**Questionnaire**

**Convention on the Rights of Persons with Disabilities**

**Article 5 equality and nondiscrimination in CHINA**

**1.Has your country adopted legislation establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.**

Chinese law fails to state clearly the definitions of some of the key concepts of CRPD, such as ‘discrimination’ and ‘reasonable accommodation’.

Article 3 of the Chinese Law on the Protection of Disabled Persons (LPDP) states (as revised in 2008):

“Persons with disabilities shall enjoy equal rights with other citizens in political, economic, cultural and social respects and in family life as well.

The rights and dignity of persons with disabilities as citizens shall be protected by law.

Discrimination on the basis of disability shall be prohibited. Insult of and disservice to persons with disabilities shall be prohibited. Disparagement of and infringement upon the dignity of persons with disabilities by means of mass media or other means shall be prohibited.”

Despite the addition of this last paragraph to the text of the LPDP in 2008, there is still no clear definition of what constitutes discrimination or disparagement and infringement upon the dignity of persons with disabilities. This makes any violation very hard to define or prosecute in law. There is no definition of ‘undue burden’ within Chinese law.

**2. Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).**

NO, as discussed in Question 1. In the LPDP, there is no detailed description on what kind of services (e.g. accessible facilities) disabled people are entitled to, and what would be the consequences if business or government agencies failed to provide the services. Chinese law fails to state that employers need to provide reasonable accommodation, disability equality management and other related services. Neither LPDP nor Employment Promotion Law has detailed articles on employers’ legal obligations in providing these services and consequences when they fail to do so. Article 60 of the LPDP states, “Where any of the lawful rights and interests of a disabled person is infringed upon, the disabled person shall have the right to require the relevant department to deal with it, or apply to the appropriate institution for arbitration, or bring a lawsuit in the people’s court according to law.” Again, the law does not indicate details such as basic standards for the court to follow in making its judgments, or supervision of whether employers have made adjustments according to the court’s ruling.

**3. Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).**

The Government has established a quota system requiring all public and private employers to reserve no less than 1.5 per cent of job opportunities for persons with disabilities. Companies that don’t meet this quota have to pay into Disabled employment security fund. However, the “disabled persons’ employment quota” should not be seen as a way of protecting disabled people’s rights, because it rarely results in equal employment for disabled people and is often subject to corrupt practices and misuse of public funds.

1. **Not enough disabled people in decision-making positions:** Within the CDPF and local DPF system there are very few disabled officials. Usually it is still non-disabled people acting in administrative positions and making decisions for disabled people
2. **Failure to meet percentage employment quota for disabled civil servants:** There are articles under Civil Service Health Check Standards clearly stating requirements that discriminate against disabled people. Survey results show that from 2008 to 2011 four years, a total of 18 prefecture-level cities 21184 recruiting civil servants, of whom eight were civil servants with disabilities, the proportion was 0.03 percent. There are 12 cities, 4 years, never had a recruiting people with disabilities. Recruiting persons with disabilities in six cities, the lowest proportion of a city of 0.04%. China University of Political Science released the "2011 national civil service recruitment in employment discrimination investigation report" also pointed out that the national authorities should not apply to "Disabled employment security fund" system, which is the essence of the spirit of the law violation. Meanwhile, the state authorities in recruiting civil servants, it should be in accordance with the standards set aside 1.5 percent of jobs for people with disabilities, the post portion is adapted to give targeted recruiting people with disabilities, so as to protect the rights of persons with disabilities to hold public office.
3. **Low levels of disabled people in employment:** In general, there is a much lower employment rate for disabled people than for non-disabled people. In addition, most employed disabled people are still working in low-paid or low-skilled positions. Statistics show that only 3.35% of employed disabled people in China work in professional jobs, whereas physical labor accounts for 96.65%. There are only 1.24% of employed disabled people working for government agencies.
4. **Discrimination and lack of equality in employment:** China’s laws guarantee a disabled person’s right to work, but in reality disabled people do not receive equal treatment and most are refused access to mainstream employment. Disabled people living in rural areas, who make up over 75% of all people with disabilities in China, are regarded as being in employment if they have the ability to work on the land. So according to government statistics the employment rate for disabled people in China is very much higher than in any developed western country, though in reality it remains very low. Disabled people are also confined to very few areas of employment, such as massage and handicrafts.

**4. Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).**

No

**5. Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?**

As far as I know, no such disaggregated data. Maybe we can apply for government information disclosure about this.

**Note:** Most of the comments based on ‘*SOME COMMENTS BY DPOs/NGOs ON CHINA’S IMPLEMENTATION OF THE CRPD AND THE INITIAL REPORT SUBMITTED TO THE COMMITTEE*’, the shadow report which I contributed in 2012 along with other activists from DPOs and NGOs in China. I have made all the information above up-to-date.

Please submit with subject [Art 5 Study CRPD] by 30 June 2016 to: registry@ohchr.org

More about work on the rights of persons with disabilities:

http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx

Background

Human Rights Council resolution 31/6 requested the Office of the UN High Commissioner for Human Rights to prepare a

study on article 5 of the Convention on the Rights of Persons with Disabilities.