribunal for Asia and the Pacific (DRTAP). DRICAP’s centerpiece is the creation of a website collecting statutes, regulations, scholarly articles, advocacy news, and case law from selected Asian and Pacific

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nations.

This work was done through a clinic created by the lead author, which he taught as a two-semester course at New York Law School in academic year 2013-14. This article shares the work done through this clinic, and hopes to inspire other clinicians and students to engage in similar projects on behalf of persons with disabilities in other parts of the world. In Part II, the lead author explains the course's structure. In Part III, five of the participating students explain separately how they went about their work, the pitfalls, the challenges, and the breakthroughs. In Part IV, the lead author retrospectively reconsiders the work that was done and its expected value for advocates in the region in question and for persons with disabilities in the included nations.

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I. INTRODUCTION

The lead author (MLP) and colleagues (especially Yoshikazu Ikehara, Esp., director of the Tokyo Advocacy Law Office) have been collaborating for several years to create a Disability Rights Tribunal for Asia and the Pacific (DRTAP).¹ While other regions of the world have human rights conventions and inter-regional courts or commissions, Asia lags far behind; it is the only continent that has neither a regional human rights court nor commission.² Although the United Nations (UN) has ratified a Convention on the Rights of Persons with Disabilities (CRPD)³—”the most important development ever seen in institutional human rights law for persons with mental disabilities”⁴—the absence of a regional human rights tribunal in Asia and the Pacific makes this Convention effectively meaningless in that area, because there is no recourse to a judicial body to resolve legal disputes or to report Convention noncompliance.

It is hoped that the creation of a sub-regional disability rights tribunal will go a long way towards ameliorating this situation.⁵ One key element of the DRTAP is the creation of a Disability Rights *Information Center* for Asia and the Pacific (DRICAP), and online databases containing statutes, regulations, scholarly articles, advocacy news, and case law from specific nations within Asia and the Pacific.⁶

As part of the DRTAP creation efforts, MLP created a clinic, “Building a Disability Rights Information Center for Asia and the Pacific,” taught as a two-semester course at New York Law School in academic year 2013-2014. Students in the course were individually chosen by the professor and (1) studied recent developments in the relationship between international human rights and mental disability law (focusing on the U.N. CRPD); (2) learned about the DRTAP initiative, which was seen as the only realistic way that disability rights will ever be enforced in that

1. See generally Michael L. Perlin, *Promoting Social Change in 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*, 44 GEO. WASH. INT’L L. REV. 1 (2012).

2. MICHAEL L. PERLIN, INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD 170 (2012).

3. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, Mar. 30, 2007–Sep. 28, 2015, 2515 U.N.T.S. 3 (entered into force May 3, 2008); 46 I.L.M. 443 (2007) [hereinafter CRPD].

4. Perlin, *supra* note 1, at 23.

5. *Id.* at 2.

6. *Id.* at 24-25.

region of the world, an area where there is no regional court or commission; and (3) participated in the building of the DRICAP website by researching and analyzing all disability rights law-based developments in specified Asian and Pacific nations, and by preparing them for website posting and distribution. About two-thirds of the way through the semester, four of the students (including three of the co-authors of this article) participated with MLP at New York Law School's "Faculty-Student Presentation Day," presenting the work in-progress on the DRICAP initiative to faculty and other students.⁷

We have chosen to write this article to share with others the work that we have done through this clinic to serve as a tool for social change, to improve access to justice on behalf of persons with disabilities, *and*, we hope, to inspire other clinicians and students to engage in similar projects on behalf of disabled persons in other parts of the world. In Part II, MLP describes the evolution of the DRTAP idea, how he structured the course, what work was assigned, how the classroom sessions operated, how the nations were chosen, how "key players" in the nations in question were chosen as contacts, and how—for about half of the second semester—the class was broken up into overlapping groups of two to three students for intensive work with MLP. In Part III, five of the participating students will explain how they went about their work, including the pitfalls, the challenges, and the breakthroughs that they encountered along the way.⁸ In Part IV, MLP retrospectively reconsiders the work completed, how the clinic served to teach students how to be more vigorous advocates, and its expected value for advocates in the regions in question and for persons with disabilities in the included nations.

II. WHY A DRICAP COURSE

This Part is divided into two sections. Part A. describes the evolution of DRTAP

7. See *Faculty/Student Presentation Day*, NEW YORK LAW SCHOOL, <http://www.nyls.edu/news-and-events/calendar/facultystudent-presentation-day/> (last visited Jan. 5, 2016).

8. These contributions are written in the individual "voices" of the students to reflect their personal thoughts about clinic participation.

A. THE EVOLUTION OF THE DRTAP IDEA

Regional human rights courts and commissions are essential to the enforcement of international human rights where such tribunals exist. Specifically, there is now important case law from the European Court on Human Rights (ECtHR), some significant and transformative decisions from the Inter-American Commission on Human Rights (Inter-American Commission), and one (at least) major case from the African Commission on Human Rights (African Commission), enforcing the rights of persons with mental disabilities.⁹ There is, though, no such body in Asia and the Pacific,¹⁰ and the lack of such a court or commission has significantly hindered any efforts to enforce disability rights in that part of the world.¹¹

The ratification of the CRPD has made the creation of courts and commissions even more necessary.¹² Notwithstanding the fact that the CRPD clearly establishes, through hard law, the international human and legal rights of persons with disabilities,¹³ it will, in the Asia and Pacific region, be nothing more than a mere “paper victory,” unless there is a regional

9. See, e.g., MICHAEL L. PERLIN ET AL., *INTERNATIONAL HUMAN RIGHTS LAW AND COMPARATIVE MENTAL DISABILITY LAW: CASES AND MATERIALS* 451-782 (2006) (unpublished course syllabus) (on file with author); *Congo v. Ecuador*, Case 11.427, Intertherapeut-Am. Comm’n H.R., Report No. 63/99, OEA/Ser.L/V/II.95, doc. 7 ¶¶ 6-27 (1999), discussed in Perlin, *supra* note 1, at 5-7; *Purohit & Moore v. Gambia*, Afr. Comm’n on H. and Peoples’ R., Comm. No. 241/2001, ¶ 85 (2003), discussed in Perlin, *supra* note 1, at 7-8. See also Michael L. Perlin & Meredith R. Schriver, “*You That Hide Behind Walls*”: *The Relationship between the Convention on the Rights of Persons with Disabilities and the Convention Against Torture and the Treatment of Institutionalized Forensic Patients*, in *TORTURE AND ILL-TREATMENT IN HEALTH-CARE SETTINGS: A COMPILATION* 195, 31-33 (American University Center on Humanitarian Law ed., 2013).

10. Although ASEAN (the Association of Southeast Asian Nations) has adopted a “Charter of ASEAN,” providing for the establishment of a human rights body, critics have dismissed the mandate as merely “aspirational” and “toothless.” See David Cohen, *ASEAN’s Intergovernmental Commission on Human Rights and Civil Society Initiatives in Southeast Asia*, 51 *ASIA PAC. BULL.* (Mar. 1, 2010), <http://www.eastwestcenter.org/system/tdf/private/apb051.pdf?file=1&type=node&id=32388>. See, e.g., Tamio Nakamura, *Proposal of the Draft Charter of the East Asian Community: An Overview and the Basic Principles*, in *EAST ASIAN REGIONALISM FROM A LEGAL PERSPECTIVE: CURRENT FEATURES AND A VISION FOR THE FUTURE* 193, 204 (Tamio Nakamura ed., 2009) (“aspirational”); see also Tom Ginsburg, *Eastphalia as the Perfection of Westphalia*, 17 *IND. J. GLOBAL LEGAL STUD.* 27, 32 (2010) (“toothless”).

11. See Perlin, *supra* note 1, at 1.

12. CRPD, *supra* note 3.

13. Perlin, *supra* note 1, at 2.

human rights court or commission in place to enforce it.¹⁴ Only the creation of such a body will allow us to be optimistic about the CRPD's "real-life" impact of the population in question.¹⁵

Arguably, human rights are the "most significant political force shaping the life experience of people with disabilities,"¹⁶ and there is no question that persons with mental disabilities—especially those who are institutionalized because of such disabilities—are uniformly deprived of their civil and human rights.¹⁷ MLP, in a previous work concerning this very issue, stated:

The creation of a Disability Rights Tribunal for Asia and the Pacific (DRTAP) 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 be, ultimately, a likely inspiration for a full regional human rights tribunal in this area of the world.¹⁸

Such a victory, however, would be hollow if there were not dedicated and knowledgeable lawyers available to represent the population in question.¹⁹

14. See, e.g., Michael L. Perlin, "What's Good Is Bad, What's Bad Is Good, You'll Find Out When You Reach the Top, You're on the Bottom": Are the Americans with Disabilities Act (and *Olmstead v. L.C.*) Anything More Than "Idiot Wind?", 35 U. MICH. J.L. REFORM 235, 246 (2002) ("Mental disability law is strewn with examples of 'paper victories'" (quoting Michael Lottman, *Paper Victories and Hard Realities*, in PAPER VICTORIES AND HARD REALITIES: THE IMPLEMENTATION OF THE LEGAL AND CONSTITUTIONAL RIGHTS OF THE MENTALLY DISABLED 93 (Valerie J. Bradley & Gary J. Clarke eds., 1976)).

15. Perlin, *supra* note 1, at 2. On problems related to CRPD enforcement of rights of persons with intellectual disabilities in Australia, see generally Jeffrey Chan, *Challenges to Realizing the Convention on the Rights of Persons with Disabilities (CRPD) in Australia for People with Intellectual Disability and Behaviours of Concern*, 22 PSYCHIATRY, PSYCHOLOGY & L. 1 (2015).

16. See Michael L. Perlin, *Human Rights Law for Persons With Disabilities in Asia and the Pacific: The Need for a Disability Rights Tribunal*, 10 J. POLY & PRAC. IN INTELLECTUAL DISABILITIES 96 (2013).

17. See Michael L. Perlin, *International Human Rights Law and Comparative Mental Disability Law: The Universal Factors*, 34 SYRACUSE J. INT'L L. & COM. 333, 335 (2007); see also PERLIN, *supra* note 2, at 25.

18. Perlin, *supra* note 1, at 2. On frustrations of creating regionalist projects in Asia and the Pacific in general, see generally Deepak Nair, *Regionalism in the Asia Pacific/East Asia: A Frustrated Regionalism?* 31 CONTEMP. SOUTHEAST ASIA 110 (2008). See also, P. Imrana Jalal, *Why Do We Need a Pacific Human Rights Commission?* 40 VICTORIA U. WELLINGTON L. REV. 177, 180 (2009).

19. See Michael L. Perlin, 'Yonder Stands Your Orphan with His Gun': *The International Human Rights and Therapeutic Jurisprudence Implications of Juvenile*

A careful reading of the CRPD tells us that enforcement is virtually impossible without such a tribunal, and without access to counsel to effectuate enforcement.²⁰ The CRPD commands that “States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others . . . in all legal proceedings . . . including at investigative and other preliminary stages.”²¹ These provisions underscore the crucial importance of dedicated counsel and make mandatory the appointment of such counsel—the lynchpin to authentic change in this area of the law.²² It is thus mandatory that any regional human rights tribunal provides adequate counsel to help persons with disabilities file, present, and argue cases.²³ As MLP wrote some years ago, “[t]he 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.”²⁴ Only when there is a mechanism for the appointment of dedicated counsel, can the dreams generated by the CRPD become a reality.²⁵

Punishment Schemes, 46 TEX. TECH. L. REV. 301, 337 (2013).

20. “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.” See CRPD, art. 12, § 3.

21. *Id.*, at art. 13, § 1.

22. PERLIN, *supra* note 2, at 198. Education can serve as an engine for social change by training lawyers and law students international human rights law as it relates to mental disability law. See generally Michael L. Perlin, “Ain’t No Goin’ Back”: *Teaching Mental Disability Law Courses Online*, 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. (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 e.g., Michael L. Perlin, *The Convention on the Rights of Persons with Disabilities, the Disability Rights Tribunal for Asia and the Pacific, and the Future of Online Legal Education in Chinese Schools as a Means of Training Lawyers to Represent Persons with Disabilities* 2 (N.Y. Law Sch., Legal Studies Research Paper No. 10/11 #16, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1743730 [hereinafter PERLIN, FUTURE OF ONLINE EDUCATION]; Michael L. Perlin, Yoshikazu Ikehara, & Heather Ellis Cucolo, *Online Mental Disability Law Education, a Disability Rights Tribunal, and the Creation of an Asian Disability Law Database: Their Impact on Research, Training and Teaching of Law, Criminology Criminal Justice in Asia*, 1 ASIAN J. LEGAL ED. 3 (2013).

23. See generally Michael L. Perlin, “I Might Need a Good Lawyer, Could Be Your Funeral, My Trial”: *Global Clinical Legal Education and the Right to Counsel in Civil Commitment Cases*, 28 WASH. U. J.L. & POL’Y 241, 252-53 (2008).

24. *Id.* at 253.

25. See Perlin, *supra* note 1, at 34.

It is impossible, however, to map out strategies to support the creation of such a tribunal without serious focus on the so-called “Asian values” debate.²⁶ This debate began in the early 1990s, with challenges from several nations²⁷ arguing against the application of international human rights law because such law is based on Western value, and, thus, does not conform to Asian culture.²⁸ This argument—sometimes located within what is called “cultural relativism,”²⁹ which we reject³⁰—implies that “not to share these values is to be less than ‘Asian,’ to have lost one’s bearings and to become ‘Westernized.’”³¹

26. Alfred M. Boll, *The Asian values Debate and Its relevance to International Humanitarian Law*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Mar. 31, 2001), <https://www.icrc.org/eng/resources/documents/misc/57jqzl.htm>; see also, e.g., Same Varavudej, *Right to Democracy in International Law: Its Implications for Asia*, 12 ANN. SURV. INT’L & COMP. L. 1, 13 (2006).

27. Particularly Singapore, Malaysia, and Indonesia. See Karen Engle, *Culture and Human Rights: The Asian Values Debate in Context*, 32 N.Y.U. J. INT’L L. & POL. 291, 331 (2000).

28. *Id.*

29. 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. Burroughs, *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).

