

Legal Framework Regulating for Improving Accessibility to Built Environment for Disabled Persons in Malaysia

By

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I. Introduction

The United Nations Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on 13th December 2006 and opened for signature on 30th March 2007. Malaysia signed the Convention sometime on 8th April 2008. On January 9th 2008, the Persons with Disabilities Act 2008 (Act 685) received Royal Assent and published in Gazette on 24th January 2008. This is the result of the awareness on the part of the Government of its role and commitment in regulating the registration, protection, rehabilitation, development and well being of persons with disabilities.¹

The Government is aware of the problems faced by persons with disability in effectively participating in societal development in equal platform with persons without disabilities. The United Nations have published a Charter on the Rights of Persons with Disabilities (2006) whose Article 7 *inter alia* provides that the State Government must ensure that all disabled persons are entitled to all human rights and fundamental freedoms similar to that enjoyed by normal people.

The Persons with Disabilities Act 2008 is made in recognizing the existing and potential contributions made by persons with disabilities to the overall wellbeing and diversity of the community and society: the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully and effectively participate in society: and that persons with disabilities are entitled to equal opportunity and protection

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¹ Preamble, Act 685;

and assistance in all circumstances and subject only to such limitations, restrictions and the protection of rights as provided by the Federal Constitution of Malaysia.² Article 8(2) of the Federal Constitution 1957 declares equal rights for all citizens:

"...there shall be no discrimination against citizens on grounds of religion, race, descent or place of birth in any law; or in the appointment of any office of employment under a public authority; or in the administration of any law relating to the requisition, holding or disposition of property; or the establishing or carrying on of any trade, business, profession, vocation or employment."

However, despite this guarantee by the Federal Constitution 1957, the disabled persons are still facing problems in developing themselves as they are deprived of simple basic rights such as freedom of movement to access to facilities such as educational, employment, enjoying social life simply due to the fact that schools, business premises, work places, public transport and public facilities are beyond their reach. Disabled persons need to be given equal opportunity to lead a normal life and as such access to good education, employment, and participation in social activities is essential to help them succeed in life. The barriers in the physical and built environment within the society require immediate attention. Accessibility is about giving equal access to everyone.

There are about 2.7 million disabled persons and the government need to provide sufficient facilities to give them access to education and employment opportunities. This figure excludes senior citizens who become disabled through old age and illness. A total of 197,519 disabled people have registered with the Department of Social Welfare Malaysia (DSW) by the end of 2006. The United Nations estimates that there are about 650 million disabled people in the world, which corresponds to 10% of global population. 80% of these people live in developing countries, many in conditions of poverty. 80% of disabled people of employable age are jobless. The United Nations Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities states that, "the fact that persons with disabilities are more likely to live in poverty is often the result of ignorance and neglect that is reinforced in Government and development policies and

² Preamble, Act 685

programmes that ignore, exclude, are not accessible to or do not support the rights of persons with disabilities to be included in the socio-economic life of the country.”³

Malaysia's policies and programs for the disabled are based on strategic goals of the National Welfare Policy which emphasizes on the attainment of self-reliance, equalization of opportunities for the less fortunate and fostering the spirit of mutual help and support towards enhancing the caring culture. The position of the Government can be seen through the 2004 Budget Speech as delivered by YAB Dato Seri Dr. Mahathir Bin Mohamad, Ex-Prime Minister and Minister of Finance in September 2003 based on the theme "Building on Success, Investing for the Future". The Government is concerned with the well-being of the disabled persons and will ensure that they continue to benefit as well as participate in the mainstream development. The government is committed to provide financial as well as other forms of support to assist persons with disability.

- **Defining Disability**

The meaning of disability is provided in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (2007) as,

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

Malaysia has adopted the definition above. However it has omitted the phrase ‘on an equal basis with others’. The definition of disability in the Malaysian law is

“persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society.”⁴

The legislation in Malaysia has included provision on the meaning of ‘persons with severe disabilities’. Section 39 of the Persons with Disabilities Act 2008 defines the

³ United Nations Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities

⁴ Persons with Disabilities Act 2008, section 2.

meaning of 'persons with severe disabilities' to refer to person suffering from one or more disabilities who is dependant on others for basic daily living activities.

