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人權
HUMAN RIGHTS

DISABILITIES HUMAN RIGHTS

THE RIGHTS OF PERSONS WITH DISABILITIES ARE HUMAN RIGHTS, NOT WELFARE

CONTENT

EDITORIAL

Editor-in-Chief: Mabel Au

Executive Editor: Debbie Tsui

Editor: Connie Chan / Joyce Chiang / Michael Mo / Angie Tse / Hannah Yip

COLLATION

Jude Hui / Annie Mueller

VOLUNTEER

Lawrence Tse

EDITORIAL ENQUIRIES

+852 2300 1250 / editorial@amnesty.org.hk

DESIGN

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01/ WORDS FROM THE EDITOR-IN-CHIEF IN FOCUS

02/ THE RIGHTS OF PERSONS WITH DISABILITIES ARE HUMAN RIGHTS

04/ CASE STUDY: SOMALIA

05/ CASE STUDY: BULGARIA

06/ INTERVIEW WITH FERNANDO CHEUNG ON THE RIGHTS OF PERSONS WITH DISABILITIES IN HONG KONG

09/ LET US WATCH HUMAN RIGHTS DOCUMENTARIES TOGETHER!

10/ AI GLOBAL CAMPAIGNS

11/ GOOD NEWS

LOCAL HAPPENINGS

12/ THIS IS YOUR PAGE: MICHELE CHUNG

13/ HUMAN RIGHTS PRESS AWARDS, COMMUNITY SCREENING

14/ CARNIVAL

WORDS FROM THE EDITOR- IN-CHIEF

The focus of public discussion on the rights of persons with disabilities is always on welfare resources. However a human rights policy perspective is equally important for the realization of full and equal enjoyment of human rights by persons with disabilities.

The theme of this issue was decided months ago and just before the Bridge of Rehabilitation incident. The incident concerned an allegation of the sexual assault of a female resident with intellectual disability by the former superintendent. The Department of Justice dropped the charges because the lady was declared unfit to testify. This provoked a public outcry for an explanation and the improvement of residential homes by the Social Welfare Department. Quite a number of the public condemned the authority for dropping the charges and granting impunity. However, it is also important to review the existing laws and policies with sensitivity to the situation of persons with disabilities. Providing protection for physical and mental health as well as appropriate supports are essential for implementing equality before the law.

In addition to establishing an accessible community for persons with disabilities, there is a pressing need to remove barriers so as to ensure equal recognition before the law and access to justice by marginalized groups.

An Mei Po

IN FOCUS

THE RIGHTS OF PERSONS WITH DISABILITIES ARE HUMAN RIGHTS

What do you think about disability? In some societies, a disability is regarded as an illness to be cured by medical treatment or rehabilitation. Some societies also treat persons with disabilities as recipients of charity and social welfare. Both approaches perceive disability as an individual problem. However, the Convention on the Rights of Persons with Disabilities (CRPD) adopts a rights-based approach. It recognizes persons with disabilities as rights holders and emphasizes empowerment and equal participation.

CRPD PROTECTS THE RIGHTS OF PERSONS WITH DISABILITIES

Equality and non-discrimination are the core principles of the international human rights instruments. This is stipulated in the International Bill of Human Rights comprising the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2 guarantees that the rights protected by the covenants shall be respected and ensured without distinction of any kind including "other status" which encompasses disability. The Convention on the Rights of the Child has a specific provision on the rights of children with disabilities.

However, persons with disabilities have remained "invisible" and subjected to human rights abuses. This highlights the need for a legally binding treaty. Thanks to advocacy and active participation of persons with disabilities and their organizations, the CRPD was adopted by the United Nations in 2006 and came into force in 2008. It was also applicable in Hong Kong in the same year. Article 1 of the CRPD stipulates that the aim 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".

DISABILITY IS AN EVOLVING CONCEPT

The CRPD perceives disability as a social construct instead of an individual problem. This results from "the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others". The preamble to the CRPD clearly states that "disability is an evolving concept", so it does not provide an exhaustive definition of persons with disabilities. It rather states that persons with disabilities "include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

As for disability discrimination, the CRPD defines it as "any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

DUTY TO PROVIDE REASONABLE ACCOMMODATION

As disability results from "interaction between persons with impairments and attitudinal and environmental barriers", it is paramount to remove the barriers. Hence the CRPD sets out the obligation to provide reasonable accommodation, which is "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure for persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms". Denial of reasonable accommodation is regarded as disability discrimination.

GUIDING PRINCIPLES

Article 3 of the CRPD stipulates 8 general principles, which are important for its interpretation and implementation. They include "respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons"; "non-discrimination"; "full and effective participation and inclusion in society"; "respect for difference and acceptance of persons with disabilities as part of human diversity and humanity"; "equality of opportunity"; "accessibility"; "equality between men and women" as well as "respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities".

GOVERNMENT'S OBLIGATION TO PROTECT THE RIGHTS OF PERSONS WITH DISABILITIES

The government is obliged to ensure realization of human rights for persons with disabilities on an equal basis. For instance, it shall "adopt all appropriate legislative, administrative and other measures for the implementation" of the CRPD, "modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities", "refrain from engaging in any act or practice that is inconsistent with" the Convention and "ensure that public authorities and institutions act in conformity with the Convention". It shall also "reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law".

Moreover, the government should "take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise". It should also conduct public education for fostering respect for the rights of persons with disabilities and for combating "stereotypes, prejudices and harmful practices".

ACCESSIBILITY

The government should implement the principle of accessibility including removing the barriers to the "physical environment", "transportation" as well as "information and communications" in order to "enable persons with disabilities to live independently and participate fully in all aspects of life".

SPECIFIC PROTECTION FOR WOMEN AND CHILDREN WITH DISABILITIES

The CRPD specifically protects the rights of women and children with disabilities. For instance, its article 6 recognizes that "women and girls with disabilities are subject to multiple kinds of discrimination" and urges measures to protect their full and equal enjoyment of human rights. Its article 7 states that necessary measures should be taken by the government to ensure the rights of children with disabilities. It also reaffirms the principle of "the best interests of the child" as a primary consideration and the rights of the child to be heard.

