The Forthright Causus

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Submission to Special Rapporteur on the Rights of Persons with Disabilities

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Hong Kong is known as a prosperous international city with an enviably high level of economic development and a low unemployment rate; however, persons with disabilities continue to face all forms of discrimination perpetrated by the government and by society. For persons with disabilities who wish to enter the workplace, the lack of appropriate employment support and riddled welfare policies present severe obstacles. Huge medical rehabilitation expenses and poor living conditions after retirement are also among the issues that concern persons with disabilities. Without a serious effort to address the foregoing issues, the living conditions and situation of persons with disabilities in Hong Kong will only continue to worsen despite the apparent wealth of the country. We would thus like to urge the United Nations Committee on the Rights of Persons with Disabilities to closely monitor the progress concerning the protection of human rights and dignity of persons with disabilities in Hong Kong, so that they can equally participate in and build society with others.

According to a 2013 situation report on poverty among persons with disabilities in Hong Kong, the poverty rate for persons with disabilities was 45.3 % before policy intervention (i.e. before taking into account the impact of taxation and social welfare transfers), and 29.5% after policy intervention. As a comparison, the overall poverty rate of the general population over the same period was 19.9% before policy intervention and 14.5% after policy intervention. These statistics illustrate the serious poverty situation facing persons with disabilities in Hong Kong. Especially for persons with intellectual disabilities, for those who still have training in sheltered workshops, some of them even cannot have their own bank accounts! They don’t even have any control over their financial matters. They are truly the poorest of the poor. They also are deprived of their rights to have real work and real wages.

1. **Discrimination against persons with disabilities in minimum wage productivity assessment mechanism**

The minimum wage legislation in Hong Kong, which came into force in 2011, contains a minimum wage productivity mechanism for persons with disabilities (the “**Mechanism**”). However, not only does the Mechanism fail to assist persons with disabilities with their employment, but it also is in effect a government-led institutional discrimination against persons with disabilities.

Since the implementation of the Mechanism, there are only about 100 assessments every year. The number of assessments is decreasing every year and in 2013, it fell to only 69. This demonstrates that persons with disabilities reject the assessments by the Mechanism and it fails to assist their employment.

Furthermore, the Mechanism itself is a blatant discrimination against persons with disabilities. When the Mechanism was introduced, it was recognized that it constitutes discrimination against prospective and current employees with disabilities under the Disability Discrimination Ordinance (Chapter 487 of the Laws of Hong Kong) (the “**DDO**”) at that time, and the government therefore a Even if the Mechanism is a legal exception, however, the fundamental nature of the Mechanism remains as one that tramples on the dignity of persons with disabilities.

Under Article 27 of the Convention on the Rights of Persons with Disabilities (“**CRPD**”), persons with disabilities enjoy the right to work on an equal basis with others in society, including the opportunity to freely choose and accept work in an open, inclusive and accessible labour market and working environment. Work is more than earning a living and maintaining a livelihood – it is also a means to restore dignity and recognition to persons with disabilities. All people, whether abled or disabled, have the right to work with dignity. The Mechanism perpetuates inequality against people with disabilities, violates human rights, and must be abolished.

1. **Lack of Employment Support**

Compared to others in society, persons with disabilities face greater difficulties in finding employment; even for those who are employed, they typically earn lower wages than others. According to the Hong Kong Poverty Situation Report on Disability 2013, released by the end of 2014 by the Census and Statistics Department (“**CSD**”) of the Hong Kong Government, only 39.1% of working-age persons with disabilities were economically active, a number which was far lower than the 72.8% rate for the general population. In relation to unemployment, the unemployment rate for these economically active persons with disabilities was 6.7%, which was again higher than the corresponding figure for the general population (3.7%). According to another survey in 2013 conducted by The Hong Kong Society for Rehabilitation (“**HKSR**”), the median income of persons with disabilities is only about 50% of that of the abled population. Both the CSD’s report and the HKSR’s survey show that the employment situation for persons with disabilities in Hong Kong is extremely bad, and that the government fails to provide adequate employment support to persons with disabilities.

Documents that the government submitted to the legislature appear to show that 2% of government employees are persons with disabilities, a figure that has been stable throughout the years and seems to accord to the standards of developed countries. However, a closer examination of the statistics reveals that, in the past 11 years and as a matter of proportion, there are actually fewer new recruits with disabilities who start employment with the government than those who leave the government. Statistically, for each person with disabilities newly recruited by the government, there are about 9 persons with disabilities who left, and 8 existing abled employees would be converted into employees with disabilities to fill the gap. If we look only at the new recruits by the government, persons with disabilities in fact only constitute about 0.5% of the new recruits each year for the past 11 years. We are concerned about potentially misleading figures about the government’s employment of persons with disabilities. We strongly urge the government to set a 2% employment quota for persons with disabilities in government departments and public bodies, so as to bear the responsibility of leading the employment of persons with disabilities.

In addition, we also suggest the government to provide incentives for the private sector to employ persons with disabilities, as well as to strengthen the employment by social enterprises of persons with disabilities. The employment policies of public sector should have a demonstrative effect on the private sector, and it is necessary for the government to lead in the employment of persons with disabilities, as stated above. Further to that, we also suggest the government to provide subsidies or tax incentives to the private sector, in order to incentivize the private sector and social enterprises to employ more persons with disabilities.

