Suggestions for disability-relevant questions for consideration for the
List of Issues for Country report task force
Human Rights Committee, 106th Session

The International Disability Alliance (IDA) has prepared the following suggestions for the list of issues, based on references to persons with disabilities to be found in the State report submitted to the Human Rights Committee and on concluding observations of other treaty bodies (see Annex).

HONG KONG

China ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 1 August 2008.

IDA proposed questions for the List of Issues:

• What measures are in place to collect data and statistics on persons with disabilities for targeted and effective policymaking? (see Concluding Observations of the CRC Committee, CRC/C/CHN/CO/2, 2005, paras 60 & 61(a), in Annex below)

• What steps are being taken to ratify the Optional Protocol to the CRPD?

Articles 3, 7

• What steps have been taken to address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse and exploitation in the home, community and institutions? What measures are being adopted to ensure sanctions for perpetrators, services (including shelters), information and complaints mechanisms for victims are made accessible to persons with disabilities, including training for police and other interlocutors?

Articles 2, 7, 9, 16, 26

• What measures are being adopted to ensure that all health care and services, provided to persons with disabilities, including all mental health care and services, are based on the free and informed consent of the person concerned (and cannot be substituted by third party decision-makers such as family members or guardians), and that involuntary treatment and confinement are not permitted by law in accordance with the CRPD?1

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1 Further, OHCHR Thematic Study on enhancing awareness and understanding of the CRPD, A/HRC/10/48, 26 January 2009, para 49; “Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished. This must include the repeal of provisions authorizing institutionalization of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorizing
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Articles 16, 19 & 25

- What steps are being taken to repeal law and policy which has the purpose or effect of denying or diminishing recognition of any person as a person before the law, or of denying or diminishing any person’s ability to exercise legal capacity which is contrary to Article 16 ICCPR and Article 12 CRPD?

- What steps are being taken to repeal Sections 31, 39 and 51 of the Legislative Council Ordinance and Sections 30, 14(2), 19(2)(3) and 24(3) of the District Councils Ordinance which exclude people with intellectual or psychosocial disability from voting and standing for election which is in violation of the right to political participation as set out in Article 25, ICCPR and Article 29, CRPD?

- What measures are being adopted to ensure the accessibility of polling stations, booths and voting material, including by permitting an individual an assistant of their own choice to help them to vote, without external surveillance? How is information on elections and political campaigns being made accessible in the lead up to elections? For those who cannot go to the polling stations in person (for example, persons in institutions, hospitals and correctional facilities), are alternative ways of voting being developed and implemented?

Articles 19, 27

- What measures are being adopted to ensure access to information to persons with disabilities on an equal basis with others?

- Please explain if the HKSAR Government recognises and promotes the use of sign languages. Is sign language interpretation made available in public services such as in hospitals, courts, public administration and services, and on public broadcasting programmes? Is there a formal qualification system for sign language interpreters in HK to ensure streamlined and quality standards of sign language interpretation?

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the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness.” See also OHCHR information note no 4. “The existence of a disability can in no case justify a deprivation of liberty.” http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf; “The Special Rapporteur notes that the acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention on the Rights of Persons with Disabilities.” Report of the Special Rapporteur on Torture, 28 July 2008, A/63/175, para 44.)

2 Electoral Law Legislative Council Ordinance (1997, last amended 2011) Section 31, subsection (1) states, “A natural person is disqualified from being registered as an elector for a constituency if the person...(d) is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs.” Section 39, subsection (2) states, “A person is also disqualified from being nominated as a candidate at an election if the person has been found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her own property and affairs, but a person disqualified under this subsection is eligible for nomination as a candidate if, under the Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs.”

District Councils Ordinance (1999, last amended 2011) Section 30 states, “An elector is disqualified from voting at an election if the elector...(e) is found under the Mental Health Ordinance (Cap 136) to be incapable, by reason of mental incapacity, of managing and administering his or her property and affairs.” See Section 14(2), 19(2), 21(2) and (3), and 24(3) for disqualification from district council elections based on mental disability. These provisions are the same as those regarding the Legislative Council.

3 This is confirmed in OHCHR thematic study on participation in political and public life by persons with disabilities which explicitly states that there is no reasonable restriction or exclusion permitted regarding the right to political participation of persons with disabilities. A/HRC/19/36, 21 December 2011.
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State report

Select references to persons with disabilities:

Residential childcare services
291. The underlying principle of residential child care services, as mentioned in the previous report, is that a family setting is preferred to an institutional one. This is particularly important in the case of younger children. As at 30 June 2010, there were a total of 1,865 non-institutional residential care placements, compared with 1,535 as at 30 June 2003 as reported in the previous report.