The World Health Organisation (WHO) defines persons with disability as, "any person unable to ensure by himself wholly or partly, the necessities of a normal individual and or social life, as a result of deficiency either congenital or not, in his physical or mental capabilities, which may have happened before or after childbirth."

The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities People states that a child's disability may be caused by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.⁵

From the cursory discussion above it appears that the meaning of the term "disability" is not satisfactory and conclusive. Disability is a situation where a person is suffering from some kind of abnormality that requires special care beyond the normal person. He or she has 'to go short' of something! Disability may occur at birth or by virtue of illness, or accident or on facing punishment by the State. Disability may occur at any time in one's life. The question is not about providing a precise definition but what the Government actually wants and who are the group of people the Government seeks to include or exclude from the category of disabled persons. At this juncture the question that is posed is as to whether the Persons with Disabilities Act 2008 is disabled friendly or is an attempt to discriminate?

The term 'disability' was challenged in the case of *Karunairajah a/l Rasiah v Punithambigai a/p Poniah*⁶. The court was faced with the issue as to whether financial dependence falls within the meaning of the phrase physical or mental disability. Abdul Hamid Mohamad FCJ came to the conclusion that;

"Even without looking at a dictionary the word 'disability' is always used in relation to 'physical' or 'mental.'"

⁵ <http://www1.umn.edu/humanrts/instree/disabilitystandards.html>, January 27th 2007

⁶ *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* [2004] 2 MLJ 401

His Lordship quoted the definition of disability from the Concise Oxford Dictionary which reads ‘disability’ as referring to a physical or mental condition that limits a person's movements, senses, or activities, disadvantage or handicap especially one imposed or recognized by the law⁷. He then defines the terms ‘physical’ and ‘mental’ and comes to the conclusion that these two words are used to describe the two opposing or complimentary elements of a human being; the physical and the mental elements. ‘Physical’ is defined as relating to the body as opposed to the mind, and ‘mental’ is a disorder or illness of the mind.⁸

Law Regulating Creation of Accessibility to Facilities and Amenities for Persons with Disability

The government has introduced some regulations and standards to be complied with in building construction by both the private and government agencies to ensure that the development is disable friendly. The followings are the prevailing regulations and regulations:

- **Disabled Persons Act 2008 (Act 685)**

Part III of Act 685 provides that persons with disabilities must be given the right to access and use of public facilities, amenities and services and buildings provided to the public on equal basis with persons without disabilities. As such the Government and the providers of such public facilities, amenities, services and buildings is required to give appropriate consideration and take necessary measures to ensure that such public facilities, amenities, services and buildings and the improvement of the equipment related thereto conform to universal design in order to facilitate their access and use by persons with disabilities. Thus, it’s now a statutory requirement to ensure that in designing new buildings or carrying out alterations or refurbishment, the public or private agencies must design for all sections of society in order to provide access for all members of the society. When designing for buildings other than private dwellings, means of access to and within the building is also required. Public buildings such as shops, offices, churches, meeting

⁷ Ibid., p. 17

⁸ Ibid.

halls, conference centres and other commercial properties may require disabled access requirements to be applied.

- **Provision of By-laws 34A of the Uniform Building Bylaws (UBBL)**

Bylaws 34A of the Uniform Building Bylaws makes it mandatory for all public buildings to make available facilities for disabled persons. In Sep. 20th 1990, an amendment was made to the Uniform Building Bylaws (UBBL) at the 35th National Council of Local Government (NCLG). The amendment, introduced section 34A in UBBL, making it compulsory for buildings to provide access to enable disabled persons to get into, out of and within the buildings.

