

立法會
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LC Paper No. CB(4)1514/16-17
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by the Administration)

Panel on Administration of Justice and Legal Services

**Minutes of special meeting
held on Monday, 8 May 2017, at 9 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK Wing-hang (Deputy Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon Steven HO Chun-yin, BBS
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP
- Members absent** : Hon Frankie YICK Chi-ming, JP
Hon HUI Chi-fung

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers
attending**

: Item I

The Law Reform Commission of Hong Kong

Mr Philip ROSS
Member of the Review of Sexual Offences
Sub-committee

Ms Michelle AINSWORTH
Secretary

Ms Sally NG
Co-Secretary to the Review of Sexual Offences
Sub-committee

**Attendance by
invitation**

: Item I

Amnesty International Hong Kong
TSUI Ka-wing
Senior Human Rights Education Officer

Anti-480
Ms CHAN Crystal
Center in Charge

DAB
Mr IP Johnny
DAB Deputy Spokesperson of Legal Affairs

Association Concerning Sexual Violence Against Women
Ms CHOI Suet-wah
Project Officer(Advocacy)

Hong Kong Bar Association
Mr LEE Shu-wun
Council member

Division of Clinical Psychology, the Hong Kong
Psychological Society
Dr CHANG Suk-yi Sonia
Registered Clinical Psychologist (HKPS)

Against Child Abuse

Dr HO Jessica
Director

The Democratic Party

Mr CHAN Sai-kit
Representative

The Civic Party

Mr CHEUNG Kwan-kiu, Steve
District Developer of the Kowloon West Branch

Chosen Power (People First Hong Kong)

Ms TAM Carman
Vice Chair

Ms AU Yim-fong

Mr LEUNG Hoi-fu

林倩雯女士

Clerk in attendance : Ms Sophie LAU
Chief Council Secretary (4)2

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

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I. Receiving public views on "Law Reform Commission's Consultation Paper on Sexual Offences Involving Children and Persons with Mental Impairment"

Meeting with deputations/individuals and the Administration

LC Paper No. CB(4)591/16-17(05) -- Executive Summary of the Law Reform Commission's Consultation Paper on Sexual Offences Involving Children and Persons with Mental Impairment

2. Members noted the following submissions from deputations/individuals not attending the meeting –

(LC Paper No. CB(4)902/16-17(04) - Mr CHENG Chun-hung

LC Paper No. CB(4)902/16-17(05) - Mr CHONG Yiu-kwong

LC Paper No. CB(4)902/16-17(06) - Rehabilitation Alliance
Hong Kong

LC Paper No. CB(4)902/16-17(07) - Ming WONG

LC Paper No. CB(4)902/16-17(08) - Society for Community
Organization

LC Paper No. CB(4)984/16-17(01) - RainLily)

Presentation of views by deputations/individuals and the Administration's response

3. The Chairman invited deputations/individuals to present their views. She reminded them 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 also not covered by the Ordinance. In total, 13 deputations/individuals presented their views at the meeting, a summary of which was in **Appendix I**.

4. In response to the views expressed by deputations/individuals, Mr Philip ROSS of the Sub-committee on Review of Sexual Offences

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("Sub-committee") said that the suggestion of preparing a simplified version of the Law Reform Commission ("LRC")'s Consultation Paper on Sexual Offence involving children and persons with mental impairment ("Consultation Paper"), with pictorial illustrations, and the matter relating to imposing absolute liability on sexual offences involving children between the age of 13 and 16 would be further considered by the Sub-committee.

5. With regard to the work progress of the Sub-committee, Mr Philip ROSS reported that the Sub-committee published a consultation paper in July 2008 containing its interim proposals on the question of compiling a sex offenders register. A Commission report on this aspect of the project was published in February 2010. In December 2010, the LRC issued a report proposing the abolition of the common law presumption that a boy under 14 was incapable of sexual intercourse. The Sub-committee published a consultation paper in September 2012 on rape and other non-consensual sexual offences. Two more consultation papers on sexual offences, one on miscellaneous sexual offences and the other one on sentencing, would be issued by the Sub-committee in due course.

Discussion

Progress of the work of the Sub-committee

6. Having noted that the Consultation Paper was the second of the four consultation papers issued by the Sub-committee in its overall review of the substantive sexual offences, Mr CHAN Chi-chuen proposed that the Administration should expedite the work on introducing legislative amendments with regard to the less controversial recommendations made in the Consultation Paper. Whereas, consultations on issues requiring more in-depth considerations by the community of Hong Kong could be conducted simultaneously. Mr CHAN then asked for the legislative timetable for the proposed amendments.

7. Dr Fernando CHEUNG, Mr LEUNG Kwok-hung and the Chairman