Reference

United Nations. *The Convention on the Rights of Persons with Disabilities, Training Guide No. 19, Professional Training Series*. 2014.

CASE STUDY SOMALIA



More than two decades of conflict have caused many people in Somalia to suffer as a result of their disabilities. As disability discrimination is deeply rooted in Somalia, persons with disabilities are regarded as burdens or vulnerable targets, particularly women with disabilities.

SUBJECT TO FORCED MARRIAGE AND DOMESTIC VIOLENCE

Women with disabilities in Somalia are at risk of child abandonment, forced marriage, domestic violence as well as sexual violence. Some parents do take care of their girls with disabilities but they remain invisible and are not allowed to go to school. Some parents force their girls into child marriage to get rid of the duty of care. For instance, a woman with a disability said she was forced to marry a man when she was 13. Her husband kept beating her. Every time she ran away, her family would send her back and told her not to complain as she was disabled. As there are no laws criminalizing forced marriage and domestic violence, a culture of impunity is perpetuated and thus hampers women's rights.

In another example, a woman with a physical disability said a man raped her twice and threatened to kill her if she asked for help as she was more vulnerable. However, the survivors seldom report their attacks to the police because of social stigma and little confidence in the ability or will of the authorities to investigate.

"WE ARE ABLE TO DO THINGS BUT NO CHANCE IS GIVEN"

Persons with disabilities urge their Government to recognize them as members of civil society, to protect them from attacks and to realize their human rights. A person with a disability said that "Most Somalis think that we disabled people can't do our own things, that we can't do anything for ourselves. We are able to do things but nobody gives us the opportunity."

EQUALITY AND PARTICIPATION SHOULD BE ENSURED

Amnesty International calls on the Somali Federal Government to implement laws, policies and measures to protect the rights of persons with disabilities, including ratification of the Convention on the Rights of Persons with Disabilities. The Government shall ensure persons with disabilities' equal opportunities to participate in the decision-making process.

Reference

Amnesty International. *Somalia: Prioritise Protection for People with disabilities*. 2015.

CASE STUDY BULGARIA

In Bulgaria, persons with intellectual and mental disabilities suffer from human rights violations such as freedom from inhumane treatment and the right to an adequate living standard in social care homes and psychiatric institutions.

NO EDUCATION FOR CHILDREN IN SOCIAL CARE HOMES

Children diagnosed as having "moderate, severe or profound retardation" are sent to social care homes. However, social care homes are distant from the community and provide no education and rehabilitation training. Children with severe intellectual disabilities are condemned to spend their entire time in bed. Thus they are deprived of the right to education in social homes, including development of personality, talents and mental and physical abilities to their fullest potential, in addition to not learning to live in the community independently. When they grow up, they are transferred to social care homes for adults. But the social care homes for adults provide neither rehabilitation training nor sufficient food and medical care. There is a high death rate too. For instance, 22 residents died in the same social care home in the coldest months of 2001.

ARBITRARY DETENTION IN PSYCHIATRIC HOSPITAL

Residents in psychiatric hospitals are often placed for compulsory treatment without the right of judicial review and this may constitute arbitrary detention. Without adequate resources, the living conditions in psychiatric hospitals are poor including unhygienic and overcrowded rooms, no supply of hot water and insufficient heating in winter. No rehabilitation and recreational training and activities are provided except television. Moreover, the staff are reported to use restraint and seclusion in an excessive manner and thus impairs the liberty and freedom of movement of the residents.

Amnesty International urges the Bulgarian Government to ensure its mental health care system conforms with international human rights standards so as to protect the rights of persons with disabilities. The Government should strengthen public education and stress that persons with mental disabilities enjoy the same human rights as everyone.

Reference

Amnesty International. *Bulgaria: Arbitrary detention and ill-treatment of people with mental disabilities*. October 2002.

INTERVIEW WITH FERNANDO CHEUNG CHIU-HUNG ON THE RIGHTS OF PERSONS WITH DISABILITIES IN HONG KONG

Q / *Amnesty International Hong Kong*

A / *Dr. Fernando Cheung Chiu-hung*

*(Legislative Councillor; Lecturer,
The Hong Kong Polytechnic University)*

Q Why do you strive to fight for the rights of persons with disabilities?

A Because I have a daughter with a severe intellectual disability. I am also a social worker, so I should make use of my own position and advocate for the rights of persons with disabilities.

Q Considering the Bridge of Rehabilitation incident where a female resident with an intellectual disability was alleged to have been sexually assaulted, what are your comments on the current protection of the legal capacity of persons with disabilities in Hong Kong?

A With regard to the legal capacity of persons with disabilities, the protection in Hong Kong still lags behind many other countries. This is because the medical approach is still being adopted and disabilities are considered as diseases which ought to be treated. When some people's disabilities are so severe that they cannot take care of themselves or handle their own affairs, they are categorized as "mentally incapacitated persons".

LEGAL RIGHTS OF MENTALLY INCAPACITATED PERSONS SHOULD BE REVIEWED ON AN URGENT BASIS

In the Bridge of Rehabilitation incident, the identity of "mental incapacitated persons" is both a protection and an exploitation. Based on the principles of a fair trial and equality before the law, the authority used the same rule and required the mentally incapacitated victim to be cross-examined by the defendant counsel but that was disadvantageous for her. It is often difficult for victims of sexual assault to recall the event, not to mention those with intellectual disabilities. Is there a system which can both unveil the truth and lessen the harm done to those victims of sexual assault with intellectual disabilities? I am currently studying international practices. For local protection, there was a case in 1993 where a deaf and dumb girl with an intellectual disability was alleged to have been sexually assaulted. The victim experienced an emotional breakdown whilst attending the court and the judge stopped the trial in order to protect her. The defendant was acquitted subsequently. In the following year, the Department of Justice set up 17 measures assisting mentally incapacitated persons to attend the court. 22 years have passed and the measures should be reviewed.

