



Age of Criminal Responsibility

The Convention on the Rights of the Child exists in recognition of “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection”. It is admirable that the HKSAR Government took seriously the recommendation of the Committee on the Rights of the Child to review the Age of Criminal Responsibility in HK.

The ‘child’ for the purpose of the CRC means ‘every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier’. As the age of majority in HK is 18 years, we are therefore recognizing children under 18 need special protection and provisions.

There are countries where the Age of Criminal Responsibility is 18 years. Taking into consideration ‘cultural and social values’, HK should at least be on par with Mainland China and Taiwan which is 14 years, not to mention Macau and Japan which is 16 years. ACA firmly believes the Age of Criminal Responsibility should be raised to 14 years in HK.

The Legco Brief has outlined most of the arguments for raising the age to 10 years which apply equally well to children aged 10 to 13. In the area of child abuse, the existing legislation already accord children at this age, special provisions and protection in view of their immaturity. The perceived rise in youth crime mentioned depends on how you look at statistics. Basically during the period listed, the percentage of children arrested, aged 10-13 years has been fluctuating from year to year. Yet the final recommendation is to raise the age to 10 years and not higher. Even the Survey conducted on behalf of the Law Reform Commission found over half of those surveyed were in favour of raising the age to 14 or higher.

As to the understanding of right or wrong, infants aged 9 months could comprehend ‘yes’ or ‘no’, usually ‘no’ before ‘yes’, but we are not talking about simply right or wrong, but criminal responsibility. In the telephone survey conducted by HKCCR on the issue, the majority of parents need the term explained. To expect children just finishing primary school and starting secondary school to understand the intricacies of criminal

proceedings, to be able to make decisions with serious consequences for their future and sensibly instruct their legal representative, is far from realistic.

It is generally difficult for even older adolescents to think long term, let alone children at the tender age of 10 to 13 years. In adolescent health education, say against smoking, we are abandoning talks of heart attacks or lung cancer in 30 years' time. Instead we talk about yellow teeth, bad breath and wrinkled skin. Adolescents live for the present.

Due to better nutrition, worldwide, adolescents are taller and menstruation starting earlier in girls. Hence they look more mature than children at the same age in our generation, but the assumption that their moral development is equally mature is mere speculation. True, they have a higher chance of attending school than their parents but criticisms of our local education system – emphasis on rote learning rather than critical thinking – are all too familiar.

ACA is by no means condoning delinquent behaviour in children aged 10 to 13 years. Children also need to be responsible for their behaviour to varying degrees, but from our experience in child abuse and neglect, more often than not, the children are acting out because of problems surrounding them – in the family, the school and the community.

Children model their behaviour on adults. We are only just starting to realise the level of domestic violence in our community but unfortunately, the effect on children is still often taken lightly till harm is done. Having failed the children, when they respond by misbehaving, we are asking these 10 to 13 year olds to shoulder the burden of our failure.

That a low Age of Criminal Responsibility will 'minimise exploitation of children by adult criminals' is difficult to comprehend. There is a local saying: Instead of catching the eagle, we catch the chicken. Are we admitting that our law enforcement could not deal with the adult criminals and hence we are asking the child victims of exploitation to bear the life long consequences?

An argument has been put forth to bring children into the criminal justice system to enable them to receive professional care and attention. Wouldn't this be another failure of our system if we cannot ensure such services without the child having to pay the price of a criminal record? During such formative years, does the criminal justice system with an emphasis on punishment really serve the children and our society better in the long run? Would not expensive resources for such involvement be better used in rehabilitation of the child and the family?

To the child of 10 to 13 years, the protection of a subjective, criticised as conceptually obscure, rebuttable presumption of doli incapax, is a far cry from saying no child aged 13 and below can be guilty of a criminal offence.

ACA therefore strongly supports the Age of Criminal Responsibility to be raised to 14 years. Our 10 to 13 years old need protection and rehabilitation, not incrimination.

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Against Child Abuse

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