INTERNATIONAL DISABILITY ALLIANCE (IDA)

Member Organisations:
Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families, Pacific Disability Forum

IDA submission to the Human Rights Committee on
Hong Kong, 107th session

HONG KONG

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

Articles 2, 16, 25, 26 ICCPR

There is an exclusion from the right to vote and stand for election inscribed in Hong Kong's electoral law which is directed at persons with disabilities and persons whose legal capacity has been restricted or removed.

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.”
- Section 39, subsection (3) states, “A person is also disqualified from being elected as a Member 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 property and affairs, but a person disqualified under this subsection ceases to be disqualified if, under the Ordinance, it is subsequently found that the person has become capable of managing and administering his or her property and affairs.”
- Section 51, subsection (5) states, "An elector (including a member of the Election Committee) is also disqualified from voting at an election if the elector...(d) is, in accordance with the Mental Health Ordinance (Cap. 136) found by the Court to be of unsound mind and incapable of managing himself or herself and his or her 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 also Sections 14(2), 19(2), 21(2) and (3), and 24(3) for disqualification from district council elections on the same basis.

Furthermore, persons with disabilities cannot be assisted in voting by a person of their own choice at the polling stations. Only officials at polling stations are allowed to assist them to vote. Also, there are no arrangements for persons with disabilities who cannot go to polling stations in person (for example, living in institutions and hospitals).

Proposed Recommendations to the Government:

- Take steps to remove provisions from the Legislative Council Ordinance and District Council Ordinance that exclude from the right to vote and stand for election persons with disabilities found to be "incapable by reason of mental incapacity" (sections 31, 39, 51, and sections 14, 19, 21, 24 & 30 respectively) which is violation of Article 25, ICCPR and Article 29, CRPD and contrary to the latest international standards on political participation.

- Take steps to ensure there is the possibility for persons with disabilities to be assisted in exercising their right to vote by a person of their own choosing, and for arrangements to be made for persons who are living in institutions and who are in hospitals to vote who cannot attend polling stations in person.

- Reform the law in accordance with Article 16, ICCPR and Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) to guarantee the equal recognition before the law of persons with disabilities, including the adoption of measures to ensure that having a disability does not directly or indirectly disqualify any person from exercising his or her legal capacity autonomously, and to ensure that persons with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned.

- Ensure that persons with disabilities, including persons with psychosocial and intellectual disabilities, can enjoy the right to liberty and security of person, and are not deprived of their liberty unlawfully or arbitrarily, and that the existence of a disability shall in no case justify a deprivation of liberty.

- Adopt measures to ensure that all health care and services provided to children and adults with disabilities, including all mental health care and services, are based on the free and informed consent of the individual concerned, and ensure the development of these services in the community.