

**立法會**  
**Legislative Council**

LC Paper No. CB(4) 22/13-14  
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**Panel on Administration of Justice and Legal Services**

**Minutes of special meeting**  
**held on Tuesday, 8 January 2013, at 2:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon LEE Cheuk-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Claudia MO  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Hon Kenneth LEUNG

Hon Alice MAK Mei-kuen, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, JP  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan

**Members attending:** Dr Hon Fernando CHEUNG Chiu-hung] non-Panel members  
Dr Hon Helena WONG Pik-wan ]

**Members absent :** Hon Steven HO Chun-yin  
Hon Alan LEONG Kah-kit, SC  
Hon Tony TSE Wai-chuen

**Public officers attending :** Agenda item I

Law Reform Commission of Hong Kong

Mr Stephen WONG  
Secretary

Mr Peter DUNCAN, SC  
Chairman, Sub-committee on Review of Sexual Offences

Mr Eric T M CHEUNG  
Member, Sub-committee on Review of Sexual Offences

Mr Andrew POWNER  
Member, Sub-committee on Review of Sexual Offences

Mr Thomas LEUNG  
Secretary, Sub-committee on Review of Sexual Offences

**Attendance by  
Invitation**

: Agenda item I

Hong Kong Federation of Women's Centres

Mr LEUNG Shek-lun  
Advocacy Officer

The Association for the Advancement of Feminism

Ms HUI Pui-lam  
Coordinating Officer

Individual

Mr CHAN Chung-yau

Hong Kong Chinese Civil Servants' Association,  
Social Work Officer Grade Branch

Mr Sam LEUNG Kin-hung  
Chairman

Hong Kong Association for the Survivors of  
Women Abuse (Kwan Fook)

Ms CHUNG Bik-mui  
Chairman

Association for Concern for Legal Rights of  
Victims of Domestic Violence

Ms Puja KAPAI  
Board Member

Association Concerning Sexual Violence Against  
Women

Ms Linda WONG  
Executive Director

Rainlily

Ms Tiffany NG  
Service-in-charge

Individual

Ms Arnie LEE

Individual

Miss Candice LIU

Individual

Miss Miu WONG

Voices

Miss Doris CHONG  
Counsellor

Women Friendly Environment Group

Miss Wendy TUNG  
Member

Individual

Ms Elaine LAM

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai  
Director

Caritas Project for Adult Survivors of Childhood  
Trauma

Ms HO Yim-fan  
Assistant Social Work Officer

Individual

Miss Gloria NG

Individual

Mr Daniel YIP Wai-hon

Individual

Mr John FU Chi-yung

Hong Kong Bar Association

Mr Andrew BRUCE, SC

**Clerk in attendance** : Ms YUE Tin-po  
Chief Council Secretary (4)3

**Staff in attendance** : Mr Joey LO  
Senior Council Secretary (4)3

Ms Iris CHEUNG  
Legislative Assistant (4)2

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Action

**I. Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences**

Meeting with the Law Reform Commission and deputations/individuals

*(issued by the Law Reform Commission of Hong Kong on 17 September 2012)* -- Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences

LC Paper No. CB(4)225/12-13(03) -- Executive summary on Law Reform Commission's Consultation Paper on Rape and Other Non-consensual Sexual Offences

- LC Paper No. CB(4)225/12-13(04) -- Powerpoint presentation materials on "Consultation Paper on Rape and Other Non-Consensual Sexual Offences" provided by Law Reform Commission's Review of Sexual Offences Sub-committee
- LC Paper No. CB(4)228/12-13(01) -- Submission from The Law Society of Hong Kong (English version only)
- LC Paper No. CB(4)242/12-13(01) -- Submission from Association Concerning Sexual Violence Against Women (Chinese version only))

Welcoming remarks by the Chairman

The Chairman welcomed representatives of the Law Reform Commission ("LRC") and deputations and individuals to the meeting. She said that written submissions from deputations and individuals received before the meeting had been circulated to members, and deputations and individuals which had not provided written submission were requested to do so as soon as possible after the meeting. She reminded the deputations and individuals that when addressing the Panel at the meeting, they were not covered by the protection and immunity under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382), and their written submissions were not covered by the said Ordinance.

