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Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 30 April 2018**

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

Purpose

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

Background

United Nations Convention on the Rights of Persons with Disabilities

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, 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 UN Committee on the Rights of Persons with Disabilities ("the UN Committee"), 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 UNCPRD in Hong Kong. The Rehabilitation Advisory Committee ("RAC"), being the principal advisory body on measures pertaining to the rights of persons with disabilities, assists the Government in promoting and monitoring the implementation of UNCPRD in Hong Kong.

The initial report of the Hong Kong Special Administrative Region

6. LWB issued the outline of topics to be included in the initial report for a six-week public consultation from 17 February to 31 March 2010. The Panel discussed the outline of topics with deputations and the Administration at its meeting on 19 March 2010. The HKSAR's initial report was submitted to UN in August 2010. Prior to the UN hearing on China's combined report held from 18 to 19 September 2012, the Panel discussed the initial report of HKSAR with deputations and the Administration on 18 June 2012. On 17 December 2012, the Panel further discussed the concluding observations issued by the UN Committee on 11 October 2012 with deputations and the Administration. Copies of the concluding observations and the Administration's initial responses are at Annexes A and B to LC Paper No. CB(2)335/12-13(02) respectively.

The second report of the Hong Kong Special Administrative Region

7. The Administration is preparing its second report of HKSAR under UNCPRD. LWB has issued an outline of the topics to be included in the second report for public consultation from 9 March to 4 May 2018. The report will be submitted to the Central People's Government for incorporation into its periodic report to UN.

Discussions of the Panel on the initial report of the Hong Kong Special Administrative Region

Definition of disability

8. Some members 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 departments had adopted different definitions of disability under their respective policy purviews so as to suit their respective scope of services provided to persons with disabilities. They considered that the Government's approach had failed to address fully the needs of persons with disabilities. 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.

9. 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 persons with disabilities. Given its wide coverage, 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 persons with disabilities under respective policy areas. LWB would review the measures for rehabilitation and welfare services for persons with disabilities from time to time.

10. 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.

Accessibility

11. Members in general expressed concern that barrier-free access facilities for persons with disabilities were inadequate and whether Hong Kong had lagged behind in the provision of barrier-free access facilities. The Administration advised that it had followed up proactively EOC's recommendations in its Formal Investigation Report on Accessibility in Publicly Accessible Premises published in June 2010 and had rectified the accessibility problems identified therein. The Government had taken forward a comprehensive retrofitting programme costing \$1.3 billion to upgrade the barrier-free facilities in 3 500 government venues and 240 Housing Authority properties, of which around 90% had already been completed in end-June 2012, while those for the remaining premises and facilities would be completed by end-June 2014.

12. Some members expressed concern about the travelling arrangement for persons with disabilities and geriatric patients and their difficulties in applying for Non-Emergency Ambulance Transfer Service and booking the Rehabus service. The Administration advised that the Hospital Authority had in recent years carried out improvement works for hospitals and provided new facilities and services that were more accessible to persons with disabilities. The Financial Secretary had also 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.

Facilitating voting by persons with disabilities in public elections

13. At the Panel meeting on 19 March 2010, some members expressed concern that the long-standing problem of barrier-free access to polling stations remained unresolved. They enquired whether the Administration would consider using mobile polling stations to facilitate voting by persons with disabilities.

14. The Administration advised that the Registration and Electoral Office ("REO") had been putting in place various measures to ensure that persons with disabilities could exercise their voting right. In identifying venues for use as polling stations, REO would arrange for venues accessible to persons with disabilities 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 persons with disabilities had to be used, REO would try to provide, where circumstances permitted, temporary ramps to increase the accessibility of the polling stations to persons with disabilities. 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 persons with disabilities in his constituency. Where feasible, REO would also arrange for Rehabus service for delivering electors with disabilities to the relevant polling stations.

Setting up an independent monitoring mechanism

15. At the Panel meeting on 17 December 2012, some members called on the Administration to follow up the UN Committee's recommendations on strengthening the authority of the Commissioner for Rehabilitation ("C for R") and introducing an independent monitoring mechanism according to Article 33(2) of UNCPRD¹ that involved the active participation of persons with disabilities and their representative organizations.

