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**The Democratic Party's Submission on the Implementation of
the "United Nations Convention on the Rights of Persons with Disabilities" by
the Government of the Hong Kong Special Administrative Region**

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Background

The Committee on the Rights of Persons with Disabilities (The Committee) will convene a meeting to prepare for its hearing on the initial report submitted by the Peoples' Republic of China, including the Hong Kong Special Administrative Region (HKSAR) on the implementation of the Convention on the Rights of Persons with Disabilities (the Convention). The Committee will be raising a list of issues for the SAR Government to respond. This is the Hong Kong Democratic Party's submission stating our concerns. We hope the Committee will take them into consideration.

General Principles on the Rights of Persons with Disabilities (Articles 1-4 of the Convention)

1. The Convention recognizes that "disability is an evolving concept and it results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". "Disability" results not only from one's personal physical impairments, but also from the general attitude of society and barriers in the environment.

2. Provided that the States Parties to the Convention can eliminate different forms of barriers, “disability” will vanish. The States must not limit their obligations to providing persons with disabilities medical treatments, rehabilitation services, welfare and other support. The States must also change their mindset. They should refrain from regarding the problems faced by persons with disabilities from the perspective of social welfare which aims to help them to adjust to mainstream society. Instead the States should see the issue from the perspective of the rights of persons with disabilities. This perspective aims to eliminate all barriers that hinder their full participation in society. The government should take into account the needs of persons with disabilities in making and executing policies. The Hong Kong population is aging and the disabled population is also growing steadily. The Hong Kong Government should introduce the concept of “Disability Mainstreaming” in policy-making, and use that to examine whether policies and practices can meet the needs of people with disabilities.

3. **The Democratic Party urges the Committee to raise the following question with the Hong Kong Government: Will the Government introduce the perspective of “Disability Mainstreaming” in assessing whether the needs of persons with disabilities are met when the Government enact laws, promote policies and carry out established practices?**

The definition of “Disability” (Articles 1-2 of the Convention)

4. There are variations in the definition of “disability” among different government departments and provisions in various ordinances. The Disability Discrimination Ordinance adopts a specific and comprehensive definition of disability. It basically covers most persons with disabilities and most persons with chronic illnesses. But the

government's Rehabilitation Programme Plan only covers 10 categories of disability¹ and the Disability Allowance Scheme is applied to only three categories: physical disability and visual impairment, severe mental handicap and hearing impairment. Office of The Ombudsman observed that such classification is based on the Employees' Compensation Ordinance which was enacted more than 50 years ago, thus the standard is crude and outdated². Non-governmental organizations (NGOs) and the Legislative Council have urged the Government to launch a comprehensive review, but to no avail.

- 5. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: Since different government departments have adopted different definitions of disability, does the Government consider it necessary to come up with a common definition, and will the Government amend the outdated eligibility standard in the Disability Allowance Scheme?**

Mental Health (Article 5: Equity and non-discrimination, Article 8: Awareness-raising, Article 19: Living independently and being included in the community, Article 27: Work and employment)

6. Discrimination is a big obstacle to the provision of mental health services. The Disability Discrimination Ordinance prohibits discrimination against people with disability, but

¹ The ten categories of disability under the Rehabilitation Programme Plan:

- (a) Attention Deficit / Hyperactivity Disorder;
- (b) Autism;
- (c) hearing impairment;
- (d) intellectual disability;
- (e) physical disability;
- (f) mental illness;
- (g) specific learning difficulties;
- (h) speech impairment;
- (i) visceral disability; and
- (j) Visual impairment.

² Office of The Ombudsman, "Direct Investigation on Granting of Disability Allowance and Processing of Appeals by Social Welfare Department", Issue No. 3 of Reporting Year 2009/10.

discrimination still exists, particularly against people with mental illness. The Democratic Party conducted a telephone survey in May 2010 and found that 55.4% of the respondents did not accept “neighbours who are/were mentally ill”, 39.1% did not accept “friends who are/were mentally ill”. 46.4% did not accept “working with persons who are/were mentally ill”. Thus we can see persons with mental illness are being marginalized at work and excluded in social life and have little access to rehabilitation services. Their self-esteem, treatment, social function and their physical and mental health are being adversely affected.

7. In 2008-2009, public spending on mental health was 0.22% of the Gross Domestic Product (GDP) in Hong Kong, lower than the UK (generally around 0.7%) and Australia (0.4% in 2007-2008)³. In the aftermath of several cases of violence involving persons with mental illness, the Government decided to increase spending on mental health service, but has made little impact. Implementation of the Case Management Programme is very slow. Of the 24 mental health integrated community centres serving 18 districts, 18 have no permanent premises due to opposition by local residents.
8. The work of mental health promotion and support for persons with mental illness is undertaken by various government departments and professions. NGOs said the services are fragmentary because the institutions do not work together and their programs are not well coordinated. There is no comprehensive “one-stop service”. Relapse is common among recovering patients due to lack of comprehensive services, leading to violent disasters. Deep-seated discrimination and public misunderstanding are rampant. In 2004, replying to inquiries raised by the United Nations Committee on Economic, Social and Cultural Rights, the Hong Kong Government rejected allegations made by Hong Kong

³ Ivy Cheng, “Mental Health Services in Selected Places”, Research Division, Legislative Council Secretariat, March 9, 2011, para 15. <http://legco.gov.hk/yr10-11/english/sec/library/1011rp04-e.pdf>

Equal Opportunities Commission that its policies on mental health were not holistic. The Government said it was satisfied with the co-ordination of mental health polices and services under the then Health, Welfare and Food Bureau. However, cases of violent behaviour involving ex-mental patients and the worsening mental health situation show the problem is very serious.

