

立法會
Legislative Council

LC Paper No. CB(2)2371/11-12(01)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 June 2012**

**Initial Report of the Hong Kong Special Administrative Region
under the United Nations Convention
on the Rights of Persons with Disabilities**

Purpose

This paper provides background information on the report of the Hong Kong Special Administrative Region ("HKSAR") under the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") and gives an account of the discussions of the Panel on Constitutional Affairs ("the CA Panel") in respect of the outline of the topics included in the initial report of HKSAR.

Background

2. UNCRPD has entered into force for the People's Republic of China, including HKSAR, since 31 August 2008. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities ("PWDs"), and to promote respect for their inherent dignity.

3. In accordance with Article 35 of UNCRPD, each State Party undertakes to submit to the Secretary-General of the United Nations ("UN"), for consideration by the Committee on the Rights of Persons with Disabilities, an initial report on measures taken to give effect to its obligations thereunder within two years after the entry into force of UNCRPD for the State concerned.

4. The HKSAR's initial report was submitted to UN in August 2010, forming part of the initial report of the People's Republic of China under the Convention. The report set out the administrative, legal and other measures taken by HKSAR to implement the Convention and the resulting progress achieved. Thereafter, HKSAR is required to submit subsequent reports at least every four years.

5. The Labour and Welfare Bureau ("LWB") is responsible for co-ordinating the overall implementation of UNCRPD in Hong Kong. The Rehabilitation Advisory Committee ("RAC"), being the principal advisory body on measures pertaining to the rights of PWDs, assists the Government in promoting and monitoring the implementation of UNCRPD in Hong Kong.

Discussions of the CA Panel on the outline of topics in respect of the initial report

6. LWB issued the outline of topics to be included in the initial report for a six-week public consultation period which ended on 31 March 2010. The CA Panel discussed the outline of topics with deputations and the Administration at its meeting on 19 March 2010. The issues raised by members at the meeting are summarized below.

Article 1 to 4 – Definition of disability

7. Mr CHEUNG Man-kwong and Mr Ronny TONG shared the concern of the Equal Opportunities Commission ("EOC") that due to the broad definition of "disability" in the Disability Discrimination Ordinance (Cap. 487) ("DDO"), bureaux and government departments had adopted different definitions of disability under their respective policy purviews so as to suit their respective scope of services provided to PWDs. They considered that the Government's approach had failed to address fully the needs of PWDs. They enquired whether the Administration would consider adopting the new International Classification of Functioning, Disability and Health ("ICF") introduced by the World Health Organization ("WHO") under which disability and health were classified from body, individual and societal perspectives and whether the Administration would consider introducing amendments to enhance the protection afforded under DDO as proposed by EOC.

8. The Administration advised that the definition of "disability" was very broad under DDO. It included persons who were physically and mentally impaired at present, in the past and possibly in the future. The policy intention in adopting a broad definition of "disability" under DDO was to provide the widest possible protection to PWDs. Given its wide coverage, government bureaux and departments had to, on a pragmatic level, adopt their own definitions of "disability" taking into account the scope of services provided and the needs of PWDs under respective policy areas. LWB would review the measures for rehabilitation and welfare services for PWDs from time to time.

9. The Administration further explained that although the ICF classification had been advocated by WHO some 10 years ago, no country had successfully applied the classification in law because of technical problems and complications.

This called into question whether Hong Kong should adopt a new classification to replace the existing definition in DDO which had been used for 14 years. Nevertheless, the Administration would keep in view the world trend and make changes as and when necessary. As regards the legislative amendments suggested by EOC, the Administration explained that it was a matter of legislative priority as LWB in the past few years had focused on introducing complex and major legislative proposals such as the amendments to the Domestic Violence Ordinance and the Minimum Wage Bill.

10. Referring to some deputations' comments that the Administration had not reviewed its rehabilitation policy since 1995, the Administration clarified that the Government had regularly reviewed rehabilitation policies and measures in response to the changing circumstances and needs of PWDs, and the latest review recommendations were published vide the 2007 Rehabilitation Programme Plan ("RPP"). The 2007 RPP adopted a holistic approach in reviewing the development of rehabilitation services and set out the strategic directions and proposed initiatives for the further enhancement of a wide range of services, including rehabilitation services for PWDs.

Article 9 – Accessibility

11. Ir Dr Raymond HO and Mr Paul TSE echoed the concern of EOC that barrier-free access facilities for PWDs were inadequate. They pointed out that Hong Kong lagged behind in the provision of barrier-free access facilities in comparison with those in western countries. Dr PAN Pey-chyou expressed concern about the travelling arrangement for PWDs and geriatric patients and their difficulties in applying for Non-Emergency Ambulance Transfer Service and booking the Rehabus service.