¹ According to Article 33(2) of UNCPRD, "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights."

16. The Administration advised that it was reviewing the duties, responsibilities and ranking of the post of C for R, as well as the establishment and manpower of his/her team. The Administration expected to report the progress to the relevant Panel in 2013.² As regards the monitoring mechanism, the Administration explained that RAC had been assuming the role of monitoring the implementation of UNCPRD in HKSAR in addition to assisting the Government in promoting the Convention. The Chairman, Vice-Chairman and members of RAC were all non-officials and able to reflect the views of persons with disabilities. RAC comprised persons with different disabilities, parents of persons with disabilities, representatives from self-help organizations of persons with disabilities and non-governmental organizations providing rehabilitation services, etc. Representatives of relevant government bureaux and departments also served as ex-officio members to provide the necessary support to RAC and to follow up the issues raised by RAC as appropriate.

17. Some members, however, considered that RAC fell short of the expectations of persons with disabilities, who had all along demanded for the setting up of a dedicated committee to promote the rights of persons with disabilities. These members expressed concern that RAC was only an advisory body with no power on matters of resources deployment for the promotion and protection of the rights of persons with disabilities.

18. The Administration advised that RAC also had the function of advise the Government on relevant policies to ensure perspectives of persons with disabilities were taken into account, and assisting the Government in promoting and monitoring the implementation of UNCPRD. With EOC being the statutory and independent enforcement agency of DDO, and RAC being the principal advisory body of the Government on the rights and well-being of persons with disabilities, the Administration considered the existing monitoring mechanism appropriate.

Job opportunities and wage levels of persons with disabilities

19. At the Panel meeting on 18 June 2012, some members expressed concern about the possible adverse impact of the introduction of the Minimum Wage Ordinance (Cap. 608) ("MWO") on the job opportunities of persons with disabilities with impaired productivity, as employees with disabilities enjoyed the same entitlement to the statutory minimum wage as able-bodied employees. Members also enquired about the availability of incentives to encourage recruitment of disabled employees, e.g. subsidy to employers for provision of facilities to disabled employees and tax exemption.

² The Panel on Welfare Services was consulted on and supported in principle the proposals of upgrading the post of C for R and strengthening the directorate manpower of the Rehabilitation Team of LWB on 10 March 2014. These proposals were approved by the Finance Committee on 11 July 2014.

20. The Administration advised that in response to public concern over the possible impact of the implementation of MWO on persons with disabilities' job opportunities, the voluntary productivity assessment under MWO was introduced so as to strike a reasonable balance between providing wage protection to persons with disabilities and safeguarding their employment opportunities. Under MWO, employees with disabilities, not their employers, had the right to invoke the assessment which assessed the productivity of the employees concerned in the authentic workplace. The assessment served to determine the extent, if any, that the disabilities affected the degree of productivity of the employees in performing their work so as to determine whether they should be remunerated at no less than the statutory minimum wage level or at a rate commensurate with their productivity. For employees with disabilities who were already in employment and had opted for the assessment before the implementation of MWO, they would be paid no less than their original contractual rates prior to undergoing the assessment. This special arrangement for employees with disabilities had been formulated after detailed discussions between the Administration and various stakeholders.

21. At the Panel meeting on 17 December 2012, some members expressed concern that although employees with disabilities had the right to invoke the productivity assessment under MWO, these employees seldom invoked the assessment for fear that they might be dismissed by their employers as a result. These members suggested that to address the problem, in situations where Government subsidies were involved, all the employees with disabilities should be arranged to take the productivity assessment. By the assessment, those who were found being underpaid should have their wage raised to a rate commensurate with their productivity, and no one would be paid less otherwise. Members also criticized the Administration for refusing to introduce a quota system for employing persons with disabilities on the one hand and taking no measures to tackle the high unemployment rate of persons with disabilities on the other.