Under By-law 34A, all new public buildings must be provided with access to enable disabled people to get into, out of and within the buildings and be provided with facilities for use by disabled people, such as disabled-friendly toilets. This by-law also covers existing buildings completed before 1993 (except shop houses). Old buildings were required to be modified by 1996 to comply with the Malaysian Standards (MS1183, MS1184 and MS1331) unless the local authority allowed the owners to vary or be exempted from the requirements.

The requirements apply to all public buildings including offices, banks, post offices, department stores, administration and commercial buildings, rail, road, sea and air travel and associated concourses, car parking buildings, factories, hospitals and other health and welfare buildings, restaurants, concert halls, cinemas, conference buildings, community buildings, sports buildings and other entertainment and recreation buildings, religious buildings, schools, colleges, universities, libraries and other educational cultural and scientific buildings, hostels, hotels and other residential buildings other than single family private dwelling houses.

It is the responsibility of all local authorities to ensure that all building plans contain access features in accordance with the Malaysian Standards before they are approved and before the Certificates of Fitness are issued. Owners who do not comply with the by-law can be punished under the provisions of the Street, Drainage and Building Act 1974.

- **Standards for Creating Facilities for Persons with Disability**

Three Standards Codes of Practice on the accessibility and mobility for Public Works Department were introduced between 1990 and 1993 as follows:

- **SIRIM Code of Practice MS 1183:1990**

Code of Practice for Fire Precautions in the Design and Construction of Buildings (MS 1183) issued by SIRIM in 1990 requiring special standards to be complied with in providing fire precautions in designing public buildings to make it safe for the use of disabled persons.

- **SIRIM Code of Practice MS 1184: 1991**

Code of Practice For Access For Disabled People To Public Buildings (MS 1184) issued by SIRIM in 1991 requiring special standards to be complied with in designing public buildings so that its safe for to be used by disabled persons.

- **SIRIM Code of Practice MS 1331: 1993**

Code of Practice For Access For Disabled People Outside Buildings (MS 1331) issued in 1993 is the Malaysian Standard in relation to the provisions on designing of special facilities outside buildings for disabled people to ensure accessibility and usable by disabled persons.

In complying with this Standard, all building plans submitted to the local authority after the date the Code of Practice is published in the State Gazette, each State must comply with it. Existing buildings must do so within three years of that date (or any extension of that grace period given), but may on application be exempted from its requirements to such an extent as the local planning authority thinks fit.

The principal categories of disabled people for whom the Standard caters are:

- Wheelchair users (any kind of chair, whether accompanied or not)
- Crutch users (including in practice arm amputees)
- Blind people (including those with low vision)

- Deaf people (including the hard of hearing)

In the sections which follow the requirements of each group are dealt with separately, and finally cross-indexed with reference to the Standard, which is arranged according to the different parts of the building. The responsibility of the owner and/or occupier begins at the entrance to his property from the public street. From there he must provide a continuous and unimpeded path of travel for all the above groups to the vehicle park if any, to an entrance and from there to all floors and all parts of them not specifically exempted from compliance with the Standard.⁹ The places to which they go within the premises must if necessary be modified to enable them to carry out the purpose for which they went there. Lifts, service counters, toilets and employees' desks are examples. When only some of a group of such facilities used by the public have been modified according to a quota, their location should be indicated by the Access Symbol and direction signs.

The scope of the Standard introduced by SIRIM includes all buildings other than private dwelling houses, and it applies to every part of those buildings to which employees, customers, visitors and/or the public in general normally go. The local authority is specifically empowered to exempt buildings with less than 280 square metres of floor area per level from providing access for disabled people to the upper floors, but the ground floor must be accessible to them. Also exempted are parts of any building for which "access is provided wholly or mainly for inspection, maintenance or repair of the building, its services or fixed plant or machinery". No requirements are laid down in this Standard for the bedrooms of hotels, nor the individual units in a block of flats, though the parts of such a building which are in common use must comply. Another Standard may be drawn up in the future to lay down specifications and quotas for these, and for individual houses in developers' housing schemes.