Presentation by deputations

*Hong Kong Federation of Women's Centres*  
(LC Paper No. CB(4)294/12-13(01) -- Submission (*Chinese version only*))

2. Mr LEUNG Shek-lun of Hong Kong Federation of Women's Centres presented the views of his organization as detailed in its submission.

*The Association for the Advancement of Feminism*

3. Ms HUI Pui-lam of the Association for the Advancement of Feminism ("AAF") said that the AAF supported LRC's recommendation to accept that

respect for sexual autonomy should be one of the most important guiding principles for reform. AAF agreed that there should be a statutory definition of consent in relation to sexual intercourse and sexual activity, and that the definition of consent should incorporate the element of free and voluntary agreement to sexual activity. In order to alleviate the stigmatization effect, AAF considered that the term "rape" should not continue to be used to describe the offence of non-consensual penile penetration. AAF also objected to making a distinction between rape and other non-consensual sexual offence which involved non-penile sexual penetrative acts as the harm of such acts inflicted on the victims was the same in the context of the offence of rape.

*Mr CHAN Chung-yau*

4. Mr CHAN Chung-yau said that it was important to clearly define the term "consent" to engage in sexual activities in the law and make it known to the general public through education in order to avoid any misunderstanding and inadvertent contravention.

*Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch*

(LC Paper No. CB(4)281/12-13(01) -- Submission (*Chinese version only*))

5. Mr Sam LEUNG Kin-hung of Hong Kong Chinese Civil Servants' Association, Social Work Officer Grade Branch presented the views of his organization as detailed in its submission.

*Hong Kong Association for the Survivors of Women Abuse (Kwan Fook)*

6. Ms CHUNG Bik-mui of Hong Kong Association for the Survivors of Women Abuse expressed concern about the prevalence of marital rape or non-consensual sexual activity between married couples. She said that many husbands nowadays still held an outdated view on marriage which dictated that a woman must be sexually submissive to her husband. Many wives were forced to engage in sexual activities with their husbands under economic threats or coercion. It was incumbent upon the Administration to educate the public in a positive manner so as to avoid the phenomenon from being distorted.

*Association for Concern for Legal Rights of Victims of Domestic Violence*  
(LC Paper No. CB(4)281/12-13(02) -- Submission (*Chinese version only*))

7. Ms Puja KAPAI of Association for Concern for Legal Rights of Victims of Domestic Violence presented the views of her organization as detailed in its submission.

*Association Concerning Sexual Violence Against Women*  
(LC Paper No. CB(4)284/12-13(01) -- Submission (*Chinese version only*))

8. Ms Linda WONG of Association Concerning Sexual Violence Against Women presented the views of her organization as detailed in its submission.

*Rainlily*  
(LC Paper No. CB(4)284/12-13(02) -- Submission (*Chinese version only*))

9. Ms Tiffany NG of Rainlily presented the views of her organization as detailed in its submission.

*Ms Arnie LEE*  
(LC Paper No. CB(4)304/12-13(01)) -- Submission (*Chinese version only*))

10. Ms Arnie LEE presented her views as detailed in her submission.

*Miss Candice LIU*

11. Miss Candice LIU raised objection to making a distinction between rape and other forms of sexual penetrative acts as the suffering endured by victims would be similar. She added that measures to protect the victims of sex crime should be enhanced. On the other hand, she welcomed LRC's recommendation to extend the definition of sexual assault to cover "under-the-skirt" photography and public bodily exposure.