12. The Administration advised that the Hospital Authority ("HA") had in recent years carried out improvement works for hospitals and provided new facilities and services that were more accessible to PWDs. The Financial Secretary had earmarked provision for four additional new Rehabuses in 2011. The Administration would also pilot home care services for persons with severe disabilities in Kwun Tong and Tuen Mun with a view to alleviating their travelling problem.

Article 24 – Education

13. Ms Cyd HO expressed dissatisfaction that the policy formulated by the Education Bureau for children with special educational needs was outdated and suggested it to keep abreast of development and conduct a comprehensive review to ensure the provision of reasonable and equal education opportunity to PWDs. She considered that the education support service provided to PWDs was

inadequate with the absence of a curriculum framework for children with special educational needs, the absence of an assessment on specific learning difficulties of all children under six years old, and the lack of access to lifelong learning after PWDs finishing secondary education. The Administration advised that the issues would be included in the initial report.

Article 25 – Health

14. Ms Emily LAU concurred with EOC that the establishment of a Mental Health Council was worth considering. She expressed concern that the Commissioner for Rehabilitation at his present rank might not be able to steer government bureaux and departments towards addressing the problem of mental health.

15. The Administration explained that the Food and Health Bureau ("FHB") assumed the overall responsibility of coordinating mental health policies and service programmes and it worked closely with LWB, HA, the Social Welfare Department ("SWD") and other relevant parties to ensure that persons with mental health problems were provided with appropriate medical treatment at different stages. The scope of services provided included in-patient service, specialist outpatient service, day hospital, community outreach service, and follow-up by community psychiatric nurses. SWD also rendered assistance to cater for the needs of persons with mental health problems in respect of housing, training and rehabilitation.

16. The Administration also advised that new initiatives had been introduced in recent years for enhancing the support to persons with mental health problems. In 2011, HA would implement a case management programme for persons with severe mental illness, and foster closer collaboration between its specialist psychiatric service and primary care service in order to provide people with common mental disorders with the appropriate assessment and treatment services. Additional funding would also be provided to extend the service mode of the existing Integrated Community Centre for Mental Wellness in Tin Shui Wai to all 18 districts in Hong Kong.

Article 27 – Work and employment

17. Ir Dr Raymond HO urged the Administration to provide more employment opportunities for PWDs. The Administration advised that the Government had employed over 3 000 PWDs and also encouraged other employers to do the same. At the same time, the Labour Department offered a range of employment services to PWDs which included vocational assessment, individual counselling, job matching and referral. In addition, wage subsidy would be provided to employers to encourage them to hire PWDs.

Article 29 – Participation in political and public life

18. Mr CHEUNG Man-kwong expressed concern that the long-standing problem of barrier-free access to polling stations remained unresolved. Ir Dr Raymond HO enquired whether the Administration would consider using mobile polling stations to facilitate voting by PWDs.

19. The Administration advised that the Registration and Electoral Office ("REO") had been putting in place various measures to ensure that PWDs could exercise their voting right. In identifying venues for use as polling stations, REO would arrange for venues accessible to PWDs as far as practicable. However, this would depend on constraints such as availability of venues suitable for use as polling stations, and consent of party responsible for its management. If there was no other suitable choice and a venue which was not readily accessible to PWDs had to be used, REO would try to provide, where circumstances permitted, temporary ramps to increase the accessibility of the polling stations to PWDs. The map attached to the poll card would indicate whether the polling station allocated to the elector was suitable for use by PWDs. An elector with a disability could contact REO for re-allocation to a polling station accessible to PWDs in his constituency. Where feasible, REO would also arrange for Rehabus service for electors with disabilities to commute to the relevant polling stations.

Article 33 – Implementation and monitoring

20. Mr CHEUNG Kwok-che requested the Administration to provide a timetable setting out the various measures to be implemented by relevant bureaux and departments to give effect to the obligations under UNCRPD. The Administration explained that it might not be feasible to devise a timetable as UNCRPD touched on a wide spectrum of areas. The 2007 RPP, which covered similar aspects of rehabilitation services pertaining to the rights and well-being of PWDs as included in UNCRPD, had already set out clear and comprehensive strategic directions and priorities for the development of rehabilitation services for all sectors to follow.

21. Ms Cyd HO queried why the implementation of UNCRPD was promoted by RAC, not EOC. Mrs Sophie LEUNG, however, considered RAC and Commissioner for Rehabilitation, rather than EOC, the appropriate parties to promote and implement UNCRPD. She also urged the Administration to take account of the situation in Hong Kong in taking progressive steps to implement UNCRPD.

22. The Administration explained that the work of RAC and EOC would complement each other. Membership of RAC included persons with different

disabilities, representatives from rehabilitation sector, community and business leaders, and professionals. Given its long and meritorious record of promoting the interests and wellbeing of PWDs, RAC was widely accepted by the rehabilitation sector as the suitable body to advise the Government on promoting and monitoring the implementation of UNCRPD in Hong Kong.