22. The Administration advised that it had not adopted a quota system for employing persons with disabilities having regard to overseas experience where the implementation of mandatory quota systems had proven to be unsuccessful. Some countries had, in fact, abolished such systems and had, instead, strengthened provision of support measures to enhance the employment prospects of persons with disabilities. In order to create job opportunities for persons with disabilities, the Social Welfare Department had granted seed money to non-governmental organizations for setting up small enterprises through the "Enhancing Employment of People with Disabilities through Small Enterprise Project" ("3E's Project"), and further injected \$100 million into the 3E's Project in early 2012 to sustain its momentum. In tandem, the incentive payment under

the "Work Orientation and Placement Scheme" had also been enhanced. Besides, employers of persons with disabilities would be subsidized for procuring assistive devices and carrying out workplace modification works, thereby enabling persons with disabilities to work more efficiently and facilitating them to secure open employment.

23. At the same meeting, some members expressed concern about the UN Committee's comment that the daily allowance for persons with disabilities in sheltered workshops was too low and "bordering exploitation". The Administration advised that it would continue to keep in view the need for adjusting the incentive payment for sheltered workshop users after taking into consideration changes in the Consumer Price Index (A) and relevant factors.

Promotion of sign language

24. At the Panel meeting on 17 December 2012, some members urged the Administration to address the shortage of sign language interpreters and take active measures to meet the educational needs of children with hearing impairment in order to facilitate their development and integration into the community. They considered that the lack of sign language interpreters had hindered the promotion of sign language in Hong Kong. There was also a suggestion that sign language should be adopted as an official language in Hong Kong.

25. The Administration advised that it would strive to adopt appropriate measures to facilitate persons with disabilities in communication, including persons with hearing impairment in the use of sign language or alternative modes in communication with others. To promote the use of sign language and enhance social inclusion, a Working Group had been formed under RAC since May 2010 to advise the Government on ways to promote sign language. The Working Group would continue to examine issues relating to sign languages, such as the training and accreditation of sign language interpreters. As regards the suggestion that sign language should be adopted by the Government as an official language, the Administration advised that the Working Group, having considered the views of various stakeholders, concluded that priority should be given to the promotion of sign language for the time being to facilitate popularization and development of sign language. The question of whether sign language should be adopted as an official language would be examined after a common form of local sign language had evolved over time.

Recent development

26. The Panel will discuss the outline of topics in the second report of HKSAR with deputations and the Administration at the next meeting on 30 April 2018.

Relevant motion and papers

27. At the Council meeting of 27 November 2013, Hon LEUNG Yiu-chung moved a motion on "Facing up the needs of persons with disabilities" urging the Government to implement UNCRPD on various policy levels, and face up to the needs of persons with disabilities. The motion, as amended by Hon IP Kin-yuen, Hon WONG Kwok-hing and Dr Hon Fernando CHEUNG, was passed by the Council. The wording of the passed motion is in **Appendix I**.

28. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix II**.

Council Business Division 2
Legislative Council Secretariat
24 April 2018

(Translation)

Motion on
“Facing up to the needs of persons with disabilities”
moved by Hon LEUNG Yiu-chung
at the Council meeting of 27 November 2013

Motion as amended by Hon IP Kin-yuen, Hon WONG Kwok-hing and Dr Hon Fernando CHEUNG

That, as the resources and support currently provided by the Government to persons with disabilities are very insufficient, this Council urges the Government to implement the United Nations Convention on the Rights of Persons with Disabilities on various policy levels, and face up to the needs of persons with disabilities especially in areas such as healthcare, education, welfare, employment and transportation, etc., so as to create a truly inclusive society; the relevant measures should include:

Healthcare —

- (1) to review the definition of disabilities under the various policies on persons with disabilities, and reform the definition under the Disability Allowance by deleting the outdated provisions linked to ‘a 100% loss of earning capacity’ and replacing them by international disability standards and assessment methods;
- (2) to comprehensively review and raise the amounts of the Disability Allowance to enable persons with disabilities to adequately meet medical and healthcare expenses, etc.;