Child abuse and domestic violence
297. Some commentators expressed concerns over cases involving parents committing suicide with their children, or neglecting children by leaving them unattended. They asked the Government to strengthen public education on the right to life of children and provide support to parents with mental health problems.
299. We strive to provide suitable support services for parents with disabilities, including those with mental health problems. All along, the Hospital Authority has been promoting the importance of mental health through its provision of psychiatric services. The Department of Health has also included mental health in its public health education programme. The measures taken by the HKSAR Government in this respect was elaborated under article 23 of the initial report of the HKSAR under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Article 26
Right to equal protection before the law
Legislation against racial discrimination
360. Some commentators expressed concerns that the definition of “indirect discrimination” is too narrow. The RDO defines indirect discrimination in the same manner as the three anti-discrimination ordinances previously enacted on sex, disability and family status respectively. The proportionality test in the definition is in line with the general principle under international human rights jurisprudence. The definition covers various requirements or conditions. Whether a particular requirement or condition would give rise to indirect discrimination would depend on the factual circumstances of the case.

Disability discrimination
366. The general framework of the legal protection for persons with disabilities is explained in the relevant sections of the HKSAR Common Core Document. It was also elaborated under article 5 of the initial report of the HKSAR under the UNCRPD. Under article 5 of the UNCRPD, States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
367. Some commentators expressed concern on the discrimination faced by persons with mental health problems or persons recovering from mental illness, and reiterated the request to establish a mental health council. The Disability Discrimination Ordinance (Cap. 487) provides the legal means to ensure equal opportunities for persons with disabilities (including persons with mental health problem) and to facilitate their integration into the community to the fullest extent possible.
368. At present, the Food and Health Bureau assumes the responsibility in coordinating policies and programmes on mental health. It works closely with the Labour and Welfare Bureau and coordinates various government departments and agencies including the Hospital Authority, the Department of Health and the SWD in the implementation of relevant measures. We seek to provide medical and rehabilitation services to patients with mental health problems through a multi-disciplinary and cross-sectoral team approach. The mental health services are kept under review on a continuous basis by the Working Group on Mental Health Services. The Working Group is chaired by the Secretary for Food and Health and its members comprise academics, relevant professionals and service providers. The Government takes into account their views in making adjustment to existing services and formulating new service initiatives. The existing system has worked well to provide coordinated and comprehensive services to mental patients.

369. Furthermore, the HKSAR Government strives to enhance public awareness on mental health, promote public acceptance of persons with mental illness and encourage social inclusion of persons recovering from mental illness with a view to eliminating stigmatization and assisting them to re-integrate into society. The measures taken by the HKSAR Government in this respect were elaborated under article 8 of the initial report of the HKSAR under the UNCRPD.
ANNEX - References to persons with disabilities by other treaty bodies with respect to Hong Kong

Concluding Observations of the CESCR Committee, E/C.12/1/ADD.107, 2005 (including Hong Kong and Macau)

II. HONG KONG SPECIAL ADMINISTRATIVE REGION

B. Positive aspects
74. The Committee welcomes the extensive efforts made by HKSAR, including sensitization campaigns, to combat prejudices and discrimination against persons with physical and mental disabilities.

D. Principal subjects of concern
78. The Committee regrets that HKSAR has not implemented a number of the recommendations contained in its concluding observations of 2001. The Committee wishes to reiterate in particular its concern at the following issues:
   (e) The exclusion of many individuals, including women who are homemakers, persons with disabilities and older persons, from the Mandatory Provident Fund Scheme, due to their inability to make sufficient voluntary contributions;
87. The Committee, while noting the generally high level of enjoyment to health in HKSAR, remains concerned that spending on public hospitals has been on the decline, resulting in longer waiting lists for patients. The Committee is also concerned that under the current fee waiver system, low-income patients still do not receive the most appropriate medical care. The Committee further notes with regret that many of the expensive drugs required by chronically ill and mentally ill patients are not subsidized, and are thus in practice denied to these patients.

E. Suggestions and recommendations
99. The Committee urges the State party to continue its efforts to improve its health services, inter alia, through the allocation of adequate and increased resources. The Committee recommends HKSAR to consider revising the current list of subsidized drugs to meet the needs of the chronically and mentally ill. The Committee encourages the State party to submit in its next periodic report annually collected comparative data, disaggregated by sex, age and urban/rural residence, paying particular attention to disadvantaged and marginalized groups.
111. The Committee expresses its concern that persons with disabilities are not sufficiently integrated in the labour market.