*Miss Miu WONG*  
(LC Paper No. CB(4)284/12-13(03) -- Submission (*Chinese version only*))

12. Miss Miu WONG echoed the views of Voices as detailed in its submission.

*Voices*  
(LC Paper No. CB(4)284/12-13(03) -- Submission (*Chinese version only*))

13. Miss Doris CHONG of Voices elaborated on the views of her organization as detailed in its submission.



*Women Friendly Environment Group*

(LC Paper No. CB(4)284/12-13(04) -- Submission (*Chinese version only*))

14. Miss Wendy TUNG of Women Friendly Environment Group presented the views of her organization as detailed in its submission.

*Ms Elaine LAM*

(LC Paper No. CB(4)284/12-13(02) -- Submission (*Chinese version only*))

15. Ms Elaine LAM shared the views of Rainlily as detailed in its submission (LC Paper No. CB(4)284/12-13(01)).

*Hong Kong Bar Association*

(LC Paper No. CB(4)332/12-13(01) -- Submission (*English version only*))

16. Mr Andrew BRUCE, SC of Hong Kong Bar Association presented his views as detailed in his submission.

*Caritas Project for Adult Survivors of Childhood Trauma*

(LC Paper No. CB(4)284/12-13(05) -- Submission (*Chinese version only*))

17. Ms HO Yim-fan of Caritas Project for Adult Survivors of Childhood Trauma presented the views of her organization as detailed in its submission.

*Miss Gloria NG*

(LC Paper No. CB(4)284/12-13(02) -- Submission (*Chinese version only*))

18. Miss Gloria NG shared the views of Rainlily as detailed in its submission (LC Paper No. CB(4)284/12-13(02)). She said that the adoption of evidential presumptions on the determination of consent as in Section 75 of the Sexual Offences Act 2003 in England would enhance protection for the victims, as it would make it easier for the prosecution to prove the lack of consent. Under this approach, the victim would be taken as not having consented if the evidence established that certain specified circumstance existed at the time of the act in question, unless the accused pointed to evidence which raised an issue as to whether the victim consented.

*Mr Daniel YIP Wai-hon*

(LC Paper No. CB(4)284/12-13(01) -- Submission (*Chinese version only*))

19. Mr Daniel YIP Wai-hon shared the views of Association Concerning Sexual Violence Against Women as detailed in its submission (LC Paper No. CB(4)284/12-13(02)).

*Mr John FU Chi-yung*

*(LC Paper No. CB(4)284/12-13(01) -- Submission (Chinese version only))*

20. Mr John FU Chi-yung shared the views of Association Concerning Sexual Violence Against Women as detailed in its submission (LC Paper No. CB(4)284/12-13(01)).

#### Presentation by the Law Reform Commission

21. Mr Peter DUNCAN, SC, Chairman of the Sub-committee on Review of Sexual Offences, LRC, said that the Sub-committee on Review of Sexual Offences ("the Sub-committee") noted and would consider the views expressed by the deputations/individuals attending the meeting and the written submissions on various aspects of the consultation paper, including the use of the term "rape" in the legislation, the statutory definition of consent to sexual activity and the formulation of a statutory offence to deal with "under-the-skirt" photography, etc.

22. Mr Eric T M CHEUNG, Member of the Sub-committee on Review of Sexual Offences, LRC, added that the current consultation paper represented the first of a series of papers to be issued by the Sub-committee on the overall review of sexual and related offences. The paper mainly covered the non-consensual sexual offences which were concerned with promoting or protecting a person's sexual autonomy. Issues relating to the age of consent and protection of sex offence victims would be dealt with in a separate consultation paper.

#### Discussion

##### *Implementation of LRC's recommendations*

23. Whilst Mr LEE Cheuk-yan and Ms Emily LAU both welcomed the recommendations put forward by LRC, they expressed concern whether the Administration would accept and implement LRC's recommendations.

