Submission to the LegCo Panel on Health Services on mental health policy and service programmes[1]

25 February 2013

I. Ineffective mental health policies conducive to violations of human rights

A. No long-term strategy and comprehensive policy on mental health

1. There is neither long-term strategy nor comprehensive policy on mental health while services are uncoordinated in the HKSAR. Mental health policy and services are scattered among different Government bureaux and departments and Government subvented organizations. The lack of coordination results in the ineffective utilization of resources and manpower. In 2004, in reply to inquiries raised by the United Nations Committee on Economic, Social and Cultural Rights, the HKSAR Government rejected criticisms made by the Equal Opportunities Commission (EOC) that its policies on mental health were not holistic. However, the failure of the HKSAR Government in mental health policy and services is evident in the inadequate support provided to persons with disabilities and their families and carers.

2. The Government fails to provide adequate services for persons with psychosocial disabilities at both medical and community level. There is insufficient number of psychiatric healthcare staff due to no long-term consistent mental health policy and manpower planning. Thus the average consultation time for a person with psychosocial disabilities attending follow-up consultation at the psychiatric specialist outpatient clinics ("SOPCs") in Hospital Authority is only about 5 minutes.[2] On the other hand, the support to and education on self-management for persons with psychosocial disabilities in the community, and their family members or carers, e.g. community mental health care and residential respite service, are inadequate. Particularly, persons with psychosocial disabilities are dealt with in isolation with little consideration of

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[1] This submission is an adaptation of a submission to the UN Committee on the Rights of Persons with Disabilities in September 2012 by 18 Hong Kong DPOs and other NGOs, the drafting of which was coordinated by the HK Human Rights Monitor.

[2] Panel on Health Services, Minutes of meeting held on 11 May 2010.

their families in the formulation of mental health policy. Family and peer support to persons with intellectual and psychosocial disabilities are unreasonably played down. The Government has introduced a Case Management Programme and established Integrated Community Centres for Mental Wellness (ICCMW) but problems like seriously understaffing and lacking proper venues making these services totally inadequate to satisfy the needs of persons with psychosocial disabilities.[3] These services could have been much better designed and delivered in a much better way if persons with psychosocial disabilities and their organisations (disabled persons' organizations or DPOs) are involved in policy formulation at all stages. As a result, persons with psychosocial disabilities are left in the community without appropriate and adequate community services, many of whom are left to deteriorate to a state which no longer fit for community treatment and hence they are forced to face involuntary treatments with their right to liberty, security and autonomy seriously compromised.

B. Guardianship mechanism fails to respect individuals' autonomy

3. Guardianship mechanism based on a substituted decision approach is a violation of human rights according to the international human rights standards. In the HKSAR, the Mental Health Ordinance (MHO) (Cap. 136) empowers an independent Guardianship Board to conduct hearings in order to make guardianship orders for persons aged 18 or over who are consider "mentally incapable of making their own decisions" about their personal affairs, financial matters or medical/dental treatment. The present guardianship mechanism violates the Convention on the Rights of Persons with Disabilities (CRPD) since it fails to respect the right to autonomy of persons with intellectual and psychosocial disabilities.

4. The Government has never initiated any discussions among DPOs and the community to replace substituted decision making by supported decision making or even improve the existing guardianship mechanism. The Law Reform Commission has published a report on "Substitute Decision-making and Advance Directives in Relation to Medical Treatment" in 2006. The report points out that persons with a decision-making disability should be able to enjoy

[3] Due to inadequate manpower the Government fails to extend the Case Management Programme to cover all districts in the HKSAR. Meanwhile, due to local opposition ICCMWs are difficult to find permanent accommodations. 15 out of 24 ICCMWs are operated in provisional office only.

the same fundamental human rights as any other members of the community, and they should be afforded as much autonomy as possible and given appropriate decision-making assistance whenever it is required. Moreover, the report also criticizes the definition of "mental incapacity" under the MHO because the MHO does not define and clarify what falls within categories "mental illness" and "any other disorder or disability of mind which does not amount to mental handicap".[4] The Law Reform Commission recommends some minimal improvements on guardianship mechanism, nevertheless the Government did not take this opportunity to study the issue together with DPOs, persons with intellectual and psychosocial disabilities and the community. A review on present guardianship mechanism under the involvement of persons with intellectual and psychosocial disabilities, DPOs and the community is needed.