30. We believe that cultural relativism is not sufficient justification for the denial of the universal application of human rights standards. See Patrick T.C. Hui, *Birth Control in China: Cultural, Gender, Socio-Economic and Legislative Perspectives in Light of CEDAW Standards*, 32 H.K.L.J. 187, 199 (2002). See also Joel Paul, *Cultural Resistance to Global Governance*, 27 MICH. J. INT’L L. 1, 13, n.51 (2000), citing, *inter alia*, Michael C. Davis, *Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values*, 11 HARV. HUM. RTS. J. 109 (1998) (criticizing cultural relativism as deterministic and tautological), and Simon S.C. Tay, *Human Rights, Culture and the Singapore Example*, 41 MCGILL L. J. 743 (1996) (examining the problematic character of the cultural argument in the context of Asian human rights); Engle, *supra* note 27 (same).

31. See Simon S.C. Tay, *Human Rights, Culture and the Singapore Example*, 41 MCGILL L.J. 743, 764 (1996). Professor Tay also argues (persuasively, we believe) that Asian countries, with historically mediocre (or worse) human rights records could use Asian values as a “cultural excuse” for ongoing rights violations in this area. *Id.* at 747. It must be stressed, however, that these are not unanimous points of view. The common assumption is that Asian citizens, especially those with a Confucianist background, prefer “a conciliatory approach to the settlement of disputes,” see Bobby K. Y. Wong, *Traditional Chinese Philosophy and Dispute Resolution*, 30 HONG KONG L.J. 304, 304 (2000). This conclusion has been sharply questioned in an empirical study that concludes “there is nothing immoral in turning to a more coercive forum,” Carole J. Petersen, *A Progressive Law with Weak Enforcement? An Empirical Study of Hong Kong’s Disability Law*, 25 DISABILITY STUD. Q. 1, 12 (2005); see also Junwu Pan, *Chinese Philosophy and International Law*, 1 ASIAN J. INT’L L. 233 (2011) (discussing

MLP has devoted a significant amount of time in recent years to the proposed creation of a DRTAP.³² This Tribunal would provide a forum for the resolution of legal disputes—focusing on, but not limited to, alleged violations of the UN Convention on the Rights of Persons with Disabilities—in the one area of the world that does not have a regional human rights court or commission.³³ In an earlier article, MLP set out the blueprint for this Tribunal, noting that topics such as the roles of judges, funding, NGOs, reporting, and remedies, along with a host of operational, logistical, and instrumental issues, including but not limited to the Tribunal’s actual composition, its location, the rules of procedure and pleading to be employed, the use of multiple languages, and the need to select one or more “official languages” will need to be concerned.³⁴

In addition, one important aspect of the Tribunal is the parallel creation of a Disability Rights Information Center for

Chinese philosophy and international law).

32. See e.g., Perlin, *supra* note 1; Michael L. Perlin & Yoshikazu Ikehara, *Creation of a Disability Rights Tribunal for Asia and the Pacific: Its impact on China?* (Oct. 2011) (unpublished manuscript), paper accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744196; see also, Yoshikazu Ikehara, *Strategies to Establish a Disability Rights Tribunal in Asia and Pacific During the New Decade for Persons with Disabilities in Asia and Pacific* (paper presented at 33d conference of International Academy of Law and Mental Health, Amsterdam, The Netherlands) (June 2013), abstract accessible at <https://www.ialmh.org/template.cgi?content=Amsterdam2013/main.html>. For a discussion of the planning process and organizational meetings, see Perlin, *supra* note 1, at 24.

33. See PERLIN, *supra* note 2.

34. See generally Naomi Weinstein, *Establishing the Disability Rights Tribunal for Asia and the Pacific* 24-41 (2010) (unpublished paper) (on file with author) (describing the issues and concerns that must be considered when establishing a structure for the DRTAP), discussed in Perlin, *supra* note 1, at 25-27. See also Perlin, *supra* note 1, at 25 (footnotes omitted):

States will need to negotiate such fundamental terms as the DRTAP’s jurisdictional competency, parties’ voluntary participation, the composition of the DRTAP, and the number of states that will participate. Finally, to establish the DRTAP’s legitimacy, the body will need to coordinate with other international and regional human rights bodies and other Asian and Pacific regional bodies, maintain independence from national oversight, ensure accountability and respect to those who appear before it, and implement fair procedures.

As to judges, the states that agree to be part of DRTAP must consider whether there should be seats set aside for citizens of certain nations and for individuals with disabilities, both mental and physical. Also, states parties will have to determine whether all judges will have to be lawyers, or might be non-lawyer advocates. Judges will need to be well-respected, autonomous from political interference, and have a demonstrated expertise in disability law.

Asia and the Pacific (DRICAP).³⁵ As noted above, a website is in the process of being developed to serve as a clearinghouse that collects statutes, regulations, scholarly articles, advocacy news, and case law from selected Asian and Pacific nations.³⁶ The DRICAP, housed at New York Law School, will provide “lawyers and advocates throughout this region [with] a virtual home-place dedicated to these issues.”³⁷

B. THE DRICAP COURSE

With the context established above, MLP proceeded to structure the DRICAP course. For several years prior to the creation of the course, MLP offered a “Project-Based Learning” course³⁸ that helped create the blueprint for the DRTAP and that generated the series of white papers that considered the range of specific procedural and jurisdictional issues referred to above, always with the expectations that a stand-alone DRICAP course would be offered at some future point. It made sense to do this in the 2013-2014 academic year for several reasons:

MLP and his colleagues had been gaining traction in other nations, garnering support for the overall DRTAP project from key players in other nations (especially, but not limited to, Australia and New Zealand). And, as that support developed, it became clear that more specific attention needed to be focused on the DRICAP component of this project.

MLP’s travels to many of the nations in the region in support of the DRTAP program clarified the essentiality of the DRICAP component, as advocates and scholars alike focused on the difficulties they faced in doing comparative and transnational disability law research.³⁹

New York Law School was engaged in a major expansion of

35. See Yoshikazu Ikehara, *What is the DRTAP Project and its Future?*, <http://disabilityandlaw.web.fc2.com/loads/DRTAP22Oct2010Ikehara1.ppt> (last visited Jan. 26, 2015); Perlin & Ikehara, *supra* note 32; Perlin, *supra* note 22.

36. See The Disability Rights Information Center For Asia and the Pacific, www.disabilityrightsinfoAP.com (last visited Feb. 1, 2016).

37. Michael L. Perlin, *Online, Distance Legal Education as an Agent of Social Change*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 95, 105-06 (2011). Eventually, it is hoped that the DRICAP will be populated with webpages containing discussion boards and an added option of creating chat rooms. *Id.* at 105.

38. See Perlin, *supra* note 1, at 28; Perlin, *supra* note 37, at 104-05; see generally Weinstein, *supra* note 34.

39. Perlin, *supra* note 1, at 24; Perlin & Ikehara, *supra* note 32, at 3.

its clinical offerings, and MLP believed that the pedagogical experience for the students in this clinic would be like none other than the school—or likely any other law school—offered.⁴⁰

Students had to apply for the Clinic, filing a statement of interest and their background, and each student participated in individual interviews. There was no prerequisite, though the courses in “Survey of Mental Disability Law,” and in “International Human Rights and Mental Disability Law” were co-requisites.⁴¹ The Clinic was a two-semester clinic, with one credit assigned in the fall (on a “P/F” basis), and two in the spring (graded). Seven students were accepted to the Clinic, and, per original Clinic plans,⁴² each student was assigned two nations: one “large” and one “small.”

The words “large” and “small” are used here in very different contexts than are usual. The descriptors do not necessarily refer to their geographical size, nor to their population, but to the extent to which mental disability law was coherently developed: were there modern statutes, was there accessible case law, were scholars writing extensively about local departments, were there robust advocacy efforts “on the ground”? If the answers to these questions were mostly “yes,” then, for the purposes of Clinic assignments, the nation would be considered a “large” one; if mostly “no,” then a “small” one. This was done to try to, as best as possible, even out work among students, and, pedagogically, to give them the opportunity to do research on a nation that, presumably, had a rich database of mental disability law

40. From 1984-90, MLP directed a “standard,” “live client” Federal Litigation Clinic, in which New York Law School students represented SSI and SSDI applicants with mental and physical disabilities in appeals from administrative law court decisions in the Southern District of New York, the Eastern District of New York, and the Second Circuit Court of Appeals. See Michael L. Perlin, “Simplify You, Classify You”: *Stigma, Stereotypes and Civil Rights in Disability Classification Systems*, 25 GA. ST. U. L. REV. 607, 608 n. 5 (2009) (Perlin, *Stigma and Sterotypes*). From 1992-2004, Perlin directed an outplacement clinic, the Mental Disability Litigation Seminar and Workshop, in which students were placed, mostly, with the Mental Hygiene Legal Services office of New York and the Division of Mental Health Advocacy of New Jersey. See Michael L. Perlin, “You Have Discussed Lepers and Crooks”: *Sanism in Clinical Teaching*, 9 CLINICAL L. REV. 683, 712 (2003) (Perlin, *Sanism in Clinical Teaching*).

41. These co-requisites were part of New York Law School’s online program, and were blended. That is, there were weekly online chatrooms, online webpages, discussion boards, amongst others. There were also two, full-day, live seminars at the beginning and end of the semester. See generally Perlin, *supra* note 37.

42. Perlin previously taught several of these students in classes (including mental disability law classes, and civil and criminal procedure), and had had the opportunity to speak to the students at length, prior to the interview process, about international human rights and social justice lawyering.

materials, and one that did not. MLP also, wherever possible, assigned nations where he had a close, or at least relatively close, contact “on the ground” to serve as a go-to person if the student became stymied with the research.⁴³

In the first semester, students were assigned general readings on the international human rights and mental disability law intersection.⁴⁴ In the second semester, assignments included those dealing with the CRPD and Asia,⁴⁵ those on “Asian issues” and disability discrimination in Asia and the Pacific,⁴⁶ and human rights violations in general.⁴⁷ The second semester also included assignments related to the specific nations that students would be researching in depth.⁴⁸ Later assignments dealt with

43. Thus, the “large” nations assigned were China, Taiwan, New Zealand, Japan, Australia, South Korea, and Hong Kong. The “small” nations were Pakistan, the Philippines, Bangladesh, Vietnam, Indonesia, India and Thailand.

44. Most assignments came from PERLIN, *supra* note 2, and PERLIN ET AL., *supra* note 9. Other free-standing general articles assigned included Michael L. Perlin, “A Change Is Gonna Come”: *The Implications of the United Nations Convention on the Rights of Persons with Disabilities for the Domestic Practice of Constitutional Mental Disability Law*, 29 N. ILL. U. L. REV. 483 (2009); Perlin, *supra* note 19; Perlin, *supra* note 1. Also assigned were articles on the relationship between international human rights and specific mental disability law contexts. *See e.g.*, Perlin, *supra* note 19 (juvenile justice); Michael L. Perlin, “Striking for the Guardians and Protectors of the Mind”: *The Convention on the Rights of Persons with Disabilities and the Future of Guardianship Law*, 117 PENN. ST. L. REV. 1159 (2013) (guardianship); Michael L. Perlin, “Abandoned Love”: *The Impact of Wyatt v. Stickney on the Intersection Between International Human Rights and Domestic Mental Disability Law*, 35 LAW & PSYCHOL. REV. 121 (2011) (institutional rights).

45. *See, e.g.*, Penelope Weller, *Myths, Heroes and Human Rights: The CRPD and Mental Disability in the Asia Pacific* (paper presented at the 33rd International Congress on Law and Mental Health (Amsterdam, Netherlands) (July 14, 2013).

46. On Asian issues in general, *see, e.g.*, Tom Ginsburg, *Constitutionalism: East Asian Antecedents*, 88 CHI.-KENT. L. REV. 11 (2012); Uyen P. Le, *A Culture of Human Rights in East Asia: Deconstructing “Asian Values” Claims*, 18 U.C. DAVIS J. INT’L L. & POL’Y 469 (2012). On disability discrimination law in Asia and the Pacific in general, *see, e.g.*, Andrew Byrnes, *Disability Discrimination Law and the Asian and Pacific Region* (Paper 3), in *Resources on Harmonization of National Legislation with the Convention on the Rights of Persons with Disabilities in Asia and the Pacific*, http://www.unescapsdd.org/files/documents/PUB_CRPD-Paper-III-Andrew-20110121.pdf.

47. *See, e.g.*, Natalie Drew et al., *Human Rights Violations of People with Mental and Psychosocial Disabilities: An Unresolved Global Crisis*, 378 THE LANCET 1664 (2011).

48. *E.g.*, Carole J. Petersen, *Bridging the Gap?: The Role of Regional and National Human Rights Institutions in the Asia Pacific*, 13 ASIAN-PAC. L. & POL’Y J. 174 (2011); Michael A. Stein, *China and Disability Rights*, 33 LOY. L.A. INT’L & COMP. L. REV. 7 (2010); Kelly Loper, *Equality and Inclusion in Education for Persons with Disabilities: Article 24 of the Convention on the Rights of Persons with Disabilities and Its Implementation in Hong Kong*, 40 HONG KONG L.J. 419 (2010); Rangita de Silva de

questions involving issues such as right to counsel, the relationship between health law and disability law, and the role of expert witnesses.⁴⁹

As mentioned above, to assist in the research process, the names of local advocates and lawyers in the fourteen selected nations were, where possible, made available so as to optimally provide additional information about those nations in which they resided and/or practiced law.⁵⁰ For the middle third of the second semester, MLP met with students in small groups, which were assembled based on logical intra-national connections (e.g., the students whose nations were China, Hong Kong, and Taiwan met in one group; the students whose nations were Vietnam, Thailand, and Indonesia met in another). This allowed students to share information, sources, and creative approaches to research with one another.⁵¹ For the last several weeks of the semester, each of the Clinic's students presented their findings to the professor and the other students in the class.

III. THE STUDENTS' PERSPECTIVE

In this Part of this article, five of the Clinic students share their thoughts on the clinic as a pedagogic experience, on the "end product," and on the value of this type of clinical work, including their individual pitfalls, challenges, and breakthroughs. The students' sections are presented in alphabetical order.

A. CATHERINE BARREDA

DRICAP, as a year-long clinic was exciting, challenging, and

Alwis, *Mining the Intersections: Advancing the Rights of Women and Children with Disabilities Within an Interrelated Web of Human Rights*, 18 PAC. RIM L. & POL'Y J. 293 (2009).

49. E.g., Aurora E. Bewicke, *Asian Developments in Access to Counsel: A Comparative Study*, 10 NW. J. INT'L HUM. RTS. 27 (2011); Jessica Roberts, *Health Law as Disability Rights Law*, 97 MINN. L. REV. 1963 (2013); Michael L. Perlin, Astrid Birgden & Kris Gledhill, "The Witness Who Saw, / He Left Little Doubt": A Comparative Consideration of Expert Testimony in Mental Disability Law Cases, 6 J. INVESTIGATIVE PSYCHOL. & OFFENDER Profiling 59 (2009).