MENTAL INCAPACITATION AND THE RIGHTS OF PERSONS WITH DISABILITIES

With regard to the legal capacity of persons with disabilities, there are also other issues which are worth discussing. For example, if someone is a "mentally incapacitated person", the law will assume that he/she cannot give consent to sexual intercourse; he/she cannot vote either. But is it true that he/she really lacks such ability? In addition, currently, if one wants to become the guardian of a "mentally incapacitated" adult, he/she must apply to the Guardianship Board according to the Mental Health Ordinance. Yet, most successful applications only take place where there are conflicts between family members. The current system with regard to mental incapacitation contains only a binary distinction between "yes" and "no"; there is nothing in between, nor a "supported decision mode" as advocated in the international community, i.e. providing assistance such as explaining the situation to facilitate the persons with disabilities to self-determination.

Q The Convention on the Rights of Persons with Disabilities recognizes the equal right of all persons with disabilities to live in the community. A self-help organization of persons with intellectual disabilities in Hong Kong advocates for living in the community on their own. Do you think the Government has taken any measures to facilitate persons with intellectual disabilities to manifest such a right, instead of living in residential care homes?

A The Government has no plan about facilitating persons with intellectual disabilities to live independently. Recently I visited some residential care homes and a family member of a person with a mental disability told me that the person had once become better after receiving treatment and living in a halfway house. He could even start to take care of himself. However, there was a time limit for living in that halfway house and the family members could not take care of him, so in the end he could only live in private residential care homes. Unfortunately, his situation then worsened and now he can no longer take care of himself. If there is sufficient community support as well as visiting home care services, that person can live satisfactorily in the community. I have also come across a single mother of a 22-year-old autistic man with an intellectual disability living in the Bridge of Rehabilitation Company's residential care home. Since the mother has to go to work and cannot take care of the son at home, she can only arrange for him to live in a residential care home. If there are day activity centres and visiting home care services such as bathing, feeding and temporary care, persons with intellectual disabilities can then live with their family members instead of living in residential care homes.

IT IS IN FACT NOT DIFFICULT TO ABANDON RESIDENTIAL CARE HOMES

Foreign countries have been implementing de-institutionalization. They chose not to build big residential care homes, but to establish small group homes which can accommodate 6-8 people. Some organizations in Hong Kong have started to do something similar but they do not receive attention or assistance from the Government. Building such small group homes is in fact not difficult, for example, the Government could allocate a few flats in public housing estates to establish these homes and set up support teams. In such a way, persons with disabilities can live in the community independently.

Q What is the situation of the right to education of students with disabilities in Hong Kong? Why did you introduce a private bill on Special Education Needs?

A Hong Kong is an economy-oriented society. Persons with disabilities often experience low social status, or even are considered as a burden. Education is just the same as it is concerned with cost-effectiveness too. Students with intellectual disabilities are especially discriminated against as it is perceived that they cannot contribute to society. For example, the 3-3-4 New Senior Secondary Academic Structure sheds no light on students with intellectual disabilities, as if they simply do not exist. It also forbids students with intellectual disabilities over 18 years old from continuing their studies in the schools.

INTEGRATED EDUCATION HAS BECOME ISOLATED EDUCATION

The reason for the Government to actively advocate for integrated education and arrange students with physical, visual, hearing and speech disabilities and those with special learning needs to study in mainstream schools, is simply out of concern over cost-effectiveness. This is because the unit cost of a student studying in special schools is 3 times of that of one studying in mainstream schools. However, integrated education has been introduced through a school-based approach. The Education Bureau shifts the responsibility to the schools where resources are already insufficient and teachers may not have relevant training. This has made students with disabilities to become further isolated.

ADVOCATING FOR LEGISLATION ON SPECIAL EDUCATION NEEDS

In fact, students with different disabilities have different needs in curriculum, learning methods and assessments, etc. An independent education plan has to be made together by teachers, educational psychologists, parents and students. Combined with the lack of a legal basis, the Government is not willing to work on this aspect. Therefore, together with Dennis Kwok, another Legislative Councillor, we made reference to the law and policy adopted by the United Kingdom, the United States and Taiwan, and introduced the private bill on Special Education Needs during the last session of the Legislative Council (LegCo). However, due to the constraints under article 74 of the Basic Law [1] (related to private bills made by Legislative Councillors) as well as the fact that the session had nearly come to an end, the private bill was not approved by the President or tabled in the LegCo yet. In this session of the LegCo, I will continue to introduce the Bill.

Q The Disability Discrimination Ordinance has been enacted for 20 years. Do you think the Ordinance offers sufficient protection to the rights of persons with disabilities?

A The Disability Discrimination Ordinance (DDO) is rather passive as it requires the victims to prove that they have been discriminated against based on their disabilities. Yet, it is difficult to provide such proof so it is hard to apply the DDO. Therefore, reform is needed.

In addition, the Equal Opportunities Commission (EOC) published a report in March earlier this year after completing the public consultation on the Discrimination Law Review in 2014. It was recommended that the Government should amend the DDO so as to precisely stipulate a positive duty to provide reasonable accommodation for persons with disabilities in all relevant fields including employment, the provision of goods, services and facilities, education and premises. If the relevant corporations refuse to provide reasonable accommodation, this may constitute discrimination based on disabilities. If this amendment is done, the rights of persons with disabilities can be better protected. Nevertheless, the Government may not take the advice of the EOC, so it has to be further advocated.

Annotation

[1] Article 74 of the Basic Law stipulates that "Members of the Legislative Council of the Hong Kong Special Administrative Region may introduce bills in accordance with the provisions of this Law and legal procedures. Bills which do not relate to public expenditure or political structure or the operation of the government may be introduced individually or jointly by members of the Council. The written consent of the Chief Executive shall be required before bills relating to government policies are introduced".