C. Voluntary and involuntary detention fails to protect liberty and security of the person

Voluntary detention

5. Voluntary detention of the persons with psychosocial disabilities voluntarily admitted to "mental hospital"[5] for treatment at his or family's request is operated under section 30 of the MHO. According to this legislation, a voluntary patient is entitled to leave the psychiatric hospital after the expiration of 7 days from his giving of notice to leave the hospital, but the patient could leave within 7 days of his or her notice only when a medical superintendent agrees. Without proper education to individuals, in many situations they do not fully understand the procedures to be admitted to mental hospital voluntarily and to be discharged from the mental hospital. They also do not know the existence of any mechanism to make involuntary detention order on them. Also, healthcare staff may use different excuses or tactics to persuade persons with psychosocial disabilities to have voluntary treatment in order not to trigger the procedures for involuntary treatment, so the consent to voluntary treatment is sometimes made without full disclosure of information.

D. Involuntary detention

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[4] Section 2 of the MHO.

[5] "Mental hospital" is "any place declared to be a mental hospital in accordance with the provisions of section 3 of the MHO.

6. Section 31 of the MHO stipulates the legal procedure and requirements on involuntary treatment of persons with psychosocial disabilities. An application may be made to a District Judge or magistrate for an order for the detention of a patient for observation on the grounds that the patient is suffering from mental disorder of a nature or degree which warrants his or her detention in a mental hospital for observation and that such detention order is in the interests of his or her own health or safety or for the protection of other persons. A detention order of a person with psychosocial disabilities shall be founded on the written opinion of a registered medical practitioner who has examined the patient within the previous 7 days. An application for detention for observation may be made by a relative of the patient, a registered medical practitioner, or a Social Welfare Department public officer who has personally seen the patient within the period of 14 days ending immediately prior to the date of application. Persons with psychosocial disabilities may request to see the District Judge or magistrate before an order for the detention is made.

7. Section 36 of the MHO stipulates about the procedure to detain certified patients.[6] Once a patient is certified he or she becomes a patient under involuntary treatment. What is even worse is that the law does not specify the maximum period of the detention of the patient.

8. To review the decision to involuntary treatment, all involuntarily hospitalized persons or their relatives may apply to the Mental Health Review Tribunal (the Tribunal) for a review. If the patient or relative does not exercise his or her right to apply to the Tribunal for a period of 12 months after the right first

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[6] A certificate can be completed by 2 registered medical practitioners and forwarded to a District Judge if the 2 registered medical practitioners has examined a voluntary or involuntary patients and opined that the patient is suffering from mental disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment in hospital, and it is necessary for the health or safety of the patient or for the protection of other persons that the patient should receive such treatment and it cannot be provided unless the patient is detained. If a District Judge is satisfied that the certificate referred is in order and there are no grounds for rejecting it, the District Judge shall countersign the certificate and shall forward it to the medical superintendent of the mental hospital. A medical superintendent may detain in a mental hospital for observation, investigation and treatment any person who is the subject of an order and may transfer the patient to any other mental hospital. The registered medical practitioners, District Judge and medical superintendent are given too large power under this section of the MHO.

became available to the patient, the Medical Superintendent is required by law to refer the case to the Tribunal.

9. In practice, the mechanism of involuntary treatment does not provide healthcare to persons with disabilities on the basis of free and informed consent and on an equal basis with others. It also fails to respect and promote full legal rights of persons with disabilities to self-determination and autonomy with entitlement to support when needed. Interest of persons with disabilities would then be decided by medical practitioners or social workers or other specialists. It also infringes on the right to non-discrimination, right to mental and physical integrity and may amount to torture, inhuman or degrading treatment or punishment.

10. Despite its violation of CRPD there are some other defects in the MHO which put persons with psychosocial disabilities in an even more vulnerable position. Firstly, the decision to make an involuntary treatment order emphasizes too much on a medical approach. Secondly, the law only requires registered medical practitioner but not strictly mental health medical practitioner to examine the persons with psychosocial disabilities. Thirdly, healthcare staff seldom adequately provide information to persons with psychosocial disabilities about their rights, including (a) the procedure for involuntary detention treatment and their right to appear before the District Judge or magistrate to make representation against the application for an order for the detention for observation and (b) the appeal mechanism against any order of detention already made, etc.

