

HONG KONG COMMITTEE ON CHILDREN'S RIGHTS
RESPONDING TO THE CONSULTATION PAPER
ON
PROPOSED LEGISLATION FOR THE
PREVENTION OF CHILD PORNOGRAPHY

May 2002

The Hong Kong Committee on Children's Rights supports the spirit behind the proposed legislation and we think that the enactment will comply with the United Nations Convention on the Rights of the Child (UNCRC) and the International Labor Convention No. 182 (ILC 182). However, the consultation paper has some ambiguous areas obviously need further clarification. Below are some of the points we wish to have your attention:

1. Two-tier definition for pornographic depiction

Under the UNCRC, a child means those aged under 18. We have strong reservation on the two-tier definition for pornographic depiction in paragraphs 16-19. We propose that those aged between 16 and 18 need equal protection to those aged under 16. They are equally vulnerable and the safety net shall also extend to them. The two-tier definition also complicates the investigation and prosecution procedures.

2. Definition of pornographic depiction

We are disappointed to learn that "pornographic depiction" is only proposed to mean a visual depiction in paragraph 11. Stories and sound describing sexual practices involving children are equally harmful. It provides loopholes for unscrupulous people in the pornographic trade.

3. Definition of children

We are puzzled by the definition of child pornography in paragraph 9, in which it meant any visual images depicting a person *who is, or looks like, a person under the age of 16*...The ambiguous wordings are set to cause arguments in the process of prosecution. Taking into consideration of the physical development of children, normally it has a big difference between Chinese and westerners even though the children are at the same age.

4. Balance of human rights concerns

We fully support that “mere possession” of child pornography is proposed to be made an offence provided that “there shall be a defense for the accused if it is established by evidence that he had a legitimate cause for doing the act” in paragraphs 13-15. Unlike adult pornography, children are lured and procured to involve passively in these illicit trade and activities in their immature age. It can cause irreparable harm to their future life, marriage and trust in people when they grow up. It can not be mingled with the human right issues. For the best interests of our children, we support the proposal.

5. Effective report system

Crime on the net has become a hard task for the law enforcers around the world. To keep in line with the proposed legislation, the Government shall think of ways to set up an effective report system to seek public’s cooperation.

6. Further actions

If the proposed legislation genuinely aimed at protecting children from all forms of sexual exploitation and sexual abuse, we urge the Government not just focus its resources on investigation and prosecution. We want to emphasize that “penalty” is not the only solution to protect our children. The safety net lies on prevention and public education. This relies heavily on the support and co-operation from various departments as well as the third sector (NGOs). Therapeutic services shall be strengthened for the sexually exploited children. Resources must be allocated to make the above mentioned strategies possible.

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