LET US WATCH HUMAN RIGHTS DOCUMENTARIES TOGETHER!

With the support of the Human Commons, an organization that endeavours to assist information accessibility, we offered audio description, sign interpretation and accessible captions in Chinese during our Human Rights Documentary Film Festival. This facilitated our friends with disabilities to enjoy the documentaries.

SUZANNE / Person with visual disability

I was amazed after watching *Frame by Frame* with the assistance of the Human Commons. In the past, I felt like I had missed lots of things. I either watch films at a cinema screening entirely reserved by the non-governmental organization (NGO) for persons with visual disabilities or at the hall of the said NGO. I seldom get a chance to watch a film with persons without disabilities. Most of the films the NGO chose are popular and commercial. I have limited opportunity to access to non-mainstream films. But in this Film Festival, I had a chance to watch non-mainstream human rights documentaries with persons without disability.



ANTHONY / Person with hearing disability

Thanks to the Human Commons for relaying information about Amnesty International Hong Kong Human Rights Documentary Film Festival to me. I watched *Hooligan Sparrow*. Accessible captions in Chinese were available which indicated the sound effects such as the sound of wind. It thus facilitated my understanding of the documentary. However, I found it difficult to understand some of the concepts and buzzwords. I hope that providing accessible captions in film screenings can become a more common practice. In addition to accessible captions, sign language interpretation is important for persons with hearing disabilities and with a lower education level.



FRANCES / Person with hearing disability

I watched *Frame by Frame* and *Cartoonists: Foot Soldiers of Democracy*. The documentaries were real-life stories and meaningful. I also got a chance to learn about the issues I rarely have access to. Apart from accessible captions in Chinese, it will help us in understanding the issues better, if time for asking questions through a sign language interpreter is provided.



AI GLOBAL CAMPAIGNS



1/ AI Malaysia

On 11 October, one day after the World Day Against the Death Penalty, AI Malaysia held a press conference outside the Sungai Buloh Prison, where the death row inmate Shahrul Izani is currently detained. AI Malaysia also handed in birthday cards to his family.

Copyright Credit: Amnesty International Malaysia

2/ AI Togo

Activists in Togo said "J'accueille" (I welcome!) loud and clear in French in order to mark the opening of the new global campaign for refugees.

Copyright Credit: Amnesty International Togo

3/ AI Italy

In front of the Pantheon in Rome, AI Italy had an action for Julius Regeni, an Italian research student on trade unions and labour rights in Egypt, who was brutally killed in Egypt. They urged the Prime Minister of Egypt to stop the horrific practice of enforced disappearance.

Copyright Credit: Amnesty International Italy

4/ AI Caribbean

Hundreds of people protested in front of the Constitutional Court of the Dominican Republic on 23 September 2016 to say no again to the statelessness measure in that country. The demonstration was part of the actions of AI's global petition against statelessness in the Dominican Republic.

In 2013, the Constitutional Court of the Dominican Republic decided that persons with undocumented parents or grandparents would be deprived of their citizenship. Tens of thousands of people thus became stateless and their rights have been violated.

Copyright Credit: Amnesty International / Fran Afonso

**GOOD
NEWS**

THANK YOU FROM PHYOE PHYOE AUNG

Phyoe Phyoe Aung, a student activist in Myanmar, wrote a letter to express her gratitude to all our members and supporters who took action during Write for Rights 2015.

"Thank you very much each and every one of you. Not just for campaigning for my release, and the release of other prisoners, but for helping to keep our hope and our beliefs alive. I hope that together we will continue our struggle until our shared dream for human rights and justice for all comes true."

Read her full letter at <http://amst.hk/ppagdnews>

To join Write for Rights 2016 actions, please visit

<http://w4r.amnesty.org.hk>

DR CONGO: YOUTH ACTIVIST LEADERS RELEASED ON BAIL

Fred Bauma and Yves Makwambala, youth activists and prisoners of conscience, were released on bail on 29 August. Their release followed a meeting between the President of the Democratic Republic of Congo and a delegation from the LUCHA youth movement. Last year, the 2 activists were arrested after monitoring human rights violations during protests against electoral delays.

Although Fred and Yves are released on bail, they still have to stand trial for other political charges and may risk the death penalty. We therefore need to continue campaigning to ask the authorities to drop all charges against them. Stay tuned for our latest Urgent Action appeal.



LOCAL HAPPENINGS

THIS IS YOUR PAGE:
MICHELE CHUNG

Why do you cooperate with Amnesty International?

I have known Amnesty International very well for a long time because I have been active in the women's and democracy movements. In 2014, I was the sign language interpreter for a post-screening sharing of Amnesty International Hong Kong Human Rights Documentary Film Festival. This year, the Human Commons, of which I am the co-founder, provided more comprehensive accessibility services for the Film Festival, including audio description for persons with visual disabilities as well as accessible captions and sign language interpretation for persons with hearing disabilities.

Have you changed your views towards Amnesty International after the Film Festival?

Amnesty International sounded rigid to me as it seemed to tackle distant issues such as prisoners of conscience. But after participating in the Film Festivals, I found that Amnesty International's work can be closely related to daily life, as long as we link human rights issues to daily life in an interesting way.



NAME

MICHELE CHUNG

OCCUPATION

THE CO-FOUNDER OF THE HUMAN COMMONS

YEARS WITH US

MANY YEARS

What are the difficulties in promoting human rights in the community for persons with disabilities?

The Government has adopted a social welfare approach instead of a rights-based approach. Persons with disabilities have to prioritize basic needs before considering their rights when they are lacking access to education, employment opportunities and social mobility. Social welfare organizations need to prioritize welfare too. However, every person should know his/her basic rights and check if he/she has options and the freedom to choose.

How would you encourage persons with disabilities to stand up for human rights?

In accordance with article 9 of the United Nations Convention on the Rights of Persons with Disabilities, the Government should ensure unhindered access to information by persons with disabilities. Hence, the Human Commons aims at removing the obstacles by providing accessibility services in order to facilitate their ability to advocate.