E. <u>Psychiatric treatments without informed consent</u>

11. The Government does not actively promote psychiatric treatments other than psychiatric drug approach, such as homoeopathy and Chinese medicine. Psychiatric drugs thus become the only option for persons with psychosocial disabilities even though most of them are not willing to take those psychiatric drugs with serious side effects. Information especially on side effects of psychiatric drug is often withheld by the healthcare staff. The label of the psychiatric drug does not include all the details of the drugs. Inaccessible information on medical treatments also contributes to the denial of the right of persons with disabilities to give free and informed consent with respect to medical treatment.

Recommendations

12. The HKSAR Government should adopt the recommendation to set up a high powered and broad based Mental Health Council, preferably chaired by the Chief Secretary for Administration, who should proactively co-ordinate and monitor the formulation and implementation of both short-term and long-term policies and action plans related to mental health support services.[7]

13. Closely consulting persons with intellectual and psychosocial disabilities and DPOs should be at the core of Government's decision-making process. The Government should take concrete measures to strengthen its services at both medical and community levels for persons with intellectual and psychosocial disabilities, their family members and carers. These measures should encompass a holistic approach which includes other supporting measures such as healthcare, housing and welfare policy and public education.

14. The Government should immediately review existing laws and policies including guardianship mechanisms, the regimes for voluntary and involuntary treatments for persons with intellectual and psychosocial disabilities with a view to institute without further delay the much needed legal, institutional and policy reforms to remove the existing defects and to better protect and respect the will, autonomy, liberty, security and other rights and the best interests of persons with disabilities. This review should be conducted under close consultations with persons with intellectual and psychosocial disabilities, DPOs and the community. In addition, persons under voluntary treatment should have the right to refuse treatment and be allowed to leave psychiatric hospitals voluntarily without subject to decisions of psychiatric hospitals. They should be fully informed on the procedures to admit to and discharge from the mental hospitals.

15. The Government should require all healthcare staff to fully inform all the individuals on the details of the medical treatment, and require all the drugs to

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[7] Equal Opportunities Commission, Enhancement of Community Mental Health Services -- Submission from the Equal Opportunities Commission, 31 March 2012. The recommendation to set up Mental Health Council does not rule out the recommendation to set up a high focal point within the Government and an independent mechanism on issues about the rights of persons with disabilities. The recommendation has been made by the EOC since 2003. Many NGOs have echoed the recommendation.

include a label on information of the drugs. This information should be provided in an accessible way for persons with different kinds of disabilities.

II. Improper arrangements on provision of social security & services affecting persons with disabilities to live independently in the community in family setting

A. Background information on social security mechanism in HKSAR

16. The CSSA Scheme and the Social Security Allowance (SSA) Scheme are the backbone of HKSAR's social security system. The DA under the SSA is non-means tested to help persons with disabilities meet their special needs regardless of their financial, social and economic circumstances. The means-tested CSSA Scheme aims to provide financial support for families to meet their basic needs.

17. Persons with disabilities should have the right to choose whether to live in community or in residential care places. No matter how they choose the Government has the responsibility to satisfy their needs. However, the current DA, CSSA and various services provision fail to take into account the needs of persons with disabilities. Without adequate support some persons with disabilities are actually denied the right to live in the community in a family setting.

B. Eligibility for DA and CSSA fails to consider actual circumstances

18. Eligibility for CSSA and DA includes a determination of the applicant's degree of disability. The criteria to determine degree of loss of earning capacity emphasizes a medical approach and traditional approach.[8] It fails to take into account the interaction with surrounding environment and the actual circumstances of persons with disabilities such as their employment skills and family conditions. In addition, it covers only physical and sensory disabilities, excluding intellectual and psychosocial disabilities. Persons with mental disabilities are therefore less likely to have their financial needs recognised, adding stress to their already burdened mental state.

[8] The First Schedule of the Employees' Compensation Ordinance standardizes the percentage loss of earning capacity for different kinds of physical and sensory disabilities.