50. Uniformly, the students found this to be extremely valuable.

51. Around this time in the semester, it appeared that some students were having trouble prioritizing and organizing their research. MLP subsequently provided them with an outline to help guide them through the research process. This outline covered advocacy efforts, statutes, regulations, court decisions, civil commitment, right to counsel, institutional rights, discrimination, personal rights (marriage, adoption, etc.), education, and the impact of disabilities on sentencing in the criminal process.

has led me to a heightened awareness and recognition of all human rights.

Part A. is divided into three subparts. The first of these subparts discusses the first semester of the Clinic and what I learned. The second subpart focuses on the research-intensive aspect of the Clinic, and the third subpart concludes with an overall synopsis of what I learned and gained from my clinical experience.

1. *The First Semester: Online Survey Course and What I Learned About the Law and Myself*

The first semester of the DRICAP clinic was coupled with the online course, “Survey of Mental Disability Law (Survey course), which was taught by Professor Perlin (Perlin). The Survey course provided a thorough foundation, not only for disability law, but for criminal and civil rights law as a whole. The Survey course included two in-person meetings; it was during these two sessions that the class was given the opportunity to simulate roles of American lawyers representing persons with mental disabilities.

The Survey course was instrumental to success in the overall clinic, not only because of the many cases we read, but also because the course equipped us with the knowledge of how the United States mental disability law system works and where the gaps lie. For example, while U.S. disability law has come a long way in recognizing constitutional due process rights during involuntary civil commitment hearings, there is still work to be done in recognizing reproductive and sexual rights for persons with disabilities.

Understanding where the gaps lie in the law was pivotal because I was able to discuss ideas and strategize with classmates on how to bridge some of these gaps. My main takeaway throughout the process of discussing ideas was the knowledge that, as American lawyers, we are gifted with the ability to challenge the laws and legal system in which we work, and can raise awareness in the legal field towards our goal of changing the way the law relates to persons with disabilities.

As part of the Survey course, we took turns in assuming the following roles: (1) United States attorneys representing persons with mental disabilities; (2) persons with mental disabilities; and (3) judges presiding over commitment hearings.⁵² When it came

52. During this activity, we were each given the role of either attorney, client, or

time to take on the roles of the attorney and client, I was often provided with a loose simulation script to work from. Undertaking the role of the client proved to be most informative as I was told in the script to only offer certain information when asked—giving me insight into how to best prepare myself as a lawyer working with this particular population. And, when I was in the role of attorney, I found myself hesitating when I needed to ask for deeply personal information from my client in order to make an argument. As the class progressed, however, I found myself growing more familiar with the process of interviewing clients for specific information—such comfort is attributable to not only practice, but to gaining a deeper understanding of the relevant law so that I knew exactly the types of questions to ask.

Throughout the Survey course, we were encouraged to openly discuss our personal feelings surrounding the many complex topics raised by the area of mental disability law. For example, the class discussed the stereotypes we each might have when interacting with various clients, where such stereotypes stemmed from, and how to work through the stereotypes as attorneys and advocates. One such stereotype was the idea that persons with disabilities do not know what is best for themselves, and, thus, need others to speak and act for them. The importance of challenging this stereotype was highlighted by the course because a core principle of the work taught by Perlin is to continually empower clients and raise their voices; not to speak for them or substitute their judgment with our own. As a class, we discussed how this strategy can be difficult when timing is rushed and when what a client ultimately wants may not be realistic under the

judge. The facts given to each role were limited, and the purpose of the exercise was for each person to have a brief experience of what a commitment hearing entailed. As the client (a person who would need to be found dangerous to himself or others as a result of his mental disability), the feelings expressed after the activity were often those of hopelessness, invisibility, and fear—mostly due to others discussing very personal details of the client's life in a public setting and having one's narrative told in various ways to obtain a particular end. For the attorneys, specifically the defense attorneys, the experience was often frightening because of the understanding that, although the client did not wish to be committed, there was a very real chance that commitment would be ordered. The attorneys were required to strike a balance between showing deference and respect for the judges, while zealously advocating for and with the client. The judge role, assigned to me, was also difficult in the sense that, as a student studying mental disability law, it was very difficult to remain neutral or to refrain from assuming facts. There was an instinct to interpret facts in ways that were favorable to my views on commitment as opposed to listening to the facts. I realized the very difficult task of being a neutral party, and also began to think more critically of judges from that point forward.

circumstances. The class spoke often about ways in which to navigate these difficult conversations so that we could guarantee that we would give our clients every possible option and outcome, while still maintaining honesty and transparency about likely outcomes without stomping on our clients' wishes.

The context in which the above preconceived notions were identified and analyzed was through a human rights lens—one in which we could compare and contrast our feelings around mental disabilities to other forms of discrimination (e.g., ageism, racism, sexism, classism, and heterosexism). I found that admitting to many ideas I may have had walking into the class were later altered by this process of open sharing and self-education. Additionally, learning of Perlin's personal experiences in working in this area of law was enlightening, and I continue to carry the lessons that I learned into my daily practice of working with young people⁵³—yet another population that experiences professionals substituting their own judgment and beliefs for those of their clients.

In the first semester of the Clinic, Perlin assigned extensive readings to expose us to the scope of international mental disability law.⁵⁴ Not only did Perlin provide insights into cultural and legal differences between the United States legal system and the legal systems in Asian Oceania nations, he also supplied us with firsthand accounts of the many cases and influential pieces of research in which he conducted. The readings assigned in the first semester included an intimate portrayal of cultural contrasts between the Asian and Western systems, arguments from the key players involved in creating DRTAP (e.g., government officials and advocacy groups, both domestically and internationally), and analyses on the issues performed by both lawyers and non-lawyers.

When discussing the cultural differences between United States mental disability law and the mental disability law that we might encounter on the world stage, a common theme was not to assume that, simply because laws are in "black and white," that the rights the laws protect are given practical and tangible effect. The easiest way to grasp this concept was by looking at our own

53. I am currently working as the Pro Bono Scholar on the affirmative immigration team at the Door Legal Services Center, an organization that provides civil legal services, as well as education, counseling, entertainment and job training, for young people aged twelve to twenty-one.

54. See, e.g., SUSAN SHEEHAN, *IS THERE NO PLACE ON EARTH FOR ME?*; see also PERLIN, *supra* note 2.

American history, where emancipation occurred about 100 years prior to any of the laws that actually ensured equal protection under the laws of the United States.⁵⁵ My grasp on the concept was further held through my understanding that, even today, after enactment of so many laws and so much progress, the work for equal and human rights continues to be a battle in the United States.⁵⁶ This same slow process also applies to other countries, and there may be areas where American law is the model and other areas where American law is lagging far behind.⁵⁷

2. *The Second Semester: Clinic, Research, and What I Learned*

The concept of *paper rights* versus *actual rights* was integral to my understanding of international law and prepared me for taking on the research leg of the clinic in the second semester. In other words, part of my work was not only to find relevant laws, but also to attempt to speak with and learn from advocates on the ground about what exactly is happening in their communities with respect to the laws I discovered.⁵⁸

In the second semester, we received our country assignments; several of us, at the same time took the online course in “International Human Rights and Mental Disability Law” (IHR course), taught by Dr. Éva Szeli.⁵⁹ The pedagogy of this online course was similar to that of the Survey course, including two in-person sessions⁶⁰ in which we assumed the roles of a mental

55. See Serena J. Joy, *Interpreting Equal Protection: Congress, the Court, and the Civil Rights Acts*, 16 J.L. & POL’Y 381, 397 (2000).

56. The “Black Lives Matter Movement,” for example, which erupted in 2014, after the murders of Michael Brown and Eric Garner, demonstrate the continued need to fight for equal rights, as just one of many examples (domestically) where inequality exists in the context of police encounters.

57. See, e.g., *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (indefinite holding of person charged with criminal offense based only on person’s incapacity to stand trial violates due process). American jurisprudence recognizes that the conditions and length of confinement must be measured against the due process clause; yet, there remains no right to sex relations within confinement in the mental disability context.

58. I often spoke with Perlin, because he has traveled all over the world to learn about how mental disability law is present or absent in a number of specific geographical areas.

59. Doctor Éva Szeli, former director for European Operations for Mental Disability Rights International. See <http://www.driadvocacy.org/volunteer/dr-eva-szeli/> (last visited Feb. 3, 2016).

60. Both courses were blended online and in person. See Perlin, *supra* note 37 (describing course methodology).

disability law attorney and a patient facing a commitment hearing in a civil law nation in Eastern Europe. It was because of this course that I became equipped with the skills necessary to delve into what national laws and case law we might find during our research. That is, we were taught specifically how to leave no doors unopened and no questions left unasked.⁶¹

During the IHR course, we viewed videos that depicted life in institutions in Eastern European and South American countries.⁶² Szeli also showed us pictures from her own experiences as an investigator and advocate for an international human rights organization, and were told about her experiences dealing with government officials, institution staff, and other advocates. I learned how to best navigate the balance between not telling someone how to do their job, while nudging them to offer information that was much needed in order to better advocate for the vindication of the rights of persons with disabilities who often were unable to advocate for themselves. I also learned the importance of having “eyes and ears” in the institutions, and how vital an advocacy tool it is to simply allow a person to share their story.

The second semester was also the time when we, as clinic students, no longer read about the overall situation in other countries—this was the time we were able to get our “wheels on the ground.” I was tasked with Hong Kong (“big” country) and India (“small” country), and learned very quickly the differences in availability of legislation and case law in Hong Kong as compared to India.⁶³ Once I received my country assignments, Perlin provided me with a contact person in India, and I was sent

61. In other words, when going on an institutional inspection, it is necessary to ask that every door be opened so that the inspectors and advocates might have access to rooms that would otherwise be hidden from view.

62. Videos showed people living in an institution in Mexico without shoes or proper beds; there were videos in Eastern Europe of people living in cages placed on top of twin-sized beds that were there “for their protection”; there were people forced to live in what would be the equivalent of a barn, outdoors and sleeping on hay with a hole in the ground for a toilet; There was a discussion of how when human rights advocates go into these institutions, there is a concerted effort to hide these conditions or to justify them somehow or explain them away. As a class, we were confronted with how to approach these situations, what questions to ask, what doors to try to open each and every time there is a site visit.

63. Big countries have a larger population and/or larger economy and/or larger availability of advocates and legislation protecting the rights of persons with disabilities; smaller countries have a smaller population and/or smaller economy and/or have a smaller availability of advocates and legislation protecting the rights of persons with disabilities.

off to begin work while still uncertain of what I may find. Perlin met with us bi-weekly to discuss our progress, and, as students, we grew close as we discussed our findings and performed research together.

As part of the Clinic, there were various challenges throughout the semester—though always met with an immense appreciation for the work. One such challenge that I constantly encountered during my research was the inability to truly experience what it was like to be a person with a mental disability in the most remote parts of the countries I had been assigned. As I learned in both the Survey and IHR courses, without firsthand knowledge of what it is like “on the ground,” many of my questions about whether rights were actually respected and given due weight went unanswered.⁶⁴ However, with the training I received from the online courses and throughout the Clinic, I knew what questions to ask, what clues to look for, and what resources to trust as I read through country reports, case law, and various advocacy websites.

Another challenge was the constant language barrier that I discovered when attempting to perform my research. For example, while many laws were available in English or translatable through Google Translate, there were occasional important laws (e.g., one linked to a government website) that were unavailable in English. When this occurred, questions of why some materials were available in English and others were not was important to note, as it might signal a number of possible explanations: a lack of resources in the country, the political climate of the country, or even because of a simple issue with Google Translate.

One of the most surprising pieces of information I discovered during the Clinic was that, in some instances (such as with India) a country can both sign and ratify the CRPD without adhering to what the CRPD actually stands for. In performing my research on India, I noted that there were no country reports to read (though they were due in June 2010),⁶⁵ and, while some older

64. The law on the books and law in action dichotomy is a gap that has plagued mental disability law for the past three decades, and can best be resolved in nations with developing economies. See Michael L. Perlin, “Chimes of Freedom”: *International Human Rights and Institutional Mental Disability Law*, 21 N.Y.L. SCH. J. INT’L & COMP. L. 423, 425 (2002).

65. India signed the CRPD on March 30, 2007, ratified on October 1, 2007, and submitted a country report on June 3, 2010. See UNITED NATIONS HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN (last

statutes have been repealed and replaced with statutes from more recent years, there were also statutes from the 19th century still in use. Studying this information from a United States mental disability law lens, I was surprised to learn that, in India, there continues to be a lack of substantial rights-based statutes—this results in outdated institutions and a lack of options for persons with disabilities.⁶⁶ My research and work on India showed that there is much work left to be done to aid disability rights advocates in India, to increase education on the matter and to push for legislative change.

In contrast to India, there are numerous statutes and case law from Hong Kong available online that reflect compliance with the CRPD.⁶⁷ Conducting research on Hong Kong was easier overall than researching India because Hong Kong submitted country reports in compliance with the CRPD, has disability rights case law available, and has multiple statutes to protect the rights of persons with disabilities.⁶⁸ However, as a result of my training in U.S. mental disability law, I continue to be skeptical of areas where perhaps adequacy of counsel for persons with disabilities is not sufficient to vindicate all of the paper rights Hong Kong has to offer.⁶⁹

3. Conclusion

The greatest appreciation I have when looking back on the work of the past year is that the CRPD is the action it involved and the “live beast” of the issues with which I had to reckon. As I performed research on Hong Kong and India, both of which have signed and ratified the CRPD, I was able to see where steps had been taken towards recognition of *all* human rights—naturally including the rights of persons with mental disabilities.⁷⁰ Yet, so

visited Feb. 3, 2016).

66. G. Banerjee, *THE LAW AND MENTAL HEALTH: AN INDIAN PERSPECTIVE* (2001), <http://www.psyplexus.com/excl/lmhi.html>.

67. See *MENTAL HEALTH ORDINANCE, 1997-2012* Cap. 136, H.K.

68. Hong Kong signed the CRPD on March 30, 2007, ratified it on August 1, 2008, and submitted a country report on February 11, 2011. See *China 2014 Human Rights Report*, UNITED STATES DEPARTMENT OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2014. See also Carole J. Petersen, *A Progressive Law with Weak Enforcement? An Empirical Study of Hong Kong's Disability Law*, *DISABILITY STUD. Q.* (2005), <http://www.dsq-sds.org/article/view/625/802>.