24. Mr Peter DUNCAN, SC, Chairman of the Sub-committee on Review of Sexual Offences, LRC, advised that LRC was a body which made recommendations on law reform initiatives to the Administration for consideration. It was up to the Administration to decide whether the recommendations would be adopted.

25. Mr Stephen WONG, Secretary of LRC added that in response to the concern about the delay in implementing LRC's recommendations, Ms

Margaret NG, former Panel Chairman, had discussed the matter with the Secretary for Justice who was also the Chairman of LRC. The Director of Administration issued a set of guidelines in October 2011, under which bureaux and departments ("B/Ds) having policy responsibility over any LRC report were required to provide at least an interim response within six months of publication of the report, and a detailed public response within 12 months of its publication. The B/Ds were required to give full consideration to the recommendations made by LRC setting out which recommendations they accepted, rejected or intended to implement in modified form in the detailed public response. The House Committee also endorsed the Panel's proposal for the introduction of a mechanism to monitor the Government's progress in implementing the recommendations made by LRC, including requiring the Secretary for Justice to submit to the Panel for discussion an annual report flagging up the progress in respect of the LRC reports which had not yet been implemented.

*Sexual assault by penetration*

26. Mr LEE Cheuk-yan noted that the scope of rape under section 118 of Crimes Ordinance (Cap. 200) was confined to penile penetration of the vagina of a woman. It did not apply to penile penetration of the anus or mouth of the victim. LRC recommended, amongst others, that in the new legislation there should be an offence of sexual assault by penetration, which would be constituted by a person (A) who, without the consent of another person (B) and without a reasonable belief that B consents, intentionally penetrated the vagina or anus of B with a part of A's body or anything else. Mr LEE expressed concern that the formulation of the offence of sexual assault by penetration might cause confusion between the offence of rape and that of sexual assault by penetration, causing difficulty in proving the accused guilty.

27. Mr Eric T M CHEUNG, Member of the Sub-committee on Review of Sexual Offences, LRC said that the formulation of the offence of sexual assault by penetration would provide an alternative offence in cases where the accused was unable to be proven guilty of the offence of rape. In this regard, LRC recommended that Schedule 1 to the Crimes Ordinance should be amended to allow a statutory alternative verdict for sexual assault by penetration where the accused was charged with rape.

*Definition of consent*

28. Dr Helena WONG opined that the existing legislation dealing with sexual offences was archaic and gravely in need of overhaul. In this regard, she supported the recommendations of LRC and hoped that it could expedite

its review on the common and statute law governing sexual and related offences under the relevant ordinances. On LRC's proposed definition of consent, she echoed the concern of some of the deputations and individuals attending the meeting that the proposed definition was unclear, and should be modified to set out particular circumstances in which there was no free agreement by the complainant to sexual activity, similar to Section 13(2) of the Sexual Offences (Scotland) Act 2009. She shared the views of the two legal professional bodies that clarity and precision in the drafting of the definition and scope of every sexual offence in the new legislation was essential in order to achieve the desired effect. She also echoed the views of some deputations/individuals attending the meeting that non-consensual penile and non-penile penetration were equally serious offences and should carry the same level of penalty.

29. The Chairman thanked LRC for taking the advice of the Panel to extend the consultation period for two months until 28 February 2013. She expressed reservation on whether the offence of rape should be abolished and be replaced by the offence of sexual assault, as it might lead to misunderstanding by the general public that the offence was less severe. She considered that public education on the definition of consent was of great importance so that members of the public, especially the youngsters would not fall into the criminal net inadvertently.

30. Mr Eric TM CHEUNG, Member of the Sub-committee on Review of Sexual Offences, LRC advised that LRC considered that the proposed definition of consent, i.e. free and voluntary agreement to sexual activity which was based on overseas legislation, was sufficiently clear. He agreed that education would help the public gain a deeper understanding of the definition of consent. He cautioned that it was questionable whether the adoption of rebuttable evidential presumptions on the determination of consent as proposed by certain deputations/individuals attending the meeting would be desirable, as the adoption could compromise the protection for the victims by imposing a higher threshold for conviction, making it harder for the prosecution to prove the lack of consent.