19. There are three different standard rates for disabled CSSA recipients, including rate for recipients with 50% disabilities or medically certified to be in ill-health, 100% disabilities and those requiring constant attendance. Also, an applicant can receive the DA if he or she is certified with a 100% loss of earning capacity. As a result, CSSA with higher standard rates for person with 50% or 100% degree of disability and the DA are not provided to persons who are not medically certified to be of ill-health and with a degree of disability under 50%.

C. <u>Persons with disabilities forced to separate from their families and to rely on residential services</u>

20. In reality, the right of persons with disabilities to live independently in the community is related to the CSSA mechanism and its Care Attention Allowance. However, the current mechanism discourages persons with disabilities, who choose to live in the community independently, from living with their family. As a result it is not able to facilitate persons with disabilities to live in the community independently with close family support and enhance their quality of life. Instead, they were forced back to institutions, often with inadequate support even for them to leave such premises.

21. In a lot of cases, persons with disabilities want and need to live with their family to have close physical and moral support. The requirement to apply for CSSA on a household basis forces persons with disabilities to separate from their families to live alone to satisfy the means test. The Government has ignored that some families cannot support the high cost of living of their members with disabilities. Although they are willing to live with their family members with disabilities to provide them close physically and morally support, they may not have the means to do so economically without public financial support.

22. The eligibility for the Care and Attention Allowance under the CSSA implemented since 2004 continues to deprive their right to choose their place of residence and active participation in the community. At present, the eligibility of this allowance is simply the applicants' ability to move which fails to include the special needs of persons with disabilities in their daily activities. For example, many persons with disabilities who are not fully immobile are living in the community; they face different difficulties in their daily lives and are unable to take care of themselves and require support, even though they are not fully

immobile like tetraplegics. Nevertheless they are excluded from the Care and Attention Allowance. Some of them may live in residential places for persons with disabilities or older persons which have an even poorer environment. The allowance is essential for persons with disabilities to live in community, but the high threshold of full immobility deprives their right and opportunity to independently live in the community with the necessary supports.

D. District Support Centres and Pilot Scheme fail to provide adequate support

23. Many persons with disabilities living in the community still fail to receive appropriate and adequate support, so they continue to face various difficulties in being included in the community.

E. Lack of monitoring on quality of residential care homes

24. There is no effective monitoring mechanism to ensure the quality of residential care homes. The number of subsidized residential care places for persons with disabilities is inadequate to meet the demand, and the quality of residential care homes for persons with disabilities is in doubt. The environment of various residential care homes and attitude of their staff are unsatisfactory and the privacy of residents is not fully respected. The Residential Care Homes (Persons with Disabilities) Regulations only cover the hardware of the residential care homes and even allows standards lower than the former non-statutory Code of Practice such as a lower minimum staffing requirement for healthcare staff and a smaller minimum area of floor space per resident. Medicine management in residential care homes is problematic, due to inadequate manpower it is reported that some staff in residential care homes have the tendency to give more medicine than required to residents to stabilize their physical and mental conditions.

Recommendations

25. The Government should amend the CSSA and DA criteria to take into account the surrounding environment and actual circumstances of persons with disabilities.

26. The Government should provide more resources to different rehabilitation organizations for them to develop comprehensive and adequate community care

services. Care subsidies should be introduced and eligibility of services should be based on the needs of applicants. "Community case managers" should be developed to organize resources for community support. The role of District Support Centres for persons with disabilities in the community should be comprehensively reviewed. The HKSAR Government should also enhance its services for persons with both hearing and visual impairments.

27. The Government should take measures to improve the quality of residential care homes, including setting up an independent mechanism to monitor the quality of both public and private residential care homes.

III. Majoritarian approach and inadequate public education

28. Local resistance are often encountered during district consultation on the siting of residential and support services for persons with disabilities, especially those with psychosocial disabilities and persons with intellectual disabilities. The HKSAR Government often adopted a majoritarian approach by giving too much weight to the views of the residents in the neighbourhood of the proposed facilities and thus most of the services cannot be set up and operated due to local community resistance.

Recommendations

29. The HKSAR Government should not adopt a majoritarian approach in policies regarding the rights of minorities including persons with disabilities. The Government should also take proactive measures to enhance awareness of the CRPD at the local levels.