69. See, e.g., Perlin, *supra* note 23.

70. See generally United Nations, *Reporting Status for India*, HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN (last visited Feb. 3, 2016);

much of the work is yet to be done, and there is still much need for a continued global effort to fully recognize and enforce the rights of all humans; specifically through the vehicle of a disability rights tribunal for Asian and Oceania countries.⁷¹

B. KATHERINE DAVIES

As part of the DRICAP Clinic, Perlin assigned to me Australia and Indonesia. Indonesia was the smaller country of the two and, as expected, posed far more challenges than did Australia.⁷² However, I learned throughout the two semesters that each country had its own challenges when it came to researching their mental disability laws.

This Part is divided into three subparts. The first subpart discusses how I began researching the mental disability laws in Australia and Indonesia. The second subpart discusses the challenges I faced while researching the laws in each country and the steps I made to attempt to overcome these challenges. Finally, the third subpart concludes with an examination of the laws I found in Australia and Indonesia, and the conclusions that I made about each of these countries as they relate to mental disability law.

1. Research

My research commenced by learning about the demographics of Australia and Indonesia, which were important to understanding how each country's government structure and cultural background would influence their mental disability laws. From there, I searched online to discover cases or laws that would be relevant to mental disability law in each of these countries. Throughout the course of this research, I was able to find most of the information I needed about mental disability laws in Australia. I also reviewed the report filed by Australia on the "Convention on the Rights of Persons with Disabilities" (CRPD).⁷³

United Nations, *Reporting Status for China (Hong Kong)*, HUMAN RIGHTS: OFFICE OF THE HIGH COMMISSIONER, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HKG&Lang=en (last visited Feb. 3, 2016).

71. See Perlin, *supra* note 1.

72. Indonesia was considered the smaller country because we expected that Indonesia would not have as many rules and regulations as Australia.

73. CRPD, *supra* note 3; see also UN Committee on the Rights of Persons with Disabilities, *Implementation of the Convention on the Rights of Persons with Disabilities: Initial reports submitted by States parties under Article 35 of the*

This report listed many laws that were already in place, as well as steps that were being taken to implement and enforce these laws. For example, Australia has laws that regulate transportation standards to accommodate persons with disabilities. These standards are implemented by using timetables and by setting guidelines with which companies are to comply.⁷⁴

While successful in finding relevant laws in Australia, I was not as fortunate in my research on Indonesia. I met with the research librarian at New York Law School to find the best sources for these international laws. Through the World Legal Information Institute (World Lii), an online research website, I was able to find more laws and cases for Australia, in addition to a few laws for Indonesia.⁷⁵ I subsequently learned that, while each state in Australia has its own mental health law (e.g., Western Australia's "Mental Health Act 1996"),⁷⁶ Indonesia's mental health laws apply to the entire country.⁷⁷ Further, the mental health laws in Australia each set out strict guidelines for civil commitment, right to treatment, right to refuse treatment, and treatment in the community.⁷⁸ Examples of the regulations for treatment in the community include guardianship laws and guidelines for how a community treatment order is to be executed.⁷⁹ Australia's mental health laws also have guidelines

Convention (Dec. 3, 2010)

74. *Disability Discrimination Act 1992* (Austl.) sec. 31-32.

75. See generally WORLD LEGAL INFORMATION INSTITUTE, <http://www.worldlii.org/> (last visited Feb. 3, 2016); see also Northern Territory Consolidated Acts, *Mental Health and Related Services Act*, http://www.austlii.edu.au/au/legis/nt/consol_act/mharsa294/; Victoria Consolidated Acts, *Disability Act 2006*, http://www.austlii.edu.au/au/legis/vic/consol_act/da2006121/; Undang-Undang Republik Indonesia, Nomor 13 (2011), *Dengan Rahmat Tuhan Yang Maha Esa*, <http://www.worldlii.org/id/legis/uu/un13t2011239/>.

76. The Western Australian Act has more recently been amended by the Mental Health Act 2014. For an overview, see generally http://www.mentalhealth.wa.gov.au/mentalhealth_changes/mh_act2014.aspx.

77. *How Government Works*, AUSTRALIAN GOVERNMENT, <http://www.australia.gov.au/about-australia/our-government>; Western Australian Current Acts, *Mental Health Act of 1996*, http://www.austlii.edu.au/au/legis/wa/consol_act/mha1996128/; Undang-Undang, *supra* note 75; Indonesia: Social security (general standards), INTERNATIONAL LABOUR ORGANIZATION (Nov. 20, 2015), http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=IDN&p_classification=15&p_whatsnew=201209&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

78. Mental Health Act of 1996, *supra* note 77.

79. See *Guardian and Administration Act, 2000*, ch 3, pt 1 (Austl.), <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/G/GuardAdminA00.pdf>;

for when inpatient treatment, such as electroconvulsive therapy, may be used.⁸⁰

Through further research and translation, I was able to find that Indonesia's mental health laws can be found in the Indonesian Constitution and the Indonesian Health Law 32/2009.⁸¹ These laws are not as detailed as Australia's mental health laws.⁸² Also, Indonesia does not set forth as detailed guidelines as Australia for civil commitment.⁸³ For example, a person in Indonesia can be civilly committed by his or her spouse, and can be committed not only for having a mental illness, but also for simply breaching the peace.⁸⁴ Additionally, persons with mental illnesses in Indonesia do not always have access to treatment, and, unfortunately, *Pasung*—the use of physical restraint by shackling or locking someone in a psychiatric facility—is still practiced.⁸⁵ Persons with mental illnesses do not specifically have a right to treatment in Indonesia, and the necessary treatment is not always available.⁸⁶ Many of these practices, on their face, violate the CRPD.⁸⁷

2. *Working with the Contacts*

After exhausting my online research options for Indonesia, I contacted Professor Nandang Sutrisno and Mr. Eko Riyadi from

See also Mental Health Act, 1986 (Austl.), [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/ACD4FED0771D1FCBCA2579560002C01D/\\$FILE/86-59aa101%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt6.nsf/DDE300B846EED9C7CA257616000A3571/ACD4FED0771D1FCBCA2579560002C01D/$FILE/86-59aa101%20authorised.pdf)

80. *Mental Health Related Services Act*, *supra* note 75, at s 86.

81. Undang-Undang, *supra* note 75.

82. *Id.*

83. *Id.*

84. *Id.*

85. Andrea Star Reese, *Disorder: Indonesia's Mental Health Facilities*, TIME, Sept. 3, 2013, <http://time.com/3801916/disorder-indonesia-mental-health-facilities-be-andrea-star-reese/>.

86. Undang-Undang, *supra* note 75; *see also* Republik Indonesia, Nomor 13 Tahun 2011, <http://www.worldlii.org/id/legis/uu/un13t2011239/>; *see also* Mental Health Indonesia, *Constitution Health and Hospital, Republic of Indonesia, 2010* ch 3, http://www.mentalhealthindonesia.org/information/page/90a1be607766540647ae/undang-undang_kesehatan.

87. *See e.g.*, Bryan Y. Lee, *The U.N. Convention on the Rights of Persons with Disabilities and Its Impact Upon Involuntary Civil Commitment of Individuals with Developmental Disabilities*, 44 COLUM. J. L. & SOC. PROBS. 393, 413-30 (2010-2011) (discussing changes ratifying states need to make in their domestic involuntary civil commitment laws to comply with CRPD mandates).

the Islamic University in Jogjakarta.⁸⁸ They were both helpful in verifying that the laws I had found were current.⁸⁹ The most valuable piece of information that I gained Professor Sutrisno and Riyadi was the reason I was unable to find any cases online—they are only accessible as hard copies in Indonesia. Although this posed an additional challenge to gaining further information on Indonesia, it was also an important breakthrough to include when putting together the information center. Riyadi, Sutrisno's student, was able to send me an electronic version of research studies that summarized several cases in Indonesia, and that dealt with persons with mental illness and developmental disabilities.⁹⁰

When researching Australia, I found there to be a wealth of information to sort through. In order to narrow down such information, I contacted Dr. Astrid Birdgen, an Australian forensic psychologist with a Master's Degree in mental disability law studies from New York Law School.⁹¹ When I had originally searched for laws online, I encountered many that were accessible but no longer enforced.⁹² Birdgen was able to provide me with an overview and understanding of the laws still in place. Having her guidance allowed me to consolidate my research in order to make it easier for other researchers and advocates to access and use.

88. Perlin put us in contact with different people in our assigned country that he knew had knowledge and experience in the mental disability law field. He had previously taught at that University during the fall semester of 2012.

89. Undang-Undang, *supra* note 75; *see generally* Mental Health Indonesia, *supra* note 86.

90. *See generally* M' SYAFI'IE PURWANTI MAHRUS ALI, ENDANG EKOWARNI & M. JONI YULIANTO, POTRET DIFABEL BERHADAPAN DENGAN HUKUM NEGARA (Sasana Integrasi dan Advokasi Difabel 2014) (POTRET DIFABEL). I was able to translate the title of this book and a chart that listed recent cases. Because Google Translate did not translate every word, the book as a whole lost some of its meaning.

91. Birdgen has also co-authored several articles with Perlin. *See, e.g.*, Astrid Birdgen & Michael L. Perlin, "Tolling for the Luckless, the Abandoned and Forsaked": *Therapeutic Jurisprudence and International Human Rights Law as Applied to Prisoners and Detainees by Forensic Psychologists*, 13 LEGAL & CRIMINOLOGICAL PSYCHOL. 231 (2008); Astrid Birdgen & Michael L. Perlin, "Where the Home in the Valley Meets the Damp Dirty Prison": *A Human Rights Perspective on Therapeutic Jurisprudence and the Role of Forensic Psychologists in Correctional Settings*, 14 AGGRESSION & VIOLENT BEHAV. 256 (2009); Perlin, Birdgen & Gledhill, *supra* note 49. The third of these articles—on the question of how expert testimony is treated in Western and Asian nations—was assigned in the second semester of the Clinic.

92. *E.g.*, Tasmanian Numbered Acts, *Mental Health Act 2013 (No.2 of 2013)*, http://www.austlii.edu.au/au/legis/tas/num_act/mha20132o2013174/.

3. *Issues and Challenges*

Language barriers also made research difficult. The little information I was able to find on Indonesia was not in English. I used Google Translate to translate the laws and articles that I found. And, while this method did not aid in translating everything perfectly, it was sufficient enough so that I was able to get the information that I needed. One specific occasion when Google Translate was especially helpful, was when I had to translate a research study, sent to me by Professor Sutrisno and Mr. Riyadi, which was entirely in Indonesian.⁹³ While not every word of the study was able to be translated, one chart was translated and provided summaries of all of the cases that had been used in the study.⁹⁴ I was able to learn from this chart that complaints made by persons with mental illnesses often do not make it past filing a complaint with the police.⁹⁵ Some reasons the chart listed as to why cases were not further pursued included the inability by the police to understand the person's language, or that a person was simply a "slow learner."⁹⁶

Another challenge I faced in researching both Australia and Indonesia was in trying to understand to what extent the laws in each country were contemporaneously being enforced. Many laws I had found had been updated or repealed over the years, such as Western Australia's "Mental Health Bill 2013."⁹⁷ I encountered the same challenge with non-governmental organizations in Indonesia when trying to understand their goals and whether they truly advocated for persons with disabilities, or, if it just appeared as if they did.⁹⁸

The question of counsel is dealt with in radically different ways in the two nations.⁹⁹ In Indonesia, there does not appear to be a right to counsel for persons with mental illness.¹⁰⁰ Even

93. See generally POTRET DIFABEL, *supra* note 90.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Mental Health Act of 1996*, *supra* note 77.

98. Various non-governmental organizations in Indonesia were examined for purposes of this research. See, e.g., See, e.g., Disability Rights Fund, *PPCI (Indonesian Disabled Peoples Association)*, <http://www.disabilityrightsfund.org/grantee/asia/indonesia/2010/ppci-indonesian-disabled-peoples-association.html>; LBH Jakarta, *Jakarta Legal Aid Institute*, <http://en.bantuanhukum.or.id>.

99. See *Mental Health Act of 1996*, *supra* note 77.

100. Undang-Undang, *supra* note 75.

though there exists the Indonesian Legal Aid Foundation,¹⁰¹ there is no indication that it represents persons with mental illnesses. In Australia, cases involving persons with mental illness are heard in Mental Health Courts.¹⁰² And, unlike Indonesia, Australia has a right to counsel.¹⁰³

Some organizations that represent persons with mental illness in Australia include Legal Aid, Mental Health Legal Services/Queensland Advocacy Incorporated, Mental Health Law Practice, Health Quality Complaint Commission, and the Queensland Law Society. Further, a person with a mental illness in Australia has the right to vote if a doctor determines that such person has the capacity to vote. This contrasts with Indonesia, where persons with mental illnesses do not have the right to vote.¹⁰⁴

The information discussed above was important to include in the DRICAP database so that advocates, family members, and persons with disabilities are able to locate helpful organizations. To overcome the challenges of locating such organizations, I found it helpful to read articles authored by lawyers and advocates in Indonesia and Australia (as well as case law in Australia) to determine which laws are currently being enforced.¹⁰⁵ I also considered the Committee on the Rights of Persons with Disabilities' response to Australia's report to supplement this information.¹⁰⁶

101. See generally Indonesian Legal Aid Foundation (YLBHI), <http://www.ylbhi.or.id> (last visited Feb. 3, 2016).

102. *Mental Health Review Tribunal*, DEPARTMENT OF THE ATTORNEY-GENERAL AND JUSTICE, <http://www.nt.gov.au/justice/courtsupp/mentalhealth/index.shtml>.

103. UN Committee, *supra* note 73; see also Mental Health Advocacy Service, LEGAL AID NEW SOUTH WALES, <http://www.legalaid.nsw.gov.au/what-we-do/civil-law/mental-health-advice> (last visited Feb. 3, 2016).

104. This is violative of the CRPD. See Theresia Degener, *The Right to Political Participation: From Exclusion to Universality*, INT'L DISABILITY ALLIANCE HUM. RTS. PUBLICATION, Mar. 2013, 1 ("the *de facto* denial of the right to vote . . . for disabled persons should be considered as one of the most serious human rights violations.").

105. See, e.g., Penelope Weller, *Taking a Reflexive Turn: Non-Adversarial Justice and Mental Health Review Tribunals*, 37 MONASH U. L. REV. 81 (2011); POTRET DIFABEL, *supra* note 90; Re MI, Ex Parte WW, Wasat 5 (2009) (Guardianship Case); Australian Capital Territory v. Crowley And Commonwealth Of Australia and Glen Pitkethly, ACTCA 5 (2012) (duty of care); Kracke v. Mental Health Review Board & Ors, VCAT 646 (2009) (right to be free from medical treatment).