23. The Administration advised that for the time being, there were 144 signatories to the Convention and amongst them, 81 had ratified UNCRPD. While UNCRPD had entered into force for HKSAR since August 2008, some advanced countries such as Japan, Singapore, the United States and Canada etc. had yet to ratify UNCRPD. In fact, Hong Kong had started to promote rehabilitation services for PWDs back in the 1970's. The Administration assured members that it would continue to introduce new initiatives to improve its existing services and work towards building an inclusive society for PWDs.

Recent development

24. At its meeting on 16 April 2012, the CA Panel agreed that in anticipation of a UN hearing on the China's combined reports under UNCRPD to be held in September 2012, members should receive views from the public at the regular meeting on 18 June 2012.

Relevant questions raised at Council meetings

25. At the Council meeting of 13 June 2012, Ms Emily LAU raised an oral question regarding the implementation of UNCRPD by the Administration. The question raised by Ms LAU and the reply of the Secretary for Labour and Welfare are in **Appendix I**. Details of other questions relating to UNCRPD raised at Council meetings since the first LegCo and relevant papers available on the LegCo website (<http://www.legco.gov.hk>) are in **Appendix II**.

Appendix I

Press Releases

LCQ15: United Nations Convention on the Rights of Persons with Disabilities

Following is a question by the Hon Emily Lau Wai-hing and a written reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council today (June 13):

Question:

In September this year, the Committee on the Rights of Persons with Disabilities of the United Nations will consider the initial report submitted by Hong Kong under the United Nations Convention on the Rights of Persons with Disabilities (the Convention). In this connection, will the Executive Authorities inform this Council:

(a) whether the authorities will introduce "mainstreaming of the rights of persons with disabilities" for examining if the Government complies with the provisions relating to the rights of persons with disabilities under the Convention in legislation and implementation of administrative and other measures; if they will, of the details; if not, the reasons for that;

(b) whether the authorities will standardise the definition of disabilities adopted by various government departments and policy bureaux in accordance with the concept of disabilities as described in the Preamble of the Convention, and collect statistical and research data on persons with disabilities in accordance with Article 31 of the Convention, so as to facilitate the formulation and implementation of policies to give effect to the Convention; if they will, of the details; if not, how the authorities collect data to give effect to the Convention in the absence of a standardised definition of disabilities; and

(c) given that Article 33 of the Convention stipulates the establishment of independent mechanisms by states parties to promote, protect and monitor implementation of the Convention, whether the authorities have assessed if the Commissioner for Rehabilitation (C for R) under the Deputy Secretary for Labour and Welfare has sufficient independence and power to promote the implementation of the Convention in various government departments; if they have, of the results; whether the authorities will consider establishing a high level mechanism to promote, protect and monitor the implementation of the Convention; if they will, of the details; if not, the reasons for that?

Reply:

President,

It has all along been the policy objective of the Government and the development directions set out in the Hong Kong Rehabilitation Programme Plan (RPP) to help persons with disabilities develop their potential as well as to build a barrier-free living environment with a view to enabling persons with disabilities to participate in full and enjoy equal opportunities both in terms of their social life and personal growth. These are also the spirit and core values enshrined in

the United Nations Convention on the Rights of Persons with Disabilities (the Convention). Promotion and implementation of the Convention is an ongoing initiative. It is also the direction of continued development of rehabilitation services in Hong Kong. The Government will continue to collaborate with the Rehabilitation Advisory Committee (RAC), the Equal Opportunities Commission (EOC), groups of persons with disabilities, parents groups, the rehabilitation sector and other sectors in the community to promote the spirit and core values enshrined in the Convention and step up our efforts in fulfillment of the requirements under the Convention. My reply to the Hon Emily Lau's question is as follows:

(a) All government bureaux and departments are fully aware that in formulating policies and implementing service programmes, due consideration needs to be given to the requirements under the Convention, including a statement under its preamble which emphasises the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development. In this regard, government bureaux and departments would take into account the needs of persons with disabilities in formulating policies and implementing service programmes. For policies and measures which may bring about significant impact on persons with disabilities, bureaux and departments are required to suitably consult persons with disabilities and stakeholders and draw up guidelines to ensure that these policies and measures can adequately cater for the needs of persons with disabilities, thereby facilitating their full integration into society. For example, to build a barrier-free environment, the Labour and Welfare Bureau (LWB) has issued a circular, requesting all government bureaux and departments to comply with the design manual on barrier-free access in carrying out construction or alteration works and, wherever practicable, adopt higher standards beyond the design manual to ensure the provision of barrier-free access for persons with disabilities. The Buildings Department has also published the "Design Manual: Barrier Free Access 2008", providing guidelines on barrier-free facilities.