ADHERE TO RIGHTEOUSNESS – 20 YEARS OF HUMAN RIGHTS PRESS AWARDS

The Human Rights Press Awards, founded by the Foreign Correspondents' Club Hong Kong, the Hong Kong Journalists Association and Amnesty International Hong Kong, was first held in 1996. It was the year before the 1997 handover when people were anxious about human rights in Hong Kong. After 20 years, what has changed in the human rights situation in Hong Kong?

Now for the 20th anniversary of the awards, Amnesty International Hong Kong has published the book *Adhere to Righteousness – 20 Years of Human Rights Press Awards*. The book compiles a selected number of winning entries as well as an account of the implementation of international human rights treaties in Hong Kong. It aims at giving readers a deeper understanding of the changes in the human rights situation in Hong Kong, ranging from freedom of expression, economic rights, gender equality, ethnic minorities, the rights of the child to the rights of persons with disabilities.



Read the book online

amst.hk/hrpa20

THE 6TH HUMAN RIGHTS DOCUMENTARY FILM FESTIVAL + COMMUNITY SCREENING

Human rights is not just about conventions, but also our daily lives. This is the 6th year for Amnesty International Hong Kong to organize the Human Rights Documentary Film Festival, in order to provide the audience with a glimpse of human rights situations around the world through documentary films. This year, with the theme "Arts and Human Rights", 11 films were selected to show how people fight for human rights and freedom through arts in places where freedom of expression is repressed. There were also films about violence against women, refugees and the death penalty.

As the right to learn about human rights should not be limited to one's wealth, 13 free community screenings were held with various community partners in addition to 15 paid screenings as in previous practice. This does not only provide more opportunities for people to learn about human rights, it also provides a chance for audiences to have a better understanding of the community.

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CARNIVAL



《堅守公義—— 人權新聞獎二十年》

「人權新聞獎」自一九九六年起，由香港外國記者會、香港記者協會及國際特赦組織香港分會聯合主辦，是為香港首個新聞獎項盛事。當年適逢主權移交前夕，不少人對香港人權狀況感到憂慮。二十年後的今日，香港人權狀況經歷了甚麼轉變？

國際特赦組織香港分會趁人權新聞獎二十周年，出版《堅守公義——人權新聞獎二十年》，透過回顧人權新聞獎歷年得獎作品及闡述香港實施國際人權公約的情況，讓公眾深入認識香港在表達自由、經濟權利、性別平等、少數族裔、兒童權利及殘疾人權利等各方面的狀況。



網上版

amst.hk/hrpa20

第六屆人權紀錄片電影節+ 社區放映

人權不止是硬梆梆的條文，也是活生生的生活。有見及此，國際特赦組織香港分會連續六年舉行人權紀錄片電影節，希望透過光影，將世界各地的人權狀況呈現觀眾眼前。今屆電影節以「藝術與人權」為主題，嚴選十一部紀錄片，講述在表達自由備受壓抑的地方，當地人如何透過藝術為自由和人權發聲。其他紀錄片議題包括針對女性暴力、難民及死刑。

認識人權不應受財富所限，因此我們一如以往，除了十五場收費場次外，亦與不同社區團體合作，舉辦十三場免費社區放映，令更多市民加深對人權和該社區的認識。

本地迴響

你的一頁：鍾勵君

你為何會與國際特赦組織合作？

我參與婦女運動及民主運動多年，早已認識國際特赦組織。直至二〇一四年初次合作，我為人權紀錄片電影節映後談話提供手語傳譯。今年人權電影節，我有一份創辦的「聾民集作」提供更全面的通達服務，包括讓盲人接收視覺資訊的口述影像、讓聾人接收聽覺資訊的通達字幕及手語傳譯。

參與人權紀錄片電影節後，你對國際特赦組織的看法有何改變？

以前我對國際特赦組織的印象較刻板，似乎是處理良心犯等遙遠的議題。參與電影節後，我發現國際特赦組織的工作與生活息息相關，只要將人權議題連結生活，就可以相當「落地」和有趣。

你認為於殘疾人士圈子中推廣人權有何困難？

政府一直用福利角度處理權利。當殘疾人士缺乏教育配套、就業及社會流動機會，為了得到基本需要，就會無力談權利；社福團體亦只能以福利行先。誠然，任何人都要知道自己的基本權利，了解是否有選擇及選擇的自由。

你會如何遊說殘疾人士為人權發聲？

聯合國《殘疾人權利公約》第九條訂明，政府應確保殘疾人士無障礙地獲得資訊。因此，「聾民集作」旨在以通達服務消除障礙，以協助不同特色的朋友倡議。



姓名
鍾勵君
職業
聾民集作
聯合總監
與國際特赦組織同行
多年

翁斐斐和你說聲多謝

緬甸學生領袖翁斐斐乃去年「寫信馬拉松」行動受益人之一。她向曾為她爭取重獲自由的國際特赦組織會員及支持者致謝。

翁斐斐說：「非常感謝你們每一位。感謝你們不僅致力爭取緬甸當局釋放我和其他在囚人士，還幫助我們保持希望與信念。希望我們繼續一起奮鬥，直至人人享有人權公義的夢想成真。」

翁斐斐感謝信全文，請見 <http://amst.hk/ppadnews>

如欲參加二〇一六年「寫信馬拉松」行動，請瀏覽

<http://w4r.amnesty.org.hk>



剛果民主共和國：青年運動行動者獲保釋外出

去年，青年行動者及良心犯 Fred Bauma 和 Yves Makwambala 於示威期間監察剛果政府並批評其侵犯人權行為，因而被捕。在剛果民主共和國總統與青年運動代表會談後，當局公布釋放拘留或在囚人士名單，其中包括他們兩人。今年八月他們終於獲准保釋。