106. Australia and Indonesia both have laws in place for persons with disabilities. Australia has recently changed its laws to comply with the CRPD. Each state in Australia has its own mental health law for persons who are institutionalized, as well as laws dealing with education, employment, and transportation of persons with disabilities. Australia's biggest problem is that, even though there are many laws

4. *Conclusion*

At the end of the year-long Clinic, I consolidated my research by creating an outline, which included all the important cases, laws, articles, and organizations that I had found throughout the Clinic. The greatest takeaway from my research is that, even though both Australia and Indonesia have mental disability laws, there is still much work to be done before these countries' laws are in compliance with the CRPD. My hope is that, when this information is included in the DRICAP database, it will be easily accessible for researchers, scholars, and advocates in Indonesia, Australia, and other countries in Asia and the Pacific.

C. *MEHGAN GALLAGHER*

This Part is divided into four subparts. The first subpart discusses my approach to the research. The second subpart discusses my research challenges and findings in China. The third subpart outlines my findings in Pakistan. Finally, the last subpart discusses the challenges and rewards of the course.

1. *Approach*

The two countries that I researched were the People's Republic of China (China) and Pakistan. China was my "large" nation and Pakistan was considered by "small" nation. At the start of my research, I felt as though I had a solid foundation in international law and mental disability law, based on classes I had previously taken, my prior experience in the first semester of this course, and my previous work in international legal research. Nonetheless, when I first began my research I felt scattered. My strategy was to start broad, and then narrow my research. However, I still had a difficult time determining what was relevant. About halfway through the second semester, Perlin was kind enough to provide our class with an outline, which helped me narrow down my research. He also provided us with some

covering all different areas of mental disability law, they are not always enforced. For example, each Australian State has a mental health law, such as the *Mental Health Act 2013* (Tasmania), which includes the right for a person with a disability to appear before a tribunal. Mental health tribunals are important, but such tribunals can easily face difficulties where there is a lack of knowledge and expertise with respect to evaluating persons with mental illnesses. See Weller, *supra* note 105, at 89. See also UN Committee, *supra* note 73 (emphasizing need for training of judges and other people working with persons with disabilities).

resources to help us get started with our research.

For both China and Pakistan, it was useful to begin with background information about the nations, including population size, religions, languages, government structures, and Gross Domestic Product information. Many times, when laying this foundation, I found useful information concerning the cultural beliefs prevalent in these nations, specifically with respect to persons with disabilities.¹⁰⁷ To illustrate, under traditional Chinese beliefs, the presence of a mental illness indicates that a family member acted immorally in his past life. This belief, in turn, creates a culture of fear to disclose a mental illness and a desire to avoid shame brought to the family.¹⁰⁸ Such information was relevant to my research, because it helped me gain a better understanding of China and its people, why certain Chinese laws and practices are in place, and what needs to be done in the nation to ensure that the CRPD is being enforced.

2. China

The biggest problem that I encountered while researching China, was that there was *too much* information. As such, I had a difficult time distinguishing relevant information from the not-so-relevant information. I addressed this problem first by examining whether or not China had signed the CRPD (which it had) and other international human rights documents.¹⁰⁹ This

107. For example, Islam plays a large role in Pakistan society and, while society is generally biased toward persons with mental disabilities, Islam promotes strong moral and ethical values and thus it is desirable to treat individuals with a mental illness well. See Qidwai W, Azam SI, *Psychiatric Morbidity and Perceptions on Psychiatric Illness Among Patients Presenting to Family Physicians, in April 2001 at a Teaching Hospital in Karachi, Pakistan*, 1 ASIA PACIFIC FAM. MED. 79, 79-82 (2002); Farooq Naeem et al., *Stigma and Knowledge of Depression: A Survey Comparing Medical and Non-medical Students and Staff in Lahore, Pakistan*, 21 PAK. J. MED. SCI. 155, 155-58 (2005). Persons with mental disabilities often first turn to religious healers rather than mental health professionals or hospitals to treat mental disabilities. See Ahmed Ijaz Gilani et al., *Psychiatric Health Laws in Pakistan: From Lunacy to Mental Health*, PLoS MEDICINE 1105, 1106 (2005).

108. See Kam-shing Yip, *Family Caregiving of Clients with Mental Illness in the People's Republic of China*, 9 INT'L J. PSYCHOSOCIAL REHABILITATION 1, 2 (2005), www.psychosocial.com/IJPR_9/Family_Caregiving_in_China.html.

109. Notably, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). China signed the ICESCR in 1997 and ratified in 2001. Conversely, China signed the ICCPR in 1998, but has not yet ratified this treaty. See *Ratification of 18 International Human Rights Treaties: China*, UNITED NATIONS HUMAN RIGHTS, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, <http://indicators.ohchr.org> (last visited Nov. 1,

factor is important, because one of the biggest problems with the CRPD and international agreements is a lack of enforcement.¹¹⁰ Simply because a country signs—and even ratifies—an international human rights document, it does not necessarily mean the document is being enforced by that country.¹¹¹

Next in my research process, I looked to domestic statutes and regulations regarding mental health law. I discovered that examining the Constitution of the People’s Republic of China was helpful.¹¹² Much of my research led me to the conclusion that, while China has *some* progressive laws on the books—and appears to be a leader in some respects with regard to disability rights in the region—it is mostly a “dog and pony” show.¹¹³ For example, China has hosted the Far East and South Pacific games for the Disabled in Beijing, the Special Olympics Worldwide Summer Games in Shanghai, and the Paralympic Games in Beijing.¹¹⁴ However, there is still a stigma surrounding disabilities, especially mental disabilities, in China, and many protections and policies ostensibly put in place to help people with such disabilities are not being implemented or enforced.¹¹⁵

3. *Pakistan*

Pakistan presented the opposite problem that I had faced in researching China. Instead of too much information, I had a difficult time finding any information at all. One of the most helpful resources for my Pakistan research was one of Perlin’s contacts in the country: Omer Pervaiz Malik. Mr. Malik is a disability rights advocate who argues before the judicial courts in Pakistan. I Skyped with Mr. Malik, and he sent me very useful information about disability rights in Pakistan.¹¹⁶ This

2015).

110. See Jennifer Fischer, *A Comparative Look at the Right to Refuse Treatment for Involuntarily Hospitalized Persons with a Mental Illness*, 29 *Hastings Int’l & Comp. L. Rev.* 153, 153-83 (2005-2006).

111. *Id.*

112. See *Xianfa* art. 45 (1982) (China).

113. Thomas C. Weiss, *Overview of Disability in China*, *DISABLED WORLD* (May 28, 2010), <http://www.disabled-world.com/news/asia/china/disability-china.php>.

114. Michael Ashley Stein, *China and Disability Rights*, 33 *LOY. L.A. INT’L & COMP. L. REV.* 7, 8 (2010).

115. “As Long as They Let Us Stay in Class”: *Barriers to Education for Persons with Disabilities in China*, *HUMAN RIGHTS WATCH* 1, 1-2 (2013), https://www.hrw.org/sites/default/files/reports/china0713_ForUpload.pdf.

116. See, e.g., Qaisar Khalid Mahmood et al., *The Effect of SMS Service on the Political Participation of Persons with Disabilities (PWDs) in Khyber Pakhtunkhwa*

information, coupled with the advocacy organization websites that I discovered in my own research, were the biggest breakthroughs for learning more about Pakistan's approach to mental disability law.¹¹⁷

Pakistan has both signed and ratified the CRPD.¹¹⁸ And, while Pakistan still has a long way to go to protect the rights of persons with disabilities, many protections have been established in areas of employment, education, and housing to ensure that people with disabilities have equal access to the same rights and opportunities as persons without disabilities.¹¹⁹ For example, persons with disabilities are entitled to free preliminary education in special education centers established by the Directorate General of Special Education.¹²⁰ Additionally, visually impaired students are entitled to free tuition and are exempt from admission fees, and children with disabilities are entitled to free education up to the intermediate level.¹²¹ Pakistan has also established a progressive voting system that helps to ensure persons with disabilities have equal access to voting rights.¹²² To illustrate, in 2013, the government established a short messaging system that helped voters find nearby polling stations.¹²³ Studies showed that persons with disabilities were more likely to vote in the 2013 elections than in the 2008 elections due, in large part, to this new technology that

(Pakistan), 25 WORLD APPLIED SCIENCES J. 803, 803-804 (2013); Mughes Ahmed & Abdul Basit Khan, *The Policies of United Nations and Their Implementation: A Comparative Study of Policy Implementation in Pakistan*, 18 J. POL. STUD. 125 (2011).

117. See, e.g., ASIA-PACIFIC DEVELOPMENT CENTER ON DISABILITY, <http://www.apcdfoundation.org> (last visited Feb. 3, 2016); INTERNATIONAL DISABILITY ALLIANCE, <http://www.internationaldisabilityalliance.org/en> (last visited Feb. 3, 2016); PAKISTAN DISABLED PEOPLE'S ORGANIZATION (PDPO), <http://pdpo.org.pk/aboutUs/index.htm> (last visited Feb. 3, 2016); NETWORK OF ORGANIZATIONS WORKING FOR PEOPLE WITH DISABILITIES, PAKISTAN (NOWPDP) <http://www.globalgiving.org/pfil/6244/projdoc.pdf> (last visited Feb. 3, 2016); *Amnesty International Report 2013: Pakistan*, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/region/pakistan/report-2013> (last visited Feb. 3, 2016).

118. *Convention and Optional Protocol Signatures and Ratifications: Countries and Regional Integration Organizations*, UNITED NATIONS ENABLE, <http://www.un.org/disabilities/countries.asp?id=166> (last visited Feb. 3, 2016).

119. "Know Your Rights!" Network of Organizations Working for People with Disabilities, Pakistan (nowpdp), <http://www.nowpdp.org/wp-content/uploads/2015/07/Know-Your-Rights-English-Brochure.pdf> (last visited Feb. 3, 2016).

120. *Id.*

121. *Id.*

122. See generally Mahmood et al., *supra* note 116, at 803-04 (describing how the government of Pakistan has taken steps to increase voter turnout among PWDs).

123. *Id.* at 804.

made polling stations more accessible.¹²⁴

4. *Conclusion*

I found the DRICAP project both challenging and rewarding. For me, this course provided an opportunity to see the CRPD in action in nations that have signed and ratified the Convention. This course provided me with an opportunity to examine the laws of two different Asian nations to determine whether they are in line with the CRPD, and to examine how people with disabilities are actually being treated. This course helped me become a better researcher and helped me to scrutinize my research and sources more carefully. For example, to see whether the CRPD is actually being implemented and enforced in China, it is important to look at independent civil society reports rather than mere government reports.

As mentioned above, this Clinic has opened new doors for me. I have since taken other classes on international human rights and mental disability law and have done further research and writing on related topics. I have also made contacts for my future. This has been an invaluable experience for both my legal education and my career.

D. NICOLE ISRAEL

In applying for the DRICAP Clinic, my goal was to engage in an area of law in which trained counsel was scarce. This course fused my interests in Asian international law and in working to affect change to promote justice for a largely underrepresented group. The Clinic provided a challenging opportunity that placed students' legal research skills to the test, while also engaging with and learning from other DRICAP students. The assignment was to enhance our knowledge about the countries' legal systems, case law regarding mental disability, and laws that are already in place (or not in place) to protect those with mental disabilities from injustice.

This Part is divided into five subparts. The first subpart discusses the strategy and resources used to embark on our assigned countries in DRICAP. The second subpart examines the laws and agencies that enforce regulations on behalf of those suffering from mental disabilities. The third and fourth subparts

124. *Id.* at 806.

focus on the challenges and breakthroughs experienced through the journey of the DRICAP course. Finally, the fifth subpart concludes with how the course engaged students both inside and outside of the classroom, and on a global level. DRICAP fed into the aspiring international lawyer's desire to acquire more knowledge and to understand how various Asian governments operate in the context of mental disability law.

1. Strategy and Tools

Once accepted into the program, I was assigned “big” and “small” countries—Taiwan (big) and the Philippines (small). The course blueprint featured intensive reading about international law and legal articles regarding the development of mental disability law on a global scale. The second half of the Clinic required students to apply the knowledge acquired in the first semester by conducting research on our respective countries and collecting as much verified information as possible.

In preparing to begin this extensive research journey, Perlin provided a number of tools to get us started. First, he provided his time. Perlin was accessible during class time and at any point during the week, and was also willing to conduct meetings about our assignments over Skype. He guided our research and provided methods and ideas on how to obtain what we needed.

Perlin also provided us with personal contacts for practically all of the assigned countries. These contacts proved invaluable. Many of them became the gateway to a treasure trove of information and propelled our research forward. Further, the helpfulness of a legal librarian was instrumental. Carolyn Hasselman, a New York Law School librarian, who specializes in international research, provided tremendous assistance. She showed me the websites that I should use and those in which to steer clear from, as the latter might not provide the most accurate and up-to-date information.

Finally, through working as a team with other students in the course, sharing the trials and pitfalls of navigating a region's murky mental disability landscape, and exchanging knowledge of websites or sources that some of us might not have known about, I learned that collaboration is the key to success. Because every student in the Clinic was working for change, the camaraderie among us was an added bonus—students bonded and acted as a team.

2. *The Research*

There are two specific Taiwanese laws that pertain to mental disability: The Physically and Mentally Disabled Citizen's Rights Protection Act (2001) (Act) and the Mental Health Law. The Mental Health Law includes six chapters with fifty-two articles of law.¹²⁵ The Act covers medical rehabilitation, education, promotion of employment, welfare services, welfare organizations, and penalties.¹²⁶ A number of measures have been adopted to implement the Law.¹²⁷ The Foreign Law Guide (FLG), a source for comparative law research and a database on sources of foreign law, provided an accurate backdrop of the Taiwanese civil law legal system.¹²⁸

In addition, Perlin provided one of his contacts, Dr. Lisa Wang, in Taiwan to help assist in any outlying information that the doctrines may not have covered.¹²⁹ Dr. Wang is a professor and Library Director at National Chung Cheng University, and serves as the Asia-Congress Pacific Liaison for the International Association for the Scientific Study of Intellectual and Developmental Disabilities.¹³⁰

Internet searches also provided a sufficient amount of information about Taiwanese Non-Governmental Organizations (NGOs) working in the field of mental disability.¹³¹ I reached out

125. Eng-Kungyeh, *Mental Health Law and Development of Mental Health Program in Taiwan*, 52 *PSYCHIATRY AND CLINICAL NEUROSCIENCES* S246 (1998). Stephan M. Salzberg, *Taiwan's Mental Health Law*, 7 *CHINA L. REP.* 161, 163 (1991-1993).