9. In the UK, the Government has introduced the Social Exclusion Unit under the office of the Deputy Prime Minister to address social exclusion encountered by persons with mental illness. NGOs in Hong Kong have demanded a similar high-level mechanism, but it is rejected by the government.

10. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: The level of public spending on mental health service in Hong Kong is far below that of other countries, and no high-level mechanism is in place to co-ordinate the various programmes and to address social exclusion encountered by mentally ill persons. Is the Government aware of the problem and does it recognize that improvement is urgently needed?

Women with Disabilities (Article 6 of the Convention)

11. The Women's Commission (WC) was set up in 2001 and its members are appointed by the Chief Executive. There is no woman with disabilities appointed to the WC⁴. Concerned groups have repeatedly urged the Government to make such an appointment, but there is no positive response.

⁴ See the first submission on the Convention of the Rights of Persons with Disabilities by the Association of Women with Disabilities Hong Kong.

12. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: Will the Government appoint women with disabilities to the WC to reflect their views and needs?

Children with disabilities (Article 7 of the Convention)

13. According to the government, the average waiting time for admission to residential care homes for mildly mentally handicapped children or to children homes which also accept mildly mentally handicapped children in 2010-2011 is 22.4 months. In the last decade, the provision of facilities has not expanded at all. Subsidized places have even been cut by one third. The waiting time for admission to residential special child care centers is 17 months. Only two hostel places have been added in the last decade⁵.

14. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: Given the inadequate residential care home service for children with disabilities and long waiting time for admission, will the Government increase residential care home places for children with disabilities?

Accessibility (Article 9 of the Convention)

15. The Disability Discrimination Ordinance stipulates that contractors and property managers, unless due to unjustifiable hardship, should provide barrier-free access and facilities for persons with disabilities. The Building (Planning) Regulations under the Buildings Ordinance, Design Manual 1997 and Design Manual 2008 all set out statutory

⁵ Government reply to Member's written question (Question 20) in the HK Legislative Council meeting on July 6, 2011. <http://www.legco.gov.hk/yr10-11/english/counmtg/hansard/cm0706-translate-e.pdf>

requirements for the provision of access and facilities in private buildings for persons with disabilities, but the Regulations only apply to new buildings. Structures built before the commencement of Design Manual in 1997 are not legally required to provide barrier-free access and facilities. Rehabilitation groups and persons with disabilities have repeatedly complained that many buildings do not provide them with barrier-free access and facilities. Even some public hospitals do not meet the barrier-free standard.

16. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: How will the Government deal with the problem of old buildings and public hospitals which fail to meet barrier-free standards?

Living independently and being included in the community (Article 19 of the Convention)

17. There is a shortage of government-subsidized residential services for persons with disabilities, and the waiting time for admission is very long. According to the government, in 2010-2011, the average waiting time for admission to Day Care Centre is 31.2 months, and the average waiting time for admission to hostel for moderately mentally handicapped persons and for severely mentally handicapped persons are 80.4 months and 73.2 months respectively⁶. Many persons with disabilities are forced to stay in sub-standard privately-run facilities.

⁶ Government reply to Member's written question (Question 20) in the HK Legislative Council meeting on July 6, 2011. <http://www.legco.gov.hk/yr10-11/english/counmtg/hansard/cm0706-translate-e.pdf>

Persons on the Waiting List for Residential Services for the Disabled

Types of Services	Persons on the Waiting List
Hostel for Severely Mentally Handicapped Persons	1,973
Hostel for Moderately Mentally Handicapped Persons	1,359
Hostel for Severely Physically Handicapped Persons	389
Supported Hostel	934
Care and Attention Home for Severely Disabled Persons	334
Small Group Home for Mildly Mentally Handicapped Children	55
Half-way House	750
Long Stay Care Home	1,112
Care and Attention Home for the Aged Blind	112

Source: Social Welfare Department, the Government of Hong Kong SAR (June 30, 2011)

[http://www.swd.gov.hk/doc/rehab/Annex%20II%20\(Eng\)%2020110630.pdf](http://www.swd.gov.hk/doc/rehab/Annex%20II%20(Eng)%2020110630.pdf)

18. In 2011, Hong Kong enacted the Residential Care Homes (Persons with Disabilities) Ordinance which regulates residential care homes for persons with disabilities with a licencing system. However the statutory requirement on manpower and space ratio is so conservative that it is lower than what is stipulated in the Code of Practice for Residential Care Homes for Persons with Disabilities of 2002.