不過，他們仍須就數項政治檢控出庭應訊，甚至有可能被判處死刑。因此，我們要求當局撤銷檢控這兩名良心犯。請密切留意我們的緊急行動呼籲。



全球人權運動



1 / 馬來西亞分會

在國際反死刑日翌日，即十月十一日，馬來西亞分會於監禁著死囚 Shahruil Izani 的雙溪毛糯監獄 (Sungai Buloh Prison) 外舉行記者會，並向其家人送上生日卡。

照片來源：國際特赦組織馬來西亞分會

2 / 多哥分會

多哥分會成員大喊法文「J'accueille」(我歡迎)，以展開新一輪全球難民倡議運動。

照片來源：國際特赦組織多哥分會

3 / 意大利分會

今年，研究埃及工會及勞工權利的意大利研究生 Julius Rebec 於埃及被虐殺。意大利分會就在此在羅馬萬神殿前抗議，並呼籲埃及總理確保強迫失蹤不再發生。

照片來源：國際特赦組織意大利分會

4 / 加勒比分會

自二〇一三年，多明尼加共和國憲法法院撤銷當地移民的多明尼加共和國國籍，數萬人頓成無國籍人士，失去人權保障，生活堪虞。今年九月二十三日，數百人在法院門前示威，向其頒令無國籍說不！該次示威也是國際特赦組織反對多明尼加共和國無國籍決定之全球聯署行動一部分。

照片來源：國際特赦組織加勒比分會

本會與致力推動無障礙資訊的「聾民集作」合作，於本年度的人權紀錄片電影節提供口述影像、手語傳譯及中文通達字幕，以便殘障朋友同享觀影樂趣。

1 月英 / 視障朋友

我看了《鎖不住的鏡頭》，覺得很震撼，彷彿從前看漏了好多東西。平日看電影，通常是機構於戲院包場，或於機構會址觀看，觀眾都是會員，很少機會和其他人同場看戲。選片亦大多是熱門商業電影，鮮有機會接觸較冷門的人權紀錄片。

2 Anthony / 聽障朋友

感謝「聾民集作」告知人權紀錄片的資料，我看了《流氓燕》。紀錄片設通達字幕，將聲音寫出來，譬如寫明有風聲，有助我全面掌握內容。不過有些內容很深奧，而字幕一閃而過，或是出現「潮語」（潮流用語），會較難明白。現時，電影通達字幕並不常見，希望將來更普遍。若同時有手語傳譯，可令部分讀書不多的聽障人士更易理解。

3 Frances / 聽障朋友

我看了《鎖不住的鏡頭》及《漫畫爆高牆》。紀錄片都是真實故事，很有意思，亦讓我有機會了解到較少接觸的議題。除了中文通達字幕，如果放映後有發問機會，讓我們透過手語傳譯員理清不明白的事情，更有助我們掌握議題。



推動特殊教育立法

事實上，不同殘疾學童有不同課程、教學法及評核等需要，需由教師、教育心理學家、家長和學生等共同制訂「個別學習計劃」。加上沒有法例基礎，政府就不願做事，於是我和郭榮鏗議員，參考英國、美國和台灣做法，於上屆議會合力推動特殊教育法私人條例草案。礙於《基本法》第七十四條「1」對立法會議員私人草案的限制，且已屆會期尾聲，私人草案未及主席審批及交予立法會審議。今屆我會繼續推動草案。

問《殘疾歧視條例》生效二十年。你認為條例足以保障殘疾人士權利嗎？

答現時《殘疾歧視條例》很被動，要求受害人證明遭受殘疾歧視，但很難證明，不容易用，需要改革。

此外，平機會前年完成《歧視條例檢討》公眾諮詢後，於今年三月公布報告書，其中建議政府修例，明確規定要為殘疾人士提供合理遷就 (reasonable accommodation) 的積極責任，並適用於僱傭、提供貨品、服務及設施、教育和處所等範疇。若相關機構拒絕提供合理遷就，可構成殘疾歧視。若真的修例，更能保障殘疾人士的權利。不過，政府未必採納平機會建議，需要多加推動。

註釋

「1」《基本法》第七十四條訂明「香港特別行政區立法會議員根據本法規定並依照法定程序提出法律草案，凡不涉及公共開支或政治體制或政府運作者，可由立法會議員個別或聯名提出。凡涉及政府政策者，在提出前必須得到行政長官的書面同意」。



立法會議員
張超雄先生忠誼

問 《殘疾人權利公約》確認殘疾人士享有於社區生活的平等權利，本地亦有智障人士自助組織倡議社區生活。你認為政府有否採取措施，以便智障人士行使該權利，而不只是居於院舍？

答 政府並無讓智障人士自立生活的想法。最近我到院舍探訪，有名精神病院友的親友告訴我，該名院友接受治療後，到中途宿舍小住，情況逐漸改善，開始可照顧自己，但中途宿舍有期限，家人亦無法照顧他，他只好入住私營院舍，情況卻大為倒退，現在已不能自理。若有足夠社區支援及上門服務，該名院友就可以於社區生活了。我亦遇見育有二十二歲智障和自閉康橋院友的單親媽媽，由於媽媽需要上班，無法在家照顧兒子，只好安排他入住院舍。如果有日間活動中心，甚至有包括協助洗澡、煮飯和暫時照顧等上門服務，智障人士已可與家人生活，毋須入住院舍。

去院舍化，其實不難

外國已實踐「去院舍化」，不再興建大型院舍，而是營辦供六至八人居住的家舍。有香港機構自己實踐，但不獲政府重視和支援。設置家舍，其實不難，譬如於公共屋邨撥出幾個單位，用作小型家舍，並設支援隊伍，如此殘疾人士已可於社區自主生活。

問 殘疾學童接受教育的權利情況如何？為何你會提出特殊教育法私人條例草案？

答 香港經濟掛帥，殘疾人士甚無地位，甚至被視為負累。教育亦然，講求成本效益，特別歧視智障學童，認為他們無可能對社會有貢獻，譬如最初三三四新高中學制絕口不提智障學生，彷彿他們並不存在，又為智障學生設十八歲離校年齡限制。