(b) Government bureaux and departments make reference to the definition of disabilities under RPP (Note 1) in formulating policies and services relating to persons with disabilities. In defining disability, the RPP Review Working Group has carefully considered such factors as the applicability to Hong Kong situation, the service needs of persons with disabilities and feasibility, etc. while taking into account the overseas practices and experience. The definition of disabilities in RPP is also in line with the concept of disabilities under the Convention. Indeed, RPP has all along been the blueprint for the development of rehabilitation services and widely accepted by various sectors in the community, including the rehabilitation sector.

That notwithstanding, given that service needs vary among persons with different category and severity of disabilities, it is necessary for various bureaux and departments to adopt different demarcation of target service users in formulating policies and service programmes in order to provide tailor-made and suitable support for persons in need. For example, the Disability Discrimination Ordinance (Cap. 487) (DDO) aims at providing the widest protection for persons with disabilities against discrimination, and thus a broad definition of disabilities is adopted which may cover persons suffering from myopia, Hepatitis B virus carriers, etc, or persons recovered from disability. For Residential Care Homes (Persons with

Disabilities) Ordinance (Cap. 613), its legislative intent is to regulate residential care homes for persons with disabilities (RCHD), thereby protecting persons with disabilities who are living in RCHDs owing to their residential care needs. In this light, persons with disabilities who do not have special residential care needs (eg persons suffering from specific learning difficulties) are not covered. In fact, according to the reports submitted by other countries to the United Nations Committee on the Rights of Persons with Disabilities under the Convention, a number of these countries also adopt varying definitions for different policies and measures.

Regarding the statistics and data on persons with disabilities, the Census and Statistics Department (C&SD) conducts surveys on persons with disabilities and chronic diseases regularly. The latest round of survey was conducted in 2006-07. To ensure that the survey met the intended objectives, C&SD had carried out a series of consultations with stakeholders (including relevant government bureaux and departments, public bodies, non-governmental organisations and academia) before conducting the survey. These consultations served to collect expert views and advice on the scope of disabilities and chronic diseases, as well as the definitions of individual types of disability. C&SD had also made reference to the definition of disability adopted in similar surveys conducted by some overseas statistical offices to facilitate comparison with other countries or regions. Having regard to the above information and other relevant factors, such as the resources implications; the degree of difficulties encountered by respondents in giving responses; and the possible technical difficulties in defining each type of disability, the survey has adopted a definition of disability which is generally in line with the 2007 RPP.

(c) The Commissioner for Rehabilitation (C for R) of LWB is responsible to the Secretary for Labour and Welfare for the formulation of the overall policy in rehabilitation and welfare matters for persons with disabilities, and for co-ordinating and facilitating all government departments, public organisations and non-governmental organisations in the development and provision of rehabilitation services. Following the application of the Convention to Hong Kong, C for R serves as the focal point within the Hong Kong Special Administrative Region Government for matters relating to the implementation of the Convention, while relevant bureaux and departments have the responsibilities to ensure that the policies and measures under their purview provide equal opportunities and rights for persons with disabilities in compliance with the spirit and provisions of the Convention. For example, with the support and steer of the Chief Secretary for Administration and the Secretary for Labour and Welfare, C for R is responsible for co-ordination with relevant departments to take forward a comprehensive retrofitting programme on upgrading the barrier-free facilities for government venues. With the full co-operation of all relevant departments, the retrofitting programme has made satisfactory progress and achieved the desired results.

In tandem, following the application of the Convention to Hong Kong, the RAC has taken on the new role in advising the Government on the promotion and monitoring of the implementation of the Convention in Hong Kong. Furthermore, as the statutory enforcement agency of DDO, EOC has all along been serving as a safeguard in protecting the equal opportunities of persons with disabilities and their rights under the DDO.

Note 1: The definition covers ten types of disabilities, including Attention Deficit/Hyperactivity Disorder; Autism; hearing impairment; intellectual disability; mental illness; physical disability; Specific Learning Difficulties; speech impairment; visceral disability; and visual impairment.

Ends/Wednesday, June 13, 2012
Issued at HKT 12:17

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Appendix II

Relevant documents on Initial Report of the Hong Kong Special Administrative Region under the United Nations Convention on the Rights of Persons with Disabilities

Committee	Date of meeting	Paper
Legislative Council	17.3.2010	Official Record of Proceedings Pages 104 – 109 (Written question)
Panel on Constitutional Affairs	19.3.2010 (Item IV)	Agenda Minutes
Legislative Council	26.5.2010	Official Record of Proceedings Pages 119 – 122 (Written question)
	30.5.2012	Official Record of Proceedings Pages 30 – 39 (Oral question)
	13.6.2012	Written question raised by Hon Emily LAU on Convention on the Rights of Persons with Disabilities

Council Business Division 2
Legislative Council Secretariat
15 June 2012