○ **Town and Country Planning Act 1976**

The Town and Country Planning Act 1976 though not providing in clear precise terms the requirement to create accessibility for disabled persons, however, requires planning

⁹ Asia Pacific Development Centre on Disability, internet edition accessed on 30th Decemebr 2008
http://www.apcdproject.org/countryprofile/malaysia/malaysia_current.html#current17

authorities to ensure that provisions of other related written laws are taken into consideration in the process of approving applications for planning permission. The State Director for Town and Country Planning and local planning authorities must also ensure that all standards and designs necessary to create access for persons with disabilities are incorporated into the plans. The plans being blueprint for development will be effective when it is adhered.

In approving and processing of applications for planning permission, the local planning authorities are required to ensure all the relevant considerations required to make a development conform to the policies, development proposal report, environmental impact assessment and provisions of the development plans. As such it can be safely implied that barrier friendly development requirements can be incorporated into an application for planning permission.

- **Institutional Framework to Implement and Enforce Regulatory Framework**

Act 685 provides for the establishment of a National Council for Persons with Disabilities¹⁰ to execute various functions¹¹ mainly to oversee the implementation of the national policy; and national plan of action relating to persons with disabilities; to make recommendations to the Government on all aspects of persons with disabilities including matters relating to the support, care, protection, rehabilitation, development and well being of persons with disabilities; to recommend to the Government changes to the existing law as well as to propose new law in order to secure full and effective participation in society of persons international level. However, the Council does not have power to penalise or prosecute any person, bodies or agencies for failing to comply with the provisions of the Act. However, local authorities can assume an important role in enforcing the relevant law, standards and regulations to ensure that physical and built environment designs are developed taking into consideration the access for disabled persons.

¹⁰ Section 3, Act 685

¹¹ Section 9 (1), Act 685

In 1998, the Government had established a national coordinating body known as the National Advisory and Consultative Council for People with Disabilities to replace the National Implementation Committee for the Well-being of the Disabled, which was formed in 1990. The Council is chaired by the Hon. Minister of National Unity and Social Development and is comprised of various related government agencies, NGOs, private sectors and interested individuals including person with disabilities. The main function of the Council is to coordinate the implementation of the Agenda of Action for the Asian and Pacific Decade of Disabled Persons. The Council's function, though advisory in nature, constitute a platform for the collaboration and coordination among various ministries and departments of the Government along with NGOs.

For purposes of implementing the Agenda of Action, the Council established 12 Technical Working Groups based on the twelve "Areas of Concern". Each of the working groups is headed by either the Secretary-General of the relevant ministry or by the disabled persons themselves. The Council has requested all State Governments to establish a State Advisory and Consultative Council for People with Disabilities to ensure a comprehensive implementation of the Agenda for Action at the grass-roots level.

Problems of Enforcement

Despite the passing of the laws and standards, due to lack of monitoring the enforcement of the By-Laws and Code of Practice, many buildings are still inaccessible to people with disabilities. The government should consider measures to monitor the enforcement of the laws regarding barrier-free access of the disabled to public buildings. It is important for the government to empower the National Council for Persons with Disabilities to enforce the policies and law relating to creation of creation of access to persons with disabilities. The regulations and code of practice for standards are often ignored. Interpretation of such facilities from the viewpoint of non-disabled persons or persons who have no understanding of disability most times render such facilities unusable. The local governments are responsible in ensuring that those standards are adhered to in the course of designing and constructing public buildings and public amenities. The lack of accessible environment within and outside buildings makes it difficult for disabled persons to integrate into the communities that they live in. They are unable to go out as

walkways are usually not equipped with ramps and obstacles such as benches and uncovered drains obstructs their passageway but can also cause injury or death. Walkways that have ramps are usually not usable and dangerous as they do not comply with MS 1331.

