

Poverty, Debt and Legal Aid
(for the International Forum on Legal Aid, Taipei 2009)

At the World Summit for Social Development held in March 1995 in Copenhagen, poverty was defined as the “*lack of income and productive resources sufficient to ensure sustainable livelihoods.*”

According to the statement adopted by the Committee on Economics, Social and Cultural Rights of the United Nation in 2001, poverty is defined as “*the lack of basic capabilities to live in dignity*”. This definition somehow encompasses a wide range of features relating to poverty, such as hunger, poor education, discrimination, vulnerability and social exclusion.

From the regional perspective, the European Commission defines the proportion of individuals living in households where equivalised income is below the threshold of 60% of the national equivalised median income as living in poverty.

In the Hong Kong scenario, our Government has not adopted any official poverty line for the territory. The fact that Hong Kong is a generally affluent community and that a broad range of social services and support are available means that identifying and addressing the specific needs of the disadvantaged groups are more important than trying to single out those who are poor only in the income sense.

Whatever the definitions and classifications, it is worth noting

that tackling poverty, including the provision of related social assistance, is very much a national responsibility.

Despite the lack of an official poverty line, those who are in need of assistance in Hong Kong have access to extensive social and welfare services provided by the Government. Broadly speaking, the Hong Kong Government adopts a pragmatic approach by providing:

Welfare Services

People who cannot meet their basic needs, thus regarded as “the poor”, have access to the Comprehensive Social Security Assistance Scheme which forms the mainstay of Hong Kong’s welfare system. The Comprehensive Social Security Assistance Scheme is non-contributory but means tested. The scheme provides cash assistance to people suffering from financial hardship to enable them to meet basic needs. However, applicants must satisfy the stipulated residence requirements. Presently, the scheme’s yearly expenditure is about \$18.6 billion, which is 43 times that of legal aid expenditure in Hong Kong. In addition, the government also provides other support services targeting at those in need, including children, women, elderly and people with disabilities.

Health Services

Recipients of Comprehensive Social Security Assistance are waived from payment of their expenses for services rendered by the health authorities. To better assist the vulnerable groups in the community, i.e. the low income group, chronically ill patients and elderly patients who have little income or assets but who are not welfare recipients, the government has

implemented an enhanced medical fee waiver mechanism to ease their financial burden.

Education Services

The Hong Kong Government provides twelve years of free and universal education as well as various forms of assistance and services to help students and youths who need support.

Employment Assistance

The Labour Department provides a comprehensive range of free employment services to help job-seekers secure employment. Some services are targeted at certain vulnerable groups, e.g. the middle-aged and people with disabilities.

Of the above, the Comprehensive Social Security Assistance Scheme provides direct financial assistance to bring the income of needy individuals and families up to a prescribed level to meet their basic needs. The applicant however must pass the income and assets tests to receive assistance. If the applicant is living with any other family members, the application has to be made on a household basis. The total income and assets of all family members in the same household are taken into account in determining the family's eligibility for assistance.

As to the relationship between low-income groups and access to legal aid, it should be noted that in Hong Kong legal aid is granted to residents or non-residents who satisfied the means test and the merits test, irrespective of their social background. What is more, applicants who are recipients of

Comprehensive Social Security Assistance are generally deemed to be eligible for legal aid unless there are reasonable grounds to suspect otherwise. In other words, those on welfare are normally not required to undergo the means test before granted legal aid.

How then is the means test conducted? Hong Kong adopts a “financial capacity” approach in assessing the financial eligibility of legal aid applicants. This simply means aggregating a person’s yearly disposable income and disposable capital in determining his eligibility. A person whose financial capacity does not exceed the limit will be eligible for legal aid.

A person’s disposable income is the income that person may reasonably expect to receive during the period of computation. It is calculated by his yearly income minus a number of statutory deductible items such as maintenance payments, payment of salary tax and the general expenditure of a household in maintaining an acceptable standard of living.

A person’s disposable capital consists of all assets of a capital nature, such as bank savings, valuables and property other than the applicant’s main dwelling. In the context of criminal legal aid however, the Director of Legal Aid has the discretion to waive the financial eligibility limit if it is in the interest of justice to grant legal aid.

The government’s policy is to review the financial eligibility limits annually to take account of movements in the Consumer Price Index, and biennially to take account of changes in private litigation costs. The purpose of the reviews is to preserve the real value of the financial eligibility limits to

ensure that legal aid is available to the targeted group in society. As the reviews are conducted regularly; global economic recession or financial turmoil as is currently experienced will not alter the frequency of such reviews.

To ensure that a person's legal right is protected, an applicant who has been refused legal aid, and is aggrieved by such decision, can appeal to the court to bring the legal aid refusal to review.

As to whether Hong Kong's legal aid schemes will provide assistance for filing appeals against social welfare decisions of an administrative authority, the answer is affirmative provided that the application passes the means and the merits tests. In Hong Kong, the use of judicial review by an individual against an administrative decision in areas such as education, social welfare, conservation, civil and political rights etc is regarded as providing an essential foundation for good governance under the rule of law. Very often, judicial reviews in Hong Kong are backed by legal aid.

Legal aid is a cornerstone of the rule of law. In Hong Kong, some 70% of households are eligible for legal aid under the various legal aid schemes. In response to calls from the community, the Legal Aid Services Council, a statutory body set up to supervise the provision of legal aid services in Hong Kong, is actively investigating into the feasibility of further expanding the scope of coverage of legal aid, particularly for the middle class. The low income group and the disadvantaged in Hong Kong are already adequately covered. Our focus at the moment is to provide wider coverage for those of better income but yet unable to afford litigation in private.

In Hong Kong, debt and legal aid do not have a causal relationship. Legal aid can assist little in helping an individual to clear his or her debt.

Managing one's finances is very much a personal matter for both the poor and the rich. In this regard, debt clearance is more an issue for individuals themselves than the legal aid authority in Hong Kong.

Hong Kong is one of the most vibrant international financial centres in the world. It operates a sound regulatory regime on a par with international standards. The operation and activities of licensed money lenders in the territory are governed by the Money Lenders Ordinance. Under this Ordinance, anyone wishing to carry on business as a money lender must apply to the government for a licence. The government's policy is to further reinforce Hong Kong's position by making continuous improvements to the regulatory system of its financial institutions. Insofar as money lending is concerned, the credit/lending system in Hong Kong is working well. If consider necessary, our financial authority, rather than the legal aid authority, will investigate into the deficiency and make improvements.

Hong Kong's Legal Aid Ordinance and Regulations do not have provisions to assist an individual in debt clearance and/or in filing an application for personal bankruptcy procedures, which process is relatively straightforward. It should be noted that being in debt will not affect a person's eligibility for legal aid, except that in calculating his or her disposable income, debt is not a deductible item.