1. **Crude and outdated disability benefits assessment**

The Disability Allowance (“**DA**”) scheme has been around in Hong Kong for over 40 years and various aspects of it have become outdated. In particular, the definition of “severely disabled” used in the Disability Allowance assessments continue to “refer” to that used in the Employees’ Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) (“**ECO**”), i.e. a degree of disablement broadly equivalent to a person with 100% loss in earning capacity, a definition that is outdated and narrow in contemporary society.

The DA scheme is a source of longstanding concern, to which the Office of the Ombudsman in Hong Kong initiated a direct investigation in 2009. In their report, the Ombudsman mounted criticisms, amongst others, towards the crude and outdated classification and assessment of medical categories, and recommended a comprehensive review of the DA scheme, including the eligibility criteria, the definitions of disability and the medical assessment mechanisms. Paragraph 22 of the report even stated unequivocally that the reference to “100% loss of earning capacity” should be removed from the eligibility criteria of the DA scheme. The UN Committee on the Rights of Persons with Disabilities (“**CommRPD**”) (8th Session, 17-28 September 2012) had also expressed that the assessments are outdated, and the definitions of “disability” in various laws and used by government departments and bureaus are inconsistent. All of the above show that the government should have understood for a long time that the DA scheme must be revamped.

Together with various other organizations that are concerned about the rights of persons with disabilities, we have voiced out for numerous times that problems with the existing DA scheme, but the Social Welfare Department has ignored us and has still not considered reviewing the DA scheme. According to Report No. 62 of the Census and Statistics Department, in 2013 there are over 600,000 persons with disabilities in Hong Kong, but the DA scheme benefits only around 130,000 or about 20% of them. This means that most of the persons with disabilities who need the DA to meet daily expenses and difficulties are unable to receive financial support simply because of the crude and outdated system. This is an outrageous negligence and represents an indifference to the rights of persons with disabilities.

1. **Persons with disabilities unable to personally apply for CSSA**

The CommRPD (8th Session) in its Concluding Observations to Hong Kong in 2012 recommended that “Hong Kong, China, replace the family-based assessment with an individual-based one in order to determine the eligibility to receive the Comprehensive Social Security Assistance.”

The Comprehensive Social Security Assistance (“**CSSA**”) requires that persons with disabilities who live together with their family apply for CSSA as a family unit, a requirement that ignores the practical needs of persons with disabilities. Since persons with disabilities face greater difficulties in finding employment, and often have to bear expensive medical and rehabilitation expenses, they often have greater financial pressures. Many of them need the CSSA in order to receive financial support from public healthcare bodies. Yet the requirement that they apply together with their family as a family unit means that many persons with disabilities would not be eligible for CSSA simply because, taken as a whole, their household income exceeded the eligibility limits. The medical and rehabilitation expenses of persons with disabilities then became huge financial burdens on their families.

If persons with disabilities can apply for CSSA through as individual-based rather than a family-based assessment, their living conditions would improve tremendously. We thus very much regret the Hong Kong government’s years of inaction in relation to the said recommendation by the CommRPD.

1. **Universal Retirement Pension**

Up till now, Hong Kong still does not have a universal retirement protection system. As mentioned above, the employment situation of persons with disabilities are far worse than others in society. Even if there is a full-time job for disabled, their income is nevertheless lower than other groups, which means that persons with disabilities often have little or even no savings for their retirement.

The existing system of retirement protection in Hong Kong – the Mandatory Provident Fund (“**MPF**”) – operates by way of each individual contributing a percentage of his income to his own MPF fund. Persons with disabilities, who are often unable to find employment or work in low-income jobs, are hardly capable of contributing to their own MPF and are thus largely unprotected by the retirement protection system in Hong Kong. In addition to the dire retirement situation of persons with disabilities, the lack of a comprehensive community-based care services in Hong Kong means that many carers need to give up their jobs in order to take care of persons with disabilities. The implementation of a universal retirement pension system is therefore essential to the protection of persons with disabilities and their carers.

1. **Education and Poverty Alleviation**

Education and poverty have a significant relationship. The abovementioned 2013 poverty situation report on persons with disabilities pointed out that the low education level of persons with disabilities confined them to taking work with low technical requirements. In contrary, the better education policies for the abled people have proven to be effective in alleviating poverty.

At present, persons with disabilities and students with special educational needs face a lot of extra spending on education, including the associated rehabilitation supplies, treatment and training, etc. When the education and social welfare system fails to meet their needs, the students' families would then have to seek the relevant services from the market. The government needs to review the existing education system, including special education and inclusive education, in order to fulfill the students’ needs, and provide them with suitable financial support.

In Hong Kong, the proportion of persons with disabilities and students with special needs pursuing tertiary education is very low. In the past few years, only about 1% of the students with disabilities and special education needs are able to pursue tertiary education. Failure to attend universities limits the social mobility of persons with disabilities. The government must examine whether the existing curriculum and education system studies is suitable for persons with disabilities. In view of the lack of places at local universities, the government may also consider financial assistance to students with disabilities and special education needs for oversea further studies.

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