126. Shēntǐ hé zhìlì cánjǐ zhě bǎohù fǎ (身体和智力残疾者保护法) [Physically and Mentally Disabled Citizens Protection Act] (promulgated by President Order Hua-Tsung-Yi-Tzu, No. 092006210, effective June 25, 2001), *translated on* http://www.tfrd.org.tw/english/laws/upload/20060427508892_01.htm (Taiwan).

127. *Taiwan – Legislation and the Judicial System*, BRILLONLINE REFERENCE WORKS (Feb. 4, 2016), http://referenceworks.brillonline.com/entries/foreign-law-guide/taiwan-legislation-and-the-judicial-system-COM_183302?s.num=0&s.q=Taiwan+-+Legislation+and+the+Judicial+System.

128. *See generally id.*

129. Lisa Wang, *The Impact of Heller Alumni Around the World: Taiwan*, HELLER SCHOOL FOR SOCIAL POLICY AND MANAGEMENT: HELLER PROFILES (Fall 2011), <https://heller.brandeis.edu/profiles/people/wang.html> (last visited Feb. 3, 2016). *Organizing Team*, INT'L ASS'N FOR SCI. STUDY INTELL. AND DEV. DISABILITIES (IASSIDD): CONFERENCE SYSTEMS, <https://www.iassidd.org/conference/index.php/AP/AP3RDRC/about/organizingTeam> (last visited Feb. 3, 2016).

130. *Organizing Team*, *supra* note 129.

131. *Taiwan's Report*, ASIA-PACIFIC COMMUNITY MENTAL HEALTH DEVELOPMENT PROJECT 9 (2008), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCMQFjABahUKEwiGoIm6jpPIAhWLj4AKHakRAOc&url=http%3A%2>

to these NGOs to ensure legitimacy.¹³² These sources were vetted through examining the accuracy and currency of their information, and through reaching out to contacts listed on the NGOs websites, if listed. Some organizations were more than willing to assist in my research and suggested other organizations and laws I could source, while emails to other NGOs were left unanswered.

The International Disability Rights Compendium 2003 (Compendium), a publication by the International Disability Rights Monitor (IDRM), addresses current practices in various countries, including Taiwan. The Compendium provided that Taiwan adopted measures for the support and welfare of those with mental and physical disabilities in Taiwan. However, this Compendium, released in 2003, is the most recent Compendium published, and focuses mainly on physical disabilities.¹³³ Specifically, the Compendium emphasizes that there are no constitutional provisions with respect to mental disability in Taiwan.¹³⁴ The Law on the Protection of the Physically and Mentally Handicapped of 1980 regulates the rights—from basic human rights to employment rights—of disabled Taiwanese individuals.¹³⁵ This law is carefully broken down into subheadings that address the different areas in which disabilities are recognized and their rights governed: (i) “Disabled” defined; (ii) Provisions on reporting requirements; (iii) Employment rights of the disabled, including a list of discriminatory actions and their relative sanctions; (iv) Public service and transportation, including enforcement and exemptions with respect to discriminatory acts; (v) Public accommodations and private entity services; and (vi) “Telecommunications.”¹³⁶

The Philippines ratified the CRPD in 2008.¹³⁷ The main body

F%2Fs3.amazonaws.com%2Fzanran_storage%2Fwww.aamh.edu.au%2FContentPage s%2F2476200986.pdf&usg=AFQjCNFC3sNssf7DVIYDqyYSBIVWxKb74w&sig2=8DI puiDhrEe1rPe5_zsLQ&cad=rja (last visited Feb. 3, 2016).

132. Using the four criteria laid out in this article, I tried to examine if the NGOs passed the majority of the listed standards. See Iain Atack, *Four Criteria of Development NGO Legitimacy*, 27 *WORLD DEV.* 855, 855 (1999).

133. *International Disability Rights Compendium 2003*, CTR. FOR INT’L REHAB.: INT’L DISABILITY RIGHTS MONITOR (IDRM), <http://wwda.org.au/wp-content/uploads/2013/12/discompendium1.pdf>.

134. *Id.* at 111, 113.

135. *Id.* at 111.

136. *Id.*

137. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, Dec. 13, 2006, 2515 U.N.T.S. 3,

of law for disability rights in the Philippines is The Magna Carta for the Disabled (Magna Carta).¹³⁸ The Magna Carta primarily focuses on physical disability, and the law provides few provisions regarding mental health.¹³⁹ Just as I had done when researching Taiwan, I utilized the FLG to gain a useful outline of the country's legal system.¹⁴⁰ Based on my research, I learned that the Philippines follows civil, common, and Islamic law (depending on the region).¹⁴¹

The Philippine's National Council on Disability Affairs (NCDA) is the national government agency mandated to formulate policies and to coordinate the activities of all agencies—public and private—regarding disability issues and concerns.¹⁴² As such, it is the lead agency that is tasked to steer the course for program development for persons with disabilities, to deliver services to the sector, and to monitor the implementation of several laws to ensure the protection of persons with disabilities' (PWDs) civil and political rights.¹⁴³ The NCDA's website presented up-to-date cases and decisions (mostly reflecting physical disability matters), and highlighted new amendments to the Magna Carta and other ordinances on both national and local levels.¹⁴⁴

In addition, several organizations also provided information on the state of the country's responsiveness to mental disability. Such organizations include the Philippine Mental Health Association, the National Center for Mental Health, the International Disability Alliance, and the Philippine Alliance of Human Rights Advocates.¹⁴⁵

<https://treaties.un.org/doc/Publication/MTDSDG/Volume%20I/Chapter%20IV/iv-15.en.pdf>.

138. 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, Rep. Act No. 7277, § 1 (Mar. 24, 1992) (Phil.).

139. *See generally id.* § 2; *see also id.* §§ 4(a)-(d), (k), (l); 18(b).

140. *Philippines – Legal History*, BRILLONLINE REFERENCE WORKS: FOREIGN LAW GUIDE (Aug. 30, 2015), http://referenceworks.brillonline.com/entries/foreign-law-guide/philippines-legal-history-COM_155301#.

141. *Id.*

142. *About Us*, NAT'L COUNCIL ON DISABILITY AFF., <http://www.ncda.gov.ph/about/> (last visited Feb. 3, 2016).

143. *Id.*

144. *Disability Laws*, NAT'L COUNCIL ON DISABILITY AFF., <http://www.ncda.gov.ph/disability-laws/> (last visited Feb. 3, 2016).

145. PHIL. MENTAL HEALTH ASS'N, INC., <http://www.pma.org.ph/> (last visited Feb. 3, 2016); NAT'L CENTER FOR MENTAL HEALTH, <http://www.ncmh.gov.ph/> (last visited Feb. 3, 2016); *Philippines*, INT'L DISABILITY ALLIANCE,

I had the fortuitous chance of connecting with Naomi Therese F. Corpuz, a student from the University of the Philippines College of Law, who had written a dissertation on mental health law in the Philippines.¹⁴⁶ Corpuz provided relevant insight in to the various resources available on the topic. Such resources included research performed by Dr. Bernardo, Conde, for a mental health profile on the Philippines,¹⁴⁷ a publication by Adrian Jeric G. Peña on mental health and mental illness in the country,¹⁴⁸ and psychiatrist answers to a survey Ms. Corpuz produced in her paper, “The Mentally Disabled in Philippine Setting: A Call for Equal Protection. A Critique on the Rights and Privileges OF Mentally Disabled Filipinos And Their Place in Philippine Health Laws.”¹⁴⁹

3. Challenges

For both Taiwan and the Philippines, the challenges were similar. Most disappointingly, case law concerning mental disability rights was extraordinarily difficult to find.¹⁵⁰ Because Taiwan is primarily a civil law nation, many case decisions are never recorded.¹⁵¹ Taiwan is also not a CRPD signatory because Taiwan is not a member of the United Nations.¹⁵² According to

<http://www.internationaldisabilityalliance.org/en/philippines> (last visited Feb. 3, 2016); *The Alliance*, PHIL. ALLIANCE HUMAN RIGHTS ADVOC., <http://www.philippinehumanrights.org/about> (last visited Feb. 3, 2016).

146. Naomi Therese F. Corpuz, *The Mentally Disabled in Philippine Setting: A Call for Equal Protection. A Critique on the Rights and Privileges Of Mentally Disabled Filipinos And Their Place in Philippine Health Laws* 1, 3 (Jan. 22, 2013) (unpublished research paper, University of the Philippines College of Law (available at <http://artistnaomi.blogspot.com/2013/01/the-mentally-disabled-in-philippine.html?m=>)).

147. Bernardo Conde, *Philippines Mental Health Country Profile*, 16 INT’L REV. OF PSYCHIATRY 159, 166 (2004).

148. Adrian Jeric G. Peña, *Salient Points of House Bill 6679*, WIKISPACES CLASSROOM: MENTAL HEALTH AND MENTAL ILLNESS IN THE PHILIPPINES (Sept. 13, 2009, 2:29 AM), <http://mentalhealth-ph.wikispaces.com/5.+Salient+Points+of+House+Bill+6679>.

149. See Corpuz, *supra* note 146.

150. Xiaomeng Zhang, *Judicial Decisions, in Taiwan Legal Research Guide*, at (IV)(2)(c), HAUSER GLOBAL L. SCH. PROGRAM, N.Y.U. UNIVERSITY SCH. OF LAW (Nov.-Dec. 2012), <http://www.nyulawglobal.org/globalex/Taiwan.html#iv2c>.

151. Marci Hoffman, *Taiwan – Legislation and the Judicial System*, BRILLONLINE REFERENCE WORKS: FOREIGN LAW GUIDE (2016), http://referenceworks.brillonline.com/entries/foreign-law-guide/taiwan-legislation-and-the-judicial-system-COM_183302#.

152. Lung-chu Chen, *Taiwan’s Current International Legal Status*, 32 NEW ENG. L. REV. 675, 678 (1998); see Convention on the Rights of Persons with Disabilities,

the Ministry of the Interior for the Republic of China (Taiwan) (Ministry), the rise in chronic mental illness and dementia in Taiwan was more prevalent among women than among men in 2010.¹⁵³ Although 57.3% of the disabled population are men, the gap between men and women continued to narrow, as 4,166 out of the 5,220 net increase last year were female.¹⁵⁴ The Ministry also found that the most common disabilities among those under the age of eighteen were in the area of mental development, accounting for 37% in the age.¹⁵⁵

To illustrate, in 2013, a mentally disabled woman, known as “Wang,” visited a McDonald’s in southern Taiwan to purchase and ice cream.¹⁵⁶ While at the establishment, the woman was believed to have been causing trouble for other guests, and the McDonald’s manager subsequently called the police.¹⁵⁷ The manager informed police that a homeless person was shouting and disturbing other diners, and asked that she be removed from the restaurant.¹⁵⁸ However, the police determined that Wang was not behaving in any appropriate manner.¹⁵⁹

Upon learning of the McDonald’s incident, a disability rights group in Taiwan demanded that McDonald’s release surveillance footage on the night of the incident to shed light on what actually happened at the store.¹⁶⁰ Although McDonald’s refused to release the surveillance footage, the establishment did apologize for its actions.¹⁶¹ Wang Jung-chang, Secretary-General for the League of Welfare Organizations for the Disabled in Taiwan, indicated that McDonald’s actions and comments were both “disappointing and discriminatory.”¹⁶² Jung-chang also stated that he hopes that such a “flaw” in McDonald’s standard procedures will improve,

supra note 137 (Taiwan is not on the list).

153. *No. of Mentally Disabled Rising: Interior Ministry*, CHINA POST (Feb. 14, 2011, 11:34 PM), <http://www.chinapost.com.tw/taiwan/national/national-news/2011/02/14/290990/No-of.htm>.

154. *Id.*

155. *Id.*

156. *McDonald’s Taiwan Apologises for Disabled Customer Row*, STRAITS TIMES (June 26, 2013, 9:02 PM), <http://www.straitstimes.com/asia/mcdonalds-taiwan-apologises-for-disabled-customer-row>.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. Alison Hsiao, *McDonald’s Sees Backlash After Restaurant Incident*, TAIPEI TIMES (June 26, 2013), <http://www.taipeitimes.com/News/taiwan/archives/2013/06/26/2003565697>.

and that staff will be trained to better with similar situations in the future.¹⁶³

In the Philippines, mental disability rights cases are also extremely limited.¹⁶⁴ A lack of case law presents a great challenge for the mental disability rights lawyer.¹⁶⁵ With no precedent to argue a case on behalf of someone with a mental disability, the system becomes increasingly difficult to navigate—even if statutory laws are in place.¹⁶⁶

For Asian and Pacific countries like the Philippines, enforcement of mental disability laws are rare, and many disabled persons continue to face injustice on a daily basis.¹⁶⁷ Overall, the country does not have the resources to enforce mental health law provisions because the Local Government Code of 1991 devolved the provisions to local government units.¹⁶⁸ As a result, officials of these government units lack the training and expertise in mental health law to carry out many of the provisions.¹⁶⁹

In 2007, the Philippines Department of Health adopted an Administrative Order, entitled, “Operational Framework for the Sustainable Establishment of a Mental Health Program” (Order), which is designed to provide policy guidelines and procedures for establishing mental health programs at both national and local levels.¹⁷⁰ One advantage of the Order is that it is intended to reach all aspects of the country, from the ground level and up, using a “management structure” that creates “teams” for implementing the goals of the Order.¹⁷¹ However, if even one of the teams in the chain of command created by the management

163. *McDonald’s Taiwan Apologises for Disabled Customer Row*, *supra* note 156.

164. *WHO-AIMS Report on Mental Health System in the Philippines*, WORLD HEALTH ORGANIZATION 22 (2007), http://www.who.int/mental_health/evidence/philippines_who_aims_report.pdf.

165. *Id.*

166. *Id.*

167. *Id.*

168. Lila Ramos Shahani, *Breaking Stigma: The Question of Mental Health Reform*, GMA NEWS ONLINE (Mar. 18, 2014, 12:13 PM), <http://www.gmanetwork.com/news/story/352189/news/specialreports/breaking-stigma-the-question-of-mental-health-reform>.

169. *Id.*

170. *Operational Framework for the Sustainable Establishment of a Mental Health Program*, REPUBLIC OF THE PHILIPPINES, DEP’T OF HEALTH, OFF. OF THE SEC’Y, Admin. Order No. 2007-0009 (Mar. 9, 2007), <http://mentalhealth-ph.wikispaces.com/file/view/ao2007-0009.pdf>.