#### *Scope of the review*

31. Noting that the proposal for the protection of victims of sex offence cases would not be dealt with in the context of the consultation paper, Ms Emily LAU and Dr Elizabeth QUAT opined that more should be done under the existing criminal procedures to enhance the protection for the victims. They noted the deputations' view that there was inadequate handling of sexual offences by the Police, the Judiciary and the Department of Justice to ensure that the victims of sexual offence cases had the necessary privacy and

protection during the court proceedings. In this connection, Dr Kenneth CHAN opined that sufficient protection for victims of sex offences would enhance the quality of the evidence provided by the victims to the court, and ensure a fair trial for both the plaintiff and the defendant.

32. Mr Eric T M CHEUNG, Member of the Sub-committee on Review of Sexual Offences, LRC added that the scope of the entire review was wide and a number of sensitive and controversial issues which required careful consideration had been raised. It was clear that the entire review would take a considerable time to complete. The Sub-committee had therefore decided to break up the overall review into a number of parts and to issue separate consultation papers and reports on specific aspects of the subject. The Sub-committee believed that this "multi-report" approach would not only enhance the efficiency of the Sub-committee in considering this huge and complex subject but also make it easier for stakeholders to digest and comment by presenting published papers which were more manageable in size and scope for the reader. The adoption of the staged approach would enable LRC to achieve better results by collating more focused views on each of the subjects under consultation.

33. Noting with disappointment that issues relating to the age of consent for sexual activity and protection for victims of sex offences would not be touched upon by the Sub-committee at this stage, Dr KWOK Ka-ki urged LRC to start examining the subjects expeditiously without further delay. He enquired about the anticipated timetable for the work of the Sub-committee.

34. Mr Peter DUNCAN, SC, Chairman of the Sub-committee on Review of Sexual Offences, LRC advised that the consultation paper represented the first of a series of papers to be issued by the Sub-committee on the overall review of sexual and related offences. After expiration of the consultation period in February 2013, the Sub-committee would consider all the views received and make its final recommendations to LRC.

35. Ms Cyd HO welcomed the LRC's recommendations seeking to rectify the pitfalls of the existing sexual offences in the Crimes Ordinance which had long been criticized for being gender-specific and based on the sexual orientation of the parties concerned. She supported the recommendations as a step forward for Hong Kong in becoming a more open and pluralistic society. She considered that more should be done by the Hong Kong Bar Association on protection of victims of sex offences, for example, by issuing self-regulatory code of practices on protection of the identities of the victims to its members.

36. Mr Andrew BRUCE, SC, representative of the Hong Kong Bar Association advised that as revealing the identities of the victims of sex offences was tantamount to disobedience of court order and contempt of court, a self-regulatory code of practice for professional self-discipline would seem unnecessary.

37. Noting that LRC's previous recommendation of introducing legislation regulating media intrusion and clandestine photography in private places by the media was not adopted by the Administration due to strong opposition from the media industry, Ms Claudia MO enquired if LRC would tackle the proposed sex offence relating to "under-the-skirt" photography in the context of the proposed stalking legislation.

38. Mr Eric T M CHEUNG, Member of the Sub-committee on Review of Sexual Offences, LRC advised that stalking, which was not necessarily related to sex offence, was a privacy issue which fell outside the scope of the review.

39. Mr LEUNG Kwok-hung enquired if LRC would tackle the offences relating to sex torture and human trafficking in the context of the review. In response, Mr Peter DUNCAN, SC, Chairman of the Sub-committee on Review of Sexual Offences, LRC advised that such issues fell outside the scope of the review and were dealt with under the existing legislation.

## **II. Any other business**

40. There being no other business, the meeting ended at 4:38 pm.