Concluding Summary

The local authority must assume an important role in ensuring that the development plans and applications for planning permission is prepared taking into consideration the needs of persons with disabilities. Providing barrier-free environment is vital for the mobility of disabled persons and must be at the top of the Government's agenda on human capital development. It helps them to move around conveniently without much assistance. This necessarily must include access to schools, shops, offices, hospitals and other places for social and recreational activities. A barrier-free environment is also the vital link for disabled people to access public transport. Many disabled people live in conditions of poverty due to lack of education and skills. They cannot afford to own private vehicles as such public transport is the only affordable means for them to travel. A barrier-free environment will allow them access public transportation, buildings and other facilities to acquire knowledge and skills need to serve get employed. This will in turn reduce to a certain extent the poverty rate among disabled people as it allows them to go to school to get an education and then be gainfully employed. It also enables disabled people to move freely in their communities. They can then be active participants and contributors in the activities and development of the communities that they live in.

The definition of persons with disability suggests that the facilities or amenities created for disabled persons must be extended to assist people not only with disabilities, as in "wheelchair accessible", but also to be extended to include to Braille signage, wheelchair

ramps, audio signals at pedestrian crossings, walkway contours, website design, and so on.

Attachment: Provision of Bylaw 34A of the Uniform Building ByLaws 1991

STREET, DRAINAGE AND BUILDING ACT 1974

UNIFORM BUILDING (AMENDMENT) BYLAWS 1991

In exercise of the powers conferred by section 133 of the Street, Drainage and Building Act 1974, the State. Authority Makes the following By-laws:

1. These By-laws may be cited as the Uniform Building (Amendment), By-laws 1991.
2. By-law 2 of the Uniform Building By-laws 1984 which in this By-laws is referred to as "the principal By-laws" is amended by inserting immediately after interpretation "detached building" the following interpretation.

"disabled persons" means people; with a physical, hearing or sight impairment which affects their mobility or their use of buildings as referred to under by-law 34A;".

3. The principal By-laws is amended by inserting immediately after by-law 34, the following new by-law 34A:

(1)Any building or part thereof to which this by-law applies
34A shall-

(a)be provided with access to enable disabled persons to get into, out of and within the: building except for any part of the building for which access is provided wholly or mainly for the inspection, maintenance or repair of the building, its services or fixed plant or machinery; and

(b)be designed with facilities for used by disabled persons.

(2)The requirements of this by-law shall be deemed to be satisfied by compliance with Malaysian Standard MS 1184 and MS 1183.

- (3) Buildings to which this by-law applies and which on the date of commencement of this by-law have been erected, are being erected or have not been erected but plans have been submitted and approved shall be modified or altered to comply with this by-laws within 3 years from the date of commencement of this by-law.
- (4) Notwithstanding paragraph (3) the local authority may where it is satisfied that it is justifiable to do so-
- (a) allow an extension or further extensions of the period within which the requirements of this by-law are to be complied with: or
 - (b) allow, variations, deviations, or exemptions as it may specify from any provisions of: this by-law.
- (5) Any persons aggrieved by the decision of the local authority under paragraph (4) may within 30 days of the receipt of the decision appeal in writing to the State Authority whose decisions shall be final.
- (6) The requirements of this by-law shall apply to any of the following buildings or any part thereof –
- (a) offices, banks, post offices, shops, department stores, supermarkets and other administrative and commercial buildings. except shop-houses existing, at the commencement of this by-law;
 - (b) rail, road, sea and air travel buildings and associated concourses, car parking, buildings and factories;
 - (c) hospitals, medical centers, clinics, and other health and welfare buildings;
 - (d) restaurants, concert halls, theatres, cinemas, conference buildings, community buildings, swimming pools, sports buildings and other refreshment, entertainment and recreation buildings;

(e)religious buildings;

(f) schools, colleges, universities, zoos, museums, art galleries, libraries, exhibition buildings and other educational, cultural and *scientific* buildings; and

(g)hostels, hotels and other residential buildings other than single family private dwelling houses.