融合教育反成隔離教育

政府之所以積極推動融合教育，將肢體殘障、視障、聾啞及有特殊學習需要的學生安排於主流學校讀書，乃基於成本效益。因為就讀特殊學校的學生單位成本高於主流學校約三倍。可是，融合教育以校本方式推行，教育局將責任轉嫁學校，資源本已不足，教師亦未必有相關訓練，反令殘疾學生更為隔絕。

專訪 / 張超雄談香港殘疾人士的權利

問 / 國際特赦組織香港分會
答 / 張超雄博士 (立法會議員、香港理工大學應用社會科學系講師)

 關注特殊教育權益家長大聯盟

「殘疾人選舉權 一 與我何干？」研討會

問 為何你會致力爭取殘疾人士的權利？

答 因為我有個嚴重智障的女兒，亦是社工，更應利用自身位置，彰顯殘疾人士的權利。

問 就「康橋之家」智障人士疑遭性侵犯事件，你對香港保障殘疾人士法律身分 (Legal capacity) 的情況有何評論？

答 就殘疾人士法律身分而言，香港保障相對落後，因為仍然採用醫療角度，視殘疾為疾病，需要治療。當某人的殘疾達至不能自理的程度，無法為自己打算，可屬「精神上無行為能力」人士。

精神上無行為能力人士的法律權利，亟需檢討

在康橋事件，「精神上無行為能力」人士的身分既是保障，亦屬剝削。當局基於公平審訊及法律面前人人平等的原則，用同一把尺，要求智障受害人接受辯方盤問，但這樣對她相對不利。性侵犯受害人可能會難以啟齒，智障人士更難以應付盤問。到底是否有制度，既可揭露性侵犯真相，同時減輕對智障受害人可能造成的傷害？我正在研究外國做法。至於本地保障，一九九三年，有一宗聾啞智障女生疑遭性侵犯案，當事人於庭上情緒崩潰，法官出於保護她而終止聆訊，被告無罪釋放。律政司遂於翌年制訂十七項協助「精神上無行為能力」人士的出庭措施，但至今已二十二年，需要檢討。

精神上無行為能力與殘疾人士的權利

就殘疾人士的法律身分，還有其他值得探討的議題。譬如若某人屬「精神上無行為能力」人士，法律已假設他／她不能同意性交，亦不能投票，但他／她是否真的沒有能力？此外，現時若要成為成年「精神上無行為能力」人士的監護人，必須按《精神健康條例》向監護委員會申請，但通常是家屬之間有爭拗才可成功申請。現時有關「精神上無行為能力」的制度，只分「有」或「無」，但無中間，亦無國際倡議的「支援決策模式」(supported decision)，即提供支援，解釋情況，以便殘疾人士自決。

張超雄博士
立法會議員

在保加利亞，有院舍和精神病院剝削智障人士及精神病人免受不人道待遇及享有適足生活水平等權利。

智障兒童無書讀

若兒童獲診斷為中度或嚴重發展遲緩，會被送到兒童院舍生活，但院舍與社區隔絕，亦無提供教育及復康訓練，嚴重智障的兒童更只可終日躺臥床上，院童皆失去發展個性、才智和身心能力的權利，無法學習自立，遑論於社區獨立生活。他們成年後會到成人院舍生活。另一方面，成人院舍同樣欠缺復康訓練，食物和醫療亦不足，以致死亡率甚高，譬如於二〇〇一年最寒冷的月份，某院舍有二十二名院友病死。

任意拘禁精神病人

至於居住精神病院的人，大多是強制接受治療，無權尋求司法覆核，儼如任意拘禁。而精神病院資源不足，生活環境惡劣，譬如房間骯髒和擠迫、沒有熱水供應及嚴寒時暖氣不足，且無提供復康設施和活動，院友唯一的娛樂就是看電視。亦有職員濫用約束衣及單獨囚禁，限制院友於院內僅有的行動自由。

國際特赦組織促請保加利亞政府確保其精神健康醫療制度合乎國際人權標準，保障殘疾人士的權利。當局亦應加強教育，令公眾明白殘疾人士與其他人一樣享有人權。

參考資料

Amnesty International. *Bulgaria: Arbitrary detention and ill-treatment of people with mental disabilities*. October 2002.



索馬里戰事連連，許多人因此成為殘疾人士。不過，當地殘疾歧視根深柢固，大至社會，小至家庭，經常視殘疾人士為重擔甚或攻擊對象，殘疾女性更遭受雙重歧視。

飽受迫婚和家暴

在索馬里，殘疾女性飽受剝削，譬如遺棄、迫婚、家庭暴力和性暴力。有些父母會撫養殘疾女童，但將她隔絕於世，不准上學。亦有父母強迫女童結婚，以盡早卸下照顧責任。譬如有殘疾婦女指，家人於她十三歲時強迫她結婚。雖然丈夫經常虐待她，但每次她逃回家，家人反而說她身為殘疾人不應投訴，並將她送回夫家。由於當地並無法例禁止迫婚和家暴，女性權利完全沒有保障。

此外，有肢體殘疾的婦女表示曾遭同一男子強姦兩次，對方要脅若她求救就會殺死她。礙於社會歧視，性暴力倖存者亦無信心警方會秉公調查，因此甚少報警。

「我們有能力做事，只是苦無機會」

當地殘疾人士促請政府承認他們是公民社會一員，保護他們免受襲擊，並落實保障其人權。有殘疾人士感嘆：「大部分索馬里人認為殘疾人士不能自理，亦無能力為自己做事。其實我們有能力做事，只是無人給予機會」。

保障平權，落實參與

國際特赦組織促請索馬里政府制訂保障殘疾人士的權利的法例、政策及措施，包括批准《殘疾人權利公約》。政府亦應確保殘疾人士可以平等參與決策。

參考資料

Amnesty International. *Somalia: Prioritise Protection for People with Disabilities*. 2015.

