



Disability Rights - Legal Capacity, Institutionalisation, Police Powers

There were no recommendations made on the Hong Kong Special Administrative Region, China (HKSAR) in the Second UPR Cycle.

Framework in HKSAR

The Commissioner for Rehabilitation is responsible for the overall strategy relating to disabilities. However, various reviews, such as those of the Rehabilitation Program Plan and the Mental Health Ordinance, happen at the same time, without an independent monitoring mechanism. The Disability Discrimination Ordinance, the Social Welfare Department, the Labour and Welfare Bureau and the Education Bureau have different definitions of 'disability'. The Convention on the Rights of Persons with Disabilities has been extended to HKSAR. Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been extended to the HKSAR. Article 39 of the Basic Law provides ICESCR shall be implemented through HKSAR laws.

Challenges

Cases, facts and comments

<ul style="list-style-type: none"> Persons in need of support for decision making may lose legal capacity, violating Article 12 of the CRPD. 	<ul style="list-style-type: none"> Under the Mental Health Ordinance (MHO), a person with a 'mental disorder' or 'handicap' can be found to be a mentally incapacitated person (MIP). MIPs face many challenges, including being unable to consent to sexual intercourse under law or to open bank accounts.
<ul style="list-style-type: none"> Medical treatment may be conducted without the informed consent of the person who received it, raising concern over compliance with Articles 10 and 17 of the CRPD about the right to life, the protection of mental and physical integrity and Article 25 of CRPD and Article 12(1) of the ICESCR on the right to health. 	<ul style="list-style-type: none"> There is no provision in legislation to ensure persons receiving medical treatment understand its nature. The CRPD Committee called upon HKSAR to provide necessary psychological treatment based on free and informed consent of the persons and counselling in its concluding observations in 2012. The Government still refuses to repeal compulsory psychiatric treatment orders. Persons in need of support for decision making still report being forced by doctors to consent to medical treatments or hospitalisation.
<ul style="list-style-type: none"> Persons with disabilities have been sent to hospital or arrested without proper interpretation or investigation, violating their right to liberty and security under Article 14 of the CRPD. 	<ul style="list-style-type: none"> A deaf man was sent by doctors to a mental hospital for assessment without sign interpretation. An autistic man with an intellectual disability was arrested and detained for a murder case for 50 hours although the Police received alibi evidence for the autistic man.
<ul style="list-style-type: none"> Persons with disabilities are vulnerable to abuse, in a manner inconsistent with Article 16(2) of the CRPD. 	<ul style="list-style-type: none"> Prosecution for a suspected case of sexual abuse by a care home manager was dropped in 2016 as the MIP victim was not ready to testify in court. Measures to facilitate MIPs to testify were introduced in 1993 and outdated. For persons with disabilities who are unfit to testify in court, video recordings of interviews with the police or social workers cannot be admitted as evidence.



<ul style="list-style-type: none">• Persons with disabilities' right to live in the community under Article 19 of the CRPD is not adequately protected.	<ul style="list-style-type: none">• On average, each resident in residential housing for persons with disabilities or the elderly only has private and public space of 7.5m² in total. The Government has not accepted calls from Legislative Councillors and civil society to raise it to 16m².• The CRPD Committee has recommended Hong Kong allocate more resources to ensuring free choice of accommodation.• Elderly persons have been rejected by care homes because they were HIV positive.• The Ombudsman found in 2017 transportation services for persons with mobile difficulties were 'gravely inadequate'.
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Recommendations

- HKSAR should amend the MHO to (i) recognise that all persons have legal capacity; (ii) recognise the need of support for decision making instead of categorising persons in such need as mentally incapacitated persons; and (iii) allow for third party advocates to assist, in accordance with the CRPD, within one year.
- HKSAR should introduce a clear statutory definition of 'informed consent', ensuring psychological treatment is only provided where necessary, based on free and informed consent, within one year.
- HKSAR should take measures to ensure persons with disabilities are not arbitrarily deprived of their liberty through institutionalization and provide adequate resources for 24-hour community support and/or small group homes.
- HKSAR should provide mandatory periodic training for frontline police officers on catering to people with different expressive needs, including access to trained interpreters, within one year.
- HKSAR should immediately guarantee a minimum of 8 sq. m. for private space plus 8 sq. m. for public space per person for the elderly or persons with disabilities and provide funding to train in-house personnel to work in these residential settings.
- HKSAR should provide comprehensive support to ensure that persons with disabilities can fully exercise their right to live in the community within one year.
- For further related recommendations, see paragraphs 59, 60, 95 and 97 of the submission.

Questions to ask in advance

- *What measures will HKSAR take in the next year to ensure that the MHO is in full compliance with the CRPD, in particular, Article 12 about recognising the legal capacity of all?*
- *How will HKSAR ensure that the rights of persons with disabilities to live in the community under Article 19 of the CRPD are protected in the next three years? In particular, providing adequate space, choice of accommodation and community support services.*

Contact

- Hong Kong UPR Coalition: Simon Henderson, Justice Centre Hong Kong (simon@justicecentre.org.hk, +852 3109 7359)
- Coalition subject matter experts: Sophie Cheung, Disabilities CV (disabilitiescv2016@gmail.com, +852 68183758)
- Hong Kong UPR Coalition submission: <https://bit.ly/2KyGreK>