171. *Id.* *Establishment of a Comprehensive Community-Based Mental Health Care*, PROJECT PROPOSAL FOR THE PHILIPPINES 1, 3, <http://en.cittadinanza.org/wp-content/uploads/en.cittadinanza.org/the-philippines.pdf> (last visited Feb. 3, 2016).

structure does not perform its designated job, the structure unravels.¹⁷² Many Filipinos who have mental disabilities do not have the resources for medication and treatment.¹⁷³

According to a study by the National Statistics Office (NSO),¹⁷⁴ mental illness in the Philippines was the third most common form of disability in 2000, and the prevalence rate of mental disorders was found to be “88 cases per 100,000 population”—highest among an elderly group, according to the study from the Department of Health.¹⁷⁵ This finding was supported by data from a 2004 social weather survey, commissioned by the Department of Health, which revealed that 0.7% of the total households have a family member afflicted with a mental disability.¹⁷⁶ These numbers are misleadingly low because of the shame connected with mental illness, which, in turn, becomes a major factor for avoiding health and psychological services, and, which leads to deficient reporting.¹⁷⁷ Ignorance of mental illness and the significance of a person’s mental health generates an absence of useful databases on the prevalence, causes, and risk factors of mental illness in the Philippines.¹⁷⁸

The absence of a comprehensive and centered mental health care law has led “to a disorganized placement of mental health patients who are found in various government facilities governed through distinct mandates.”¹⁷⁹ For example, the “Sanctuary Center for Psychotic Female Vagrants” is run by the Department of Social Welfare and Development, while the National Center for Mental Health is run by the Department of Health.¹⁸⁰ This causes a disjointed mental health care system where proper healthcare is inaccessible, and where those with little knowledge or training

172. See *Promoting Mental Health and Wellness: Module 6*, <http://www.wpro.who.int/philippines/publications/module6.pdf> (last visited Feb. 3, 2016).

173. See *id.*

174. *Id.*

175. *Id.* at 3-4.

176. Adrian Jeric G. Peña, *The Problem of Mental Health in the Philippines*, WIKISPACES CLASSROOM: THE PROPOSED “NATIONAL MENTAL HEALTH ACT OF 2009”: A CRITICAL EVALUATION, (Sept. 2, 2009, 4:36 AM), <https://mentalhealth-ph.wikispaces.com/2.%09The+Problem+of+Mental+Health+in+the+Philippines>.

177. *National Objectives for Health: Philippines 2005-2010*, DEP’T OF HEALTH REPUBLIC OF THE PHILIPPINES, NATIONAL OBJECTIVES FOR HEALTH PHILIPPINES 2005-2010, at 199-200 (Oct. 2005), <http://www.doh.gov.ph/sites/default/files/publications/NOH2005.pdf> (last visited Feb. 3, 2016).

178. Ramos Shahani, *supra* note 168.

179. *Id.*

180. *Id.*

on mental health treatment are left in control of persons with disabilities' care.¹⁸¹

4. Breakthroughs

In researching Taiwan, I learned that there is a specific body of statutory law governing mental disability rights.¹⁸² The Act elaborated on counsel, guardianship, involuntary institutionalization, and proved to be a goldmine of pertinent information useful for a research center.¹⁸³ Taiwan has also amended The Disabled Persons Welfare Law in the following ways:

An enlarged eligibility that incorporated people with facial disfigurement, people with brain injuries, people with autism and Alzheimer's disease in patients (Article 3).

Special education supplied on the basis of the disability census (Article 9).

The mandatory hiring requirement that set [2%] for public institutions with more than 50 employees and [1%] for private institutions with more than 100 employees.¹⁸⁴

However, in the Philippines, there seems to be a severe lack of awareness about mental disability law. For example, in a survey conducted by Ms. Corpuz, many professionals in the medical field were not even aware that the Magna Carta existed.¹⁸⁵

The World Health Organization (WHO) states that "one in four people will experience a mental health condition," but in a 2007 article from GMA, a former president of the Philippine Psychiatric Association said that up to 20% of the country's population have mental disorders.¹⁸⁶ Another WHO study

181. *Id.*

182. I-lun Tsai & Ming-sho Ho, *An Institutional Explanation of the Evolution of Taiwan's Disability Movement: From the Charity Model to the Social Model*, 39 J. CURRENT CHINESE AFF. 87, 102-103 (2010).

183. *Id.*

184. *Id.*

185. *Mental Disorders Affect One in Four People: Treatment Available But Not Being Used*, WORLD HEALTH ORG.: WORLD HEALTH REP. (2001), http://www.who.int/whr/2001/media_centre/press_release/en/.

186. *1 in 5 Adult Pinoys Have 'Psychiatric Disorders.'* GMA NEWS ONLINE (July 26, 2007, 3:36 PM), <http://www.gmanetwork.com/news/story/52861/lifestyle/1-in-5-adult-pinoys-have-psychiatric-disorders>.

conducted among patients in seven developing countries—including the Philippines—showed “17-25% of patients consulting at health care centers have diagnosable psychiatric disorders that, however, are not recognized by the general physician, midwife, and community health workers in these areas.”¹⁸⁷ Because psychiatric clinics and mental hospitals are mostly located in the cities, many rural residents of the Philippines have limited to no access available to services and, as a result, remain untreated.¹⁸⁸

5. *Conclusion*

By participating in the DRICAP Clinic, I was able to critically reflect on two countries’ roles in supporting their mentally disabled citizens. Ultimately, the research is aimed at supplying an accessible resource of information. Persons with mental disabilities are, sadly, a marginalized and underrepresented group. The clinic also functioned to produce and reinforce an understanding of others on a more emotional level—sometimes ignored by lawyers.¹⁸⁹ Effective counsel is in desperate need, as those with mental disabilities have rights that are consistently ignored, and as many in the legal profession and much of society practice forms of “sanism” and “pretextuality.”¹⁹⁰

My experience in the clinic showcased, first hand, how a student can use this experience as an impetus to seek social change and strive to prevent injustice. The clinic also exposes students to the social and economic injustice in society, especially when it came to those with mental disabilities, and exposed the grave need for a Disability Tribunal in Asia and the Pacific.

E. STEPHANIE MENDELSON

This Part is organized into three subparts. The first subpart introduces my initial approach to the Clinic. The second subpart discusses mental disability law in New Zealand. The third subpart discusses mental disability law in Bangladesh. Finally,

187. WHO-AIMS Report on Mental Health System in the Philippines, *supra* note 164, at 5-6, 10-11.

188. *Id.*

189. PERLIN, *supra* note 2.

190. See Michael L. Perlin, “Half-Wracked Prejudice Leaped Forth”: Sanism, Pretextuality, and Why and How Mental Disability Law Developed as it Did, 10 J. CONTEMP. LEGAL ISSUES 3, 3-5, 9-10 (1999).

the fourth subpart concludes with the impact of this clinic, both on me, as a participant, and on mental disability as a whole.

1. Introduction

Students at New York Law School have a plethora of clinics in which to participate, wherein students must apply and the selection process is competitive. I was sure that I wanted to participate in a clinic that would strengthen my legal knowledge while also giving me the opportunity to contribute to helping society. After learning of the DRICAP clinic, I saw the challenges and potential benefits that could arise from my participation. The appeal was clear to me: the clinic was innovative, allowing us, as students, to explore other countries in both legal and non-legal settings to produce information for a website that could help persons with mental disabilities, attorneys around the world, and simply bring awareness to a hidden area of law.

The first and most daunting realization after joining the clinic, was that we were going to delve into uncommon and, essentially, untouched grounds because mental disability law in Asia and the Pacific does not appear to be the most pressing topic.¹⁹¹ I had been accustomed to having at my fingertips unlimited case law, statutes, and scholarship. Therefore, being presented with legal issues, without this same accessibility signaled that this clinic would take much more effort than researching with the typical sources. There were no guarantees that answers existed or that information would even be available.

My research commenced after I was assigned my two countries: New Zealand (“big” country) and Bangladesh (“small” country). I quickly learned that a simple search the included a few key words would not suffice to master this project. Even if the information easily presented itself, I needed to gain at least a baseline knowledge of the countries, including, for example, their respective populations and religions. In addition, I sought to develop an understanding of the structure of both countries’ legal systems.

First, I chose to focus on researching New Zealand because the information regarding persons with mental disabilities is vast; government websites, NGO websites, and the New Zealand case law were all readily accessible. In contrast, the challenges I

191. See Perlin, *supra* note 1.

faced in obtaining information regarding mental disability in Bangladesh resulted in the expenditure of far more time and effort.

2. *New Zealand*

New Zealand ratified the CRPD on September 25, 2008, and submitted its initial report to the CRPD on May 8, 2012, even though the report was due almost two years prior, on October 25, 2010.¹⁹² The report indicates that persons with disabilities still face challenges in New Zealand, including being disadvantaged, being socially discriminated against, and facing a lack of support in different cultural contexts.¹⁹³

Despite the challenges I found in New Zealand, I learned that the country has many resources for persons with mental disabilities. One available resource is the Mental Health Foundation of New Zealand (Foundation), which provides services for persons with mental disabilities, including free access to information on mental health conditions, support groups, and information officers who can guide in finding mental disability resources and information.¹⁹⁴ In addition, the Foundation advocates for policies and services that support persons with mental illness and their families.¹⁹⁵

I also discovered in my research that the laws of New Zealand provided rights and protections for persons with mental disabilities.¹⁹⁶ These rights and protections can be found in New Zealand's principal legislation, which includes the Mental Health (Compulsory Assessment and Treatment) Act 1992, Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999, Criminal Procedure (Mentally Impaired Persons) Act 2003, and Intellectual Disability (Compulsory Care and Rehabilitation)

192. *Reporting Status for New Zealand*, U.N. HUMAN RIGHTS: OFF. HIGH COMM'R, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=NZL&Lang=EN (last visited Feb. 3, 2016).

193. *See Implementation of the Convention on the Rights of Persons with Disabilities: Initial Reports Submitted by States Parties Under Article 35 of the Convention: New Zealand*, U.N. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, CRPD/C/NZL/1 (Mar. 31, 2011).

194. *About*, MENTAL HEALTH FOUND. OF N.Z., <http://www.mentalhealth.org.nz/home/about/> (last visited Feb. 3, 2016).

195. *Id.*

196. *See* MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992 (N.Z.).

Act 2003.¹⁹⁷

The legislation provided me with an understanding of the rights and processes for persons with mental disabilities in the settings of civil commitment, institutional rights, and guardianship.¹⁹⁸ The law seems quite clear as to the assessment process of involuntary civil commitment and the right to refuse treatment.¹⁹⁹ However, treatments such as electroconvulsive therapy and psychosurgery still exist.²⁰⁰ In addition, persons with mental disabilities are provided institutional rights of information, respect for cultural identity, an interpreter, information about treatment, right to refusal of video recording, independent psychiatric advice, legal advice, company, visitors, telephone calls, and access to mail.²⁰¹

Case law of New Zealand provided an insight into the Mental Health Review Tribunal (Tribunal), which reviews and decides on patients' compulsory treatment orders, investigates breaches of patients' rights, and reviews investigations by district inspectors.²⁰² In particular, one case regarding whether a patient was unfit to stand trial was beneficial in understanding the determination process of the Mental Health Review Tribunal.²⁰³ Pursuant to Section 80(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Tribunal is required to review the patient's condition when an application (pursuant to Section 77(3) of the Act) is received from the Attorney-General.²⁰⁴ The Attorney-General is then authorized to make an application

197. *Id.* MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) AMENDMENT ACT 1999 (N.Z.); Criminal Procedure (Mentally Impaired Persons) Act 2003 (N.Z.); Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (N.Z.).

198. MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT of 1992, *supra* note 196, §§ 8-16, 63A-75, 85-90.

199. *Id.* §§ 64, 66.

200. *Id.* § 60. *See id.* § 61.

201. *See id.* §§ 63A-75.

202. *See, e.g., WorldLII Databases, WORLD LEGAL INFORMATION INSTITUTE, http://www.worldlii.org/cgi-bin/sinosrch.cgi?meta=%2Fworldlii;query=mental%20disability%20;method=auto;;view=relevance;&mask_path=nz/cases/NZMHRT* (last visited Feb. 3, 2016) (providing a list of ten applications which were examined by the Mental Health Review Tribunal).

203. Applicant 14/028 [2014] NZMHRT 28 (Apr. 22, 2014), <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZMHRT/2014/28.html?query=mental%20disability> (illustrating an application pursuant to Section 80 of the Mental Health (Compulsory Assessment and Treatment) Act of 1992).

204. MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT of 1992, *supra* note 196, §§ 77, 80(2).

for the Tribunal to review a patient's condition—a result of receiving a clinical certificate claiming that the patient is no longer unfit to stand trial.²⁰⁵

Professor Perlin also provided me with a contact in New Zealand, Dr. Katey Thom, to gain further information.²⁰⁶ Thom proved to be a valuable resource as she and I developed an open line of communication, and she greatly assisted in guiding my research as a whole.²⁰⁷ Also, Thom provided me with her relevant works, which included papers she wrote with colleagues for the Centre for Mental Health Research.²⁰⁸ Additionally, Thom provided me with the reports that her research assistants had written about cases often cited before the Tribunal in New Zealand.

While the information seemed widely accessible and non-discriminatory towards persons with mental disabilities in New Zealand, I did come across one news article, entitled, “‘Forgotten’ hospital abused ask for apology,” which discusses the old Porirua Lunatic Asylum, an institution where former patients allege, now twenty years later, that they were abused at the facility before it

205. *Id.* at § 77. *See, e.g.*, Applicant 11/026 [2011] NZMHRT 26 (Mar. 31, 2011), [http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZMHRT/2011/26.html?query=title\(%222011%20NZMHRT%2026%22\)](http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZMHRT/2011/26.html?query=title(%222011%20NZMHRT%2026%22)) (The New Zealand Mental Health Review Tribunal reviewed an application by the Attorney General to determine whether a special patient was unfit to stand trial, when mental health concerns arose during that patient's murder trial. The Tribunal considered the duration of schizophrenia, response to medications, and doctor evaluations, and found the patient fit to stand trial, as the patient did not display mental impairment that would make it unfair for him or her to be put on trial. The Tribunal declined to consider issues relating to the patient's personality or whether the patient would make wise decisions).

206. Thom is Co-Director of the Centre for Mental Health Research, and Research Fellow in the Faculty of Medical and Health Sciences Centre at The University of Auckland. Her current research is strongly focused on social justice issues in mental health, covering various aspects of mental health law and human rights within the criminal justice system. In addition, Thom's research focuses on utilizing therapeutic jurisprudence to understand the court practices and its results.