Education —

- (3) to comprehensively review the integrated education policy, including the subsidy systems, manpower establishment and training, assessment systems, continuous education arrangements, overall culture and public education, and consider legislating for protecting students with disabilities and those with special learning needs;
- (4) to allow the expeditious relocation, redevelopment, alteration or improvement of the premises of certain special schools which are excessively dilapidated, cramped and substandard;

- (5) to allocate additional resources for assisting primary and secondary schools as well as tertiary institutions which provide integrated education in upgrading their hardware facilities, including improving the designs of classrooms and public space, and procuring assistive devices such as font magnifiers, etc., so as to build up truly barrier-free campuses;
- (6) to allow schools which admit a relatively large number of students with disabilities and special learning needs to employ more permanent teachers as well as professional support and counselling personnel, so as to strengthen the support for such students;
- (7) to enhance the subsidies and support services for students with disabilities to purchase, repair and maintain assistive devices;
- (8) to step up the promotion of sign language, implement sign language programmes in primary and secondary schools and provide sign language interpretation in television news reports, so as to facilitate the deaf-mute to integrate into society;

Welfare —

- (9) to increase the places in residential care homes for persons with disabilities and provide carer subsidies to carers of persons with severe disabilities, so as to protect the livelihood of persons with disabilities in residential care homes or in the community;

Employment —

- (10) to establish a quota system for employing persons with disabilities and provide minimum wage subsidies; the Government and subvented organizations should take the lead in employing more persons with disabilities, with 2% as the target rate, and disclose by various departments and organizations their status on employment of persons with disabilities; other larger-scale public organizations such as the MTR Corporation Limited and the Airport Authority, etc. should also take the lead in employing more persons with disabilities;

Transportation —

- (11) to extend the scope of the Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities (i.e. ‘concessionary

fare of \$2 per trip') to cover persons with disabilities under the age of 12, and make it applicable to green minibuses across the territory; and

- (12) to improve the existing barrier-free access and install electronic route display panels and next stop announcement systems on various means of public transport; and

Healthcare —

- (13) to allow persons with loss of one limb to also receive Disability Allowance;
- (14) to introduce a special disability allowance at a rate higher than that of the existing higher disability allowance, so as to target persons with severe disabilities who require intensive care to help them meet the related expenditure;

Welfare —

- (15) to allow persons with disabilities to apply for Comprehensive Social Security Assistance on an individual basis; and

Transportation —

- (16) to expeditiously install MTR platform screen doors and screen door warning lights, so as to protect the safety of visually impaired persons, the deaf and persons with hearing impairment.

Appendix II

Relevant documents on Reports 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 raised by Hon Emily LAU)
Panel on Constitutional Affairs ("CA Panel")	19.3.2010 (Item IV)	Agenda Minutes
Legislative Council	26.5.2010	Official Record of Proceedings Pages 119 – 122 (Written question raised by Hon Emily LAU)
Subcommittee on Improving Barrier Free Access and Facilities for Persons with Disabilities under the Panel on Welfare Services	29.5.2012 (WS Panel meeting)	Report of the Subcommittee on Improving Barrier Free Access and Facilities for Persons with Disabilities
Legislative Council	30.5.2012	Official Record of Proceedings Pages 36 – 48 (Oral question raised by Hon Albert HO)
	13.6.2012	Official Record of Proceedings Pages 131 – 135 (Written question raised by Hon Emily LAU)
CA Panel	18.6.2012 (Item II)	Agenda Minutes

Committee	Date of meeting	Paper
Legislative Council	31.10.2012	Official Record of Proceedings Pages 7 – 19 (Oral question raised by Hon Emily LAU)
	21.11.2012	Official Record of Proceedings Pages 269 – 359 (Motion moved by Hon LEUNG Yiu-chung)
CA Panel	17.12.2012 (Item V)	Agenda Minutes
Legislative Council	27.11.2013	Official Record of Proceedings Pages 286 – 388 (Motion moved by Hon LEUNG Yiu-chung)

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