Concluding Observations of the CRC Committee, CRC/C/CHN/CO/2, 2005 (including Hong Kong and Macau Special Administrative Regions)

Right to life
28. The Committee notes with satisfaction the legal measures enacted to prohibit selective abortions and infanticide in mainland China. Nevertheless it remains concerned that selective abortions and infanticide as well as the abandonment of children, in particular girls and children with disabilities, continue as negative consequences of existing family planning policies and societal attitudes.
29. The Committee urges the State party to continue and strengthen its efforts to guarantee the right to life, survival and development of all children in its territory. It recommends that the State party strengthen its implementation of existing laws against selective abortions and infanticide and take all necessary measures to eliminate any negative consequences arising from family planning policies, including abandonment and non registration of children and unbalanced sex ratios at birth.
Non discrimination
30. While noting efforts by the State party to address the Committee’s previous concerns related to discrimination, it remains concerned about discrimination against certain groups on the mainland, such as girls; children infected with or affected by HIV/AIDS; children with disabilities; ethnic and religious minorities, such as Tibetan, Uighur and Hui children; and internal migrant children.
31. The Committee is concerned about the persistence of discrimination against refugee, asylum seeking and undocumented migrant children in the Hong Kong SAR, and the lack of legislation specifically prohibiting discrimination on the basis of race or sexual orientation. The Committee regrets the lack of available information on the practical implementation of article 2 of the Convention in the Macau SAR.
32. The Committee recommends that on the mainland the State party strengthen efforts to eliminate discrimination against girls; children infected with or affected by HIV/AIDS; children with disabilities; Tibetan, Uighur and Hui children and children belonging to other ethnic and religious minorities; internal migrant children and other vulnerable groups by:
   (a) Ensuring that these children have equal access to basic services, including health, education and other social services, and that services used by these children are allocated sufficient financial and human resources;
   (b) Enhancing monitoring of programmes and services implemented by local authorities with a view to identifying and eliminating disparities.
33. The Committee recommends that in the Hong Kong SAR the State party expedite its efforts to draft and adopt legislation prohibiting discrimination on the basis of race or sexual orientation. The Committee requests that in its next periodic report specific information be included on the practical implementation of article 2 in the Macau SAR.
34. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and taking account of Committee’s general comment No. 1 (2001) on the aims of education.

Birth registration
42. The Committee notes with appreciation the significant efforts made by the State party to address the Committee’s previous concerns regarding the non registration of children at birth. However, it continues to be concerned that, in part because of existing family planning policies, all children are not systematically registered immediately after birth in mainland China, and that this disproportionately affects girls, children with disabilities and children born in some rural areas.
43. The Committee recommends that the State party continue to strengthen its efforts to ensure that all children, in particular girls and children with disabilities, are registered immediately after birth and to provide flexible measures to allow older children who have not been registered to do so throughout mainland China, with a particular emphasis on rural areas. It further suggests that the State party consider revising the Hukou system of registration in order to reinforce such initiatives.

Children with disabilities
60. With respect to mainland China, the Committee is concerned about:
   (a) The lack of specific disaggregated data on children with disabilities;
   (b) The narrow definition of disability;
   (c) The significant discrepancy in the number of children with disabilities in urban and rural areas;
   (d) The exception made to the one child policy whereby families who have a child with disabilities are allowed to have a second child, which promotes de facto discrimination against children with disabilities.
61. The Committee recommends that the State party take into account the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the recommendations adopted by the Committee on its day of general discussion on the rights of children with disabilities (see CRC/C/69) to ensure the implementation of all the principles and provisions of the Convention for children with disabilities within its jurisdiction. It further recommends that in mainland China, the State party:
(a) Strengthen its system of data collection to ensure the availability of precise data on children with disabilities, disaggregated by sex, age, rural or urban area, living arrangements and type of disability;
(b) Establish a definition that adheres to internationally accepted standards;
(c) Take all necessary measures to eliminate de facto discrimination against children with disabilities, in particular the abandonment of such children.

Concluding Observations of the CESCR Committee, E/C.12/1/ADD.58, 2001 (Hong Kong Special Administrative Regions)
20. The Committee expresses its regret that in relation to the care of persons with mental illness, HKSAR is reluctant to authorize the prescribing of new drugs that are more costly but more effective and have been shown to produce fewer side effects for the mentally ill. In addition, the Committee notes with concern the apparent lack of initiative on the part of HKSAR to undertake public education to combat discrimination against those with mental disabilities.
21. The Committee is concerned that many individuals, including women who are homemakers, persons with disabilities and older persons, are excluded from the Mandatory Provident Fund Scheme.

36. The Committee urges HKSAR to adopt a comprehensive pension system that provides adequate retirement protection for the entire population, in particular for housewives, self-employed persons, older persons and persons with disabilities.
45. The Committee recommends that HKSAR undertake a comprehensive review of mental health policy and adopt effective measures to ensure that persons with mental illness enjoy the right to adequate and affordable health care. The Committee urges HKSAR to provide public education to combat discrimination against persons with mental illness.