207. For instance, in one of our email exchanges she clarified confusion I had to the varying documents by stating that, “Yes the MH(CAT) Act [the shortened title often used here] is the main piece of legislation used in civil commitment. The ID(CC&R) Act you mention is used with forensic patients; the other one to look at is the Criminal Procedure (Mentally Impaired Persons) Act, which was enacted alongside the ID(CC&R) Act in 2003. They both deal with people who considered forensic with mental health/intellectual disability issues.”

208. *See generally* KATEY THOM ET AL., *BALANCING INDIVIDUAL RIGHTS WITH PUBLIC SAFETY: THE DECISION-MAKING OF THE MENTAL HEALTH REVIEW TRIBUNAL* (2013); KATEY THOM ET AL., *SAFEGUARDING THE RIGHTS OF PEOPLE DETAINED FOR COMPULSORY PSYCHIATRIC TREATMENT: THE ROLE OF THE DISTRICT INSPECTOR* (2013).

was closed.²⁰⁹ The Phoenix Group, a mental health advocacy team, launched a petition for the government to acknowledge the abuses that occurred at the asylum, including deep sleep therapy that would use psychiatric drugs to cause a patient to be unconscious for a period of weeks.²¹⁰ The petition also requires a public apology.²¹¹

3. *Bangladesh*

Bangladesh ratified the CRPD on November 30, 2007, and has not yet submitted a country report, which was due more than five years ago, on June 3, 2010.²¹² Researching Bangladesh presented many challenges in finding information about the country's mental disability laws. I was unable to find any mental disability case law as it is either inaccessible on the internet or there is no established case law as the rights of persons with mental disabilities are, essentially, nonexistent and, therefore, there are no grounds and means for a person to bring a case to court.²¹³ To illustrate my challenges, the World Legal Information Institute's (World Lii) website usually provides insight into the law worldwide. However, my searches using key terms including "mental disability" and "mental health" in Bangladesh did not produce one result.²¹⁴ I also attempted to contact professors in Bangladesh whose work concentrates on mental disability issues; however, these emails never reached their intended recipients.

Despite my challenges, I was able to find the principal

209. Erin Kavanagh-Hall, *Forgotten Hospital Abused Ask For Apology*, KIWI JUSTICE BLOG (Mar. 13, 2013), <http://kiwijustice2.blogspot.com/2015/02/forgotten-hospital-abused.html>.

210. *Id.*

211. *Id.*

212. *Ratification Status for Bangladesh*, U.N. HUMAN RIGHTS: OFF. HIGH COMM'R FOR HUMAN RIGHTS, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?%20CountryID=14&Lang=EN (last visited Feb. 4, 2016).

213. A Google search for cases interpreting the rights of persons with mental disabilities and the Protection Act of 2013 provides no helpful insight about the application of Bangladesh's CPRD legislation.

214. *World LII Catalog/Websearch*, WORLD LEGAL INFO. INST., http://www.worldlii.org/form/search/?method=any&meta=%2Fworld&mask_path=%2B&mask_world=&query=mental+health+&results=50&submit=Search&rank=on&callback=off&legisopt= (last visited Feb. 4, 2016) (searching for "mental health"); *id.*, http://www.worldlii.org/form/search/?method=any&meta=%2Fworld&mask_path=%2B&mask_world=&query=mental+disability+&results=50&submit=Search&rank=on&callback=off&legisopt= (last visited Feb. 4, 2016) (searching for "mental disability").

legislation regarding persons in Bangladesh with mental disabilities on the country's government website.²¹⁵ This legislation consists of the Lunacy Act, 1912, the Code of Criminal Procedure, 1898, and the Prisoners Act, 1900.²¹⁶ These pieces of legislation were enacted over a century ago, yet they are the only legislation that exists today for persons with mental disabilities.²¹⁷

In addition to being severely outdated, the legislation contains language that seems to reify society's discrimination of persons with mental disabilities—references to mentally disabled persons as “lunatics,” for example, are common throughout the legislation.²¹⁸ Further, the definition of “lunatic,” for involuntary civil commitments, is defined, circularly, as an “idiot or person of unsound mind.”²¹⁹ The institutional rights, or lack thereof, for persons with mental disabilities are essentially nonexistent in the legislation.²²⁰ For instance, the right to treatment is only mentioned as within the government's powers to determine the treatment for persons with mental disabilities who were detained, referred to by the legislation as criminal “lunatics.”²²¹ The legislation also mentions “visitors” for institutionalized persons.²²² I, initially, presumed that “visitors” meant family and friends. However, the word may be an error of translation, as the context surrounding “visitors” seems to refer to those providing monthly inspections—“visitors,” per the language in the legislation, are appointed by the government.²²³

Information provided by such organizations as the National Forum of Organizations Working with the Disabled, ActionAid, and Action on Disability and Development were very beneficial in understanding the issues that exist, including the lack of rights

215. *Laws of Bangladesh*, GOV'T PEOPLE'S REPUBLIC OF BANGLADESH: LEGIS. AND PARLIAMENTARY AFF. DIVISION, <http://bdlaws.minlaw.gov.bd/index.php> (last visited Feb. 4, 2016).

216. Lunacy Act, 1912, Act No. IV 1912 (Mar. 16, 1912), http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=96; Code of Criminal Procedure, 1898, Act No. V 1898 (Mar. 22, 1898), http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=75; Prisoners Act, 1900, Act No. III 1900 (Feb. 2, 1900), http://bdlaws.minlaw.gov.bd/pdf_part.php?id=80.

217. *See id.*

218. *See, e.g.*, Lunacy Act, *supra* note 216.

219. *Id.* at pt. I, ch. I, 3(5).

220. *See generally*, Lunacy Act, *supra* note 216.

221. *Id.* at pt. II, ch. III, 28-30.

222. *Id.* at pt. II, ch. III, 28(2).

223. *Id.* at pt. II, ch. III, 28(2).

and resources for persons with mental disabilities.²²⁴ I was able to access a Facebook page for Mental Hospital, Pabna, in Bangladesh, which was founded in 1957.²²⁵ While not the most credible source, the Facebook page's posts provide some insight as to the mental disability issues often faced in Bangladesh. For instance, one post—written in English—addresses the stigma of persons with mental disabilities.²²⁶ However, many of the posts on this particular page are written in Bengali, which demonstrated the challenge of translating and the likelihood of errors in translating.²²⁷

4. Conclusion

Ultimately, the information obtained for the purposes of this clinic emphasizes the critical importance of mental disability law, as persons with mental disabilities are most definitely entitled to rights, protection, and access to information. I gained access to more information about New Zealand, which is tremendously beneficial for the purposes of the website. However, there is significance in the fact that information was not readily accessible or rights were inexistent, particularly with respect to my findings on Bangladesh. I hope that such lack of information provides inspiration for future researchers to embrace the necessity of continuous research within this area of law. The clinic's website and the developments it will inspire will, eventually, play a crucial role in providing accessible information to all, and, ultimately, justice for persons with mental disabilities.

IV. CONCLUSION

This Clinic was experimental. To the best of our knowledge, there has never been a similar clinical program offered at a United States-based law school. The Clinic was not undertaken

224. *National Forum of Organizations Working with the Disabled (NFOWD)*, DISABILITY RIGHTS FUND, <http://www.disabilityrightsfund.org/grantee/asia/bangladesh/2008/national-forum-organizations-working-disabled-nfowd.html> (last visited Feb. 4, 2016); ACTIONAID, <http://www.actionaidusa.org> (last visited Feb. 4, 2016); *Bangladesh. The Forgotten.*, ACTION ON DISABILITY AND DEV., <http://www.add.org.uk/bangladesh> (last visited Feb. 4, 2016).

225. *Mental Hospital, Pabna*, FACEBOOK, <https://www.facebook.com/PabnaMentalHospitalPabna> (last visited Feb. 4, 2016).

226. *See id.* (posted on Jan. 25, 2014).

227. *See generally id.*

without risks: would the students be able to find valuable material, would they “get” what was important without previously having had the substantive mental disability law courses,²²⁸ would this enterprise ultimately be of value to advocates and lawyers working in Asia and the Pacific?

MLP believes that it was worth these risks and that the Clinic accomplished those aims that can now be measured.²²⁹ Although it was clearly a challenge, students were—by and large—able to access relevant material and create webpages that, he expects, will be of value to advocates and lawyers in that part of the world. Certainly listing the two relevant substantive courses (“Survey of Mental Disability Law” and “International Human Rights and Mental Disability Law”) as co-requisites was an important element of the Clinic’s success; since students were contemporaneously taking one or both of these courses, the relevant law and theory were being constantly reinforced.²³⁰ By the students’ own testimony,²³¹ the course increased and enhanced their advocacy skills and advocacy *attitudes*.²³²

It would be valuable for those interested in this area of law and policy to reflect on some of the overarching themes highlighted by some of the students, and consider how subsequent developments in this area of law and policy must contextualize all of these into international human rights theory. Some of these themes are structural (with regard to doing the necessary research) and some substantive (with regard to the extent to which international human rights is honored or dishonored in the nations in question). Although there are some nations that appear to be making significant progress towards meeting the CRPD’s goals,²³³ in others that has simply not happened.

Structurally, the fact that in multiple nations many key mental disability law documents are not available in English,²³⁴

228. Those courses were co-requisites, which worked very well.

229. Since the website has still not been populated, we cannot yet answer the final question posed. It is expected that the website will be populated by 2016.

230. The “scope notes” for these courses are available at the following: Michael L. Perlin, “*They Keep It All Hid*”: *The Ghettoization of Mental Disability Law and Its Implications for Legal Education*, 54 ST. LOUIS U. L.J. 857, 868 n. 52, 870 n. 58 (2010).

231. See *supra* Part III.

232. On the significance of advocacy attitudes in this context, see Michael L. Perlin, “*Salvation*” or a “*Lethal Dose*”? *Attitudes and Advocacy in Right to Refuse Treatment Cases*, 4 J. FORENSIC PSYCHOL. PRAC. 51 (No. 4, 2004).

233. See, e.g., *supra* Part III, B(1), (4) (Australia); *supra* Part III, E(1)(3) (New Zealand).

234. See, e.g., *supra* Part III, A(2) (India); *supra* Part III, B(3) (Indonesia).

that in others, there is a paucity of information available,²³⁵ and that stigma, or sanism, is still so globally prevalent in the area,²³⁶ all must be taken into account as this project progresses. Substantively, consider some of the issues on which the students focused:

- Conditions in signatory nations do not meet CRPD standards,²³⁷ and specific requirements of the CRPD (as to, e.g., commitment criteria and the right to vote) are ignored,²³⁸ and there is little or no enforcement of both the CRPD and domestic disability anti-discrimination laws.²³⁹ There is even a lack of awareness that human rights laws exist and control governmental actions.²⁴⁰
- One nation (Taiwan) is not in the United Nations,²⁴¹ and, therefore, CRPD ratification becomes a near-impossibility.²⁴²
- Language that is used in local laws reflects long-repudiated stigmatizing views of persons with disabilities.²⁴³
- At least one nation (Bangladesh) failed to submit its country report to the Committee on Persons with Disabilities, with, apparently no consequences.²⁴⁴

In sum, Catherine Barreda's concern that the CRPD might turn into little more than "paper rights"²⁴⁵—channeling what Michael Lottman wrote about mental disability law nearly forty years ago²⁴⁶—must be kept in mind as this work continues.

235. See, e.g., *supra* Part III, B(1), (2) (Indonesia); *supra* Part III, C(3) (Pakistan); *supra* Part III, D(2) (Taiwan and Philippines). In at least one nation, it was virtually impossible to discover any information without the assistance of a personal contact. See *supra* Part III, C(3) (Pakistan).

236. See, e.g., *supra* Part III, B(1), (2) (Indonesia); *supra* Part III, C(3) (Pakistan); *supra* Part III, D(2) (Taiwan and Philippines). In at least one nation, it was virtually impossible to discover any information without the assistance of a personal contact. See *supra* Part III, C(3) (Pakistan). On sanism and stigma generally, see Perlin, *Stigma and Stereotypes*, *supra* note 44; Perlin, *Sanism and Clinical Teaching*, *supra* note 44.

237. See, e.g., *supra* Part III, B(1), (4) (Indonesia).

238. *Id.*

239. See, e.g., *supra* Part III, B(3) (Indonesia); *supra* Part III, D(3) (Philippines).

240. See, e.g., *supra* Part III, D(3) (Philippines).

241. See Lung-chu Chen, *Taiwan's Current International Legal Status*, 32 NEW ENG. L. REV. 675, 678 (1998).

242. See, e.g., *supra* Part III, D(3), (4) (Taiwan).

243. See, e.g., *supra* Part III, E(2) (Bangladesh).

244. *Id.*

245. *Supra* Part III, A(2), at pp. 14, 17.

246. See Lottman, *supra* note 14.

In the coming months, all the students' work will be uploaded to the dedicated DRICAP website.²⁴⁷ At that time, we will issue a press release, make announcements on New York Law School's website, and create a Facebook page for this website. We will also contact all who have worked—and who continue to work—on the DRTAP project, as well as others who devote themselves to the representation of persons with mental disabilities in an international human rights context. We hope that this leads to enhanced awareness of the law and advocacy efforts on behalf of persons with disabilities in these nations, and, ultimately, in the entire Asia and Pacific region.

In 2002, New York Law School put on the first conference ever held at a United States law school on the intersection between mental disability law and international human rights law.²⁴⁸ A presenter at the conference²⁴⁹ told the audience, "Without advocates willing to get in the trenches and fight for these ideals, so that they might become a reality for persons with mental disabilities, these treaties and standards remain mere words without action."²⁵⁰ This is a goal to which those of us who take this area of law and society seriously should aspire.²⁵¹ We hope that Disability Rights Information Center for Asia and the Pacific website helps transform these ideals into reality.

247. *See supra* note 37.

248. *See Symposium: International Human Rights Law and the Institutional Treatment of Persons with Mental Disabilities: The Case of Hungary*, 21 N.Y.L. SCH. J. HUM. RTS. 339, 339 (2002).

249. A student who had come with me to Hungary to help coordinate a conference run by Mental Disability Rights International in October 2001. *See id.* at 347, 381.

250. *Id.* at 381 (remarks of Jean Bliss).

251. Michael L. Perlin, "Through the Wild Cathedral Evening": *Barriers, Attitudes, Participatory Democracy, Professor TenBroek, and the Rights of Persons with Mental Disabilities*, 13 TEX. J. C.L. & C.R. 413, 419 (2008).