19. The Democratic Party hopes the Committee will raise the following questions with the Hong Kong Government: Will the Government conduct an assessment on the need and shortfall of residential services for persons with disabilities? Will the Government give a timetable for introducing measures to satisfy these needs? With a low manpower and space ratio for residential care homes, how can the Government

be sure that persons with disabilities will be properly cared for?

Education (Article 24 of the Convention)

20. The Convention stipulates that “persons with disabilities receive the support required, within the general education system, to facilitate their effective education”. Integrated education has been implemented in Hong Kong public schools for more than a decade. Schools which admit students with disabilities receive additional resources for this task. Parents of children with disabilities and concerned groups have complained that severe inadequacies remain, including teachers’ training. Students with disabilities studying in mainstream schools do not receive the support they require. Many cannot catch up with their studies and find it difficult to participate in school life. In addition, groups for the disabled observed that students with visual and hearing impairments in the mainstream schools which practise integrated education get fewer admission opportunities to tertiary institutions nowadays when compared with students studying in special schools before.

21. The Democratic Party hopes the Committee will raise the following questions with the Hong Kong Government: Has the Government assessed the rate of university admission for students with disabilities in comparison with that of general admission? Since the “Whole School Approach to Integrated Education” was introduced in 1997/98, is the government aware whether students with visual and hearing impairments fared better or worse educationally in comparison with the general student population?

Health (Article 25 of the Convention)

22. The Convention stipulates that the States Parties to the Convention should “provide

persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons”, and “provide those health services needed by persons with disabilities specifically and services designed to minimize and prevent further disabilities”. Hong Kong public medical institutions, however, do not provide all patients with equal-to-all treatment.

23. Most patients who receive treatment in public medical institutions enjoy cheap medical services. Some patients, however, have to self purchase expensive medicine and medical devices. To qualify for subsidy on items such as artificial limbs and equipment for physiotherapy and occupational therapy, one has to go through a means test. Many of those who need to use such equipment are person with disabilities. The purchase of medical equipment creates a heavy burden on persons with disabilities and their families. Consequently, some of them cannot receive appropriate treatment.

24. **The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: Will the Government ensure that patients in public medical institutions can enjoy government-subsidized medicine, treatment and equipment whenever their attending physicians considered the medical items essential?**

Work and Employment (Article 27 of the Convention)

25. To enhance employment opportunity for the disabled with working abilities, the Legislative Council passed a motion in 2002 urging the Government to set up an employment indicator for persons with disabilities, and that Government, public institutions and government-subsidized organizations should take the lead to provide employment to these people. So far few institutions have done so, and the Government has done nothing.

26. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: What are the reasons for the failure of government departments, public institutions and government-subsided organizations to set up an employment indicator for persons with disabilities?

Adequate standard of living and social protection (Article 28 of the Convention)

27. The Hong Kong Government provides Disability Allowance and the Old Age Allowance for the disabled and the aged respectively. Old people with severe disabilities are eligible for both Allowances but can only apply for one of them. The Government said this is to prevent double benefit⁷.

28. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: The Disability Allowance is a welfare entitlement for persons with disabilities, and the Old Age Allowance is for senior citizens. Why can't old people with severe disabilities receive both allowances?

National Implementation and Monitoring (Article 33 of the Convention)

29. The Disability Discrimination Ordinance only covers discrimination, harassment and vilification in six areas: employment; education; access to, disposal of and management of premises; provision of goods, services and facilities; barristers' professional practices and club and sporting activities. The scope is much smaller than the scope of the Convention for protection of persons with disabilities, such as the right of living independently and

⁷ Government reply to Member's written question (Question 3) in the HK Legislative Council meeting on April 13, 2011. <http://www.legco.gov.hk/yr10-11/english/counmtg/hansard/cm0413-translate-e.pdf>

being included in the community, and the right to employment. The Equal Opportunities Commission is only authorized to oversee the implementation of the Disability Discrimination Ordinance and has no mandate to monitor the protection of all the rights for persons with disabilities as stipulated by the Convention.

30. The Rehabilitation Advisory Committee and the Commissioner for Rehabilitation are tasked with the promotion of the Convention and to monitor its implementation in Hong Kong. The Commissioner for Rehabilitation, who is a senior administrative officer under the Deputy Permanent Secretary of the Labour and Welfare Bureau, does not have the authority to co-ordinate the work of various government departments in implementing the Convention. The Rehabilitation Programme Plan produced by the Commissioner for Rehabilitation and the Rehabilitation Advisory Committee contain many recommendations and objectives, but neither have the power to make government departments implement the recommendations. In the absence of a human rights institution with broad and substantial powers, there is no proper mechanism to ensure Hong Kong's implementation of the Convention.

31. The Democratic Party hopes the Committee will raise the following question with the Hong Kong Government: Will the Government set up a high-level mechanism to monitor the implementation of the Convention by effectively mobilizing government departments to work towards this end?