責任，即「根據具體需要，在不造成過度或不當負擔的情況下，進行必要和適當修改和調整，以確保殘疾人在與其他入平等的基礎上享有或行使一切人權和基本自由」。若拒絕提供「合理便利」，可構成殘疾歧視。

指導原則

公約第三條訂明保障殘疾人士的權利的一般原則，乃公約精髓，對解釋公約權利尤其重要：「(一) 尊重固有尊嚴和個人自主，包括自由作出自己的選擇，以及個人的自立；(二) 不歧視；(三) 充分和切實地參與和融入社會；(四) 尊重差異，接受殘疾人是人的多樣性的一部分和人類的分子；(五) 機會均等；(六) 無障礙；(七) 男女平等；(八) 尊重殘疾兒童逐漸發展的能力並尊重殘疾兒童保持其身分特性的權利。」

政府有責任保障殘疾人士的權利

政府有責任保障殘疾人士免受歧視，平等及全面享有人權，包括透過立法及行政措施實施公約權利，修訂或廢除構成殘疾歧視的法律和做法、「不實施任何與公約不符的行為或做法」、「確保公共當局和機構遵循公約規定行事」及確保殘疾人士「在法律面前獲得平等承認」等。此外，政府有責任採取適當措施，「消除任何個人、組織或私營企業基於殘疾的歧視」；同時推行公眾教育，加強社會認識和尊重殘疾人士的權利，消除歧視、偏見和有害做法。

無障礙

政府亦應實施無障礙原則，譬如「無障礙地進出物質環境，使用交通工具」及無障礙獲取資訊等，令殘疾人士可獨立生活及充分參與社會。

公約特別保障殘疾女性及兒童

此外，公約特別訂明保障殘疾女性及兒童。譬如第六條「確認殘疾婦女和女童受到多重歧視」，並要求政府確保其平等權利，第七條訂明政府保障殘疾兒童的平等權利，以兒童最佳利益為首要考慮，並保障其表達主見權。

參考資料

United Nations. *The Convention on the Rights of Persons with Disabilities, Training Guide No. 19, Professional Training Series*. 2014.

殘疾人士的權利是人權

當提起殘疾，你會想起甚麼？以往，社會視殘疾為疾病，需要治療和復康，或視殘疾人士為接受福利及慈善救濟的對象。上述觀念皆視殘疾為個人問題。不過，聯合國《殘疾人權利公約》突破上述框架，採用人權角度，視殘疾人士為權利擁有者，強調充權和平等參與。

公約保障殘疾人士的權利

「人人平等，無所歧視」是國際人權公約的基本原則，見諸國際人權憲章——《世界人權宣言》、《公民權利和政治權利國際公約》和《經濟、社會與文化權利的國際公約》第二條，包括人人免受「其他身分」歧視——殘疾亦屬「其他身分」。《兒童權利公約》則明文保障殘疾兒童的權利。

不過，殘疾人士在社會裡仍然處於「隱形」，受到不同形式的剝削，需要專門公約全面保障其權利。在殘疾人士及關注其權利的團體積極倡議及參與下，聯合國於二〇〇六年通過《殘疾人權利公約》，公約於二〇〇八年生效，同年適用於香港。誠如公約第一條所言，公約旨在「促進、保護和確保所有殘疾人充分和平等地享有一切人權和基本自由，並促進對殘疾人固有尊嚴的尊重」。

殘疾乃演變中的概念

公約強調殘疾並非個人問題，而屬社會建構，外在環境及社會態度阻礙殘疾人士平等參與社會的結果。而從公約序言可見，殘疾乃演變中的概念，公約只訂明殘疾人士「包括」：「肢體、精神、智力或感官有長期損傷的人，這些損傷與各種障礙相互作用，可能阻礙殘疾人在與他人平等的基礎上充分和切實地參與社會」，並沒有把「殘疾」的定義固定在某一框架內。

至於殘疾歧視的定義，則是「基於殘疾而作出的任何區別、排斥或限制，其目的或效果是在政治、經濟、社會、文化、公民或任何其他領域，損害或取消在與他人平等的基礎上，對一切人權和基本自由的認可、享有或行使。」

合理便利，消除障礙

既然殘疾是個人身體狀況與社會障礙相互作用的結果，那麼，消除障礙更是義不容辭。所以，公約強調提供「合理便利」的

主編的話

一向以來，每當提及殘疾人士的權利，焦點總是側重福利資源。資源調配固然非常重要，可是要真正實現殘疾人士的平等權利，人權政策視野亦同樣重要。

本期專題早在幾個月前定下來，卻恰恰碰上「康橋之家」事件。這是有關女性智障院友懷疑被時任院長性侵犯的案件，律政司認為事主不宜出庭作供而撤銷檢控。雖然社會人士發起遊行，要求社署交代並改善服務，然而重點只落在埋怨當局撤控，未能將施暴者繩之於法，可知帶著關注殘疾人士處境的敏感度檢視現行法例及政策亦同樣重要，在考慮保障當事人的身心健康之餘，亦令其得到適切支援，才是確實體現「法律面前，人人平等」。

除了建設無障礙社區，當務之急亟需掃除障礙，確保各邊緣社群享有平等法律權利。

區美寶

編輯部

主編 / 區美寶
執行編輯 / 徐嘉穎
編輯 /
陳文慧 / 蔣昭儀 / 巫翠泰 / 謝德愛 / 葉雅玲

校對

許朗黃
Annie Mueller

義工

謝嘉賢

編輯部查詢

+852 2300 1250 - editorial@amnesty.org.hk

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01/ 主編的話

專題

02/ 殘疾人士的權利是人權

04/ 個案：索馬里

05/ 個案：保加利亞

06/ 專訪：張超雄談香港

殘疾人士的權利

09/ 讓我們一起看人權紀錄片

10/ 全球人權運動

11/ 好消息

本地迴響

12/ 你的一頁：鍾勵君

13/ 人權新聞獎 / 社區放映

14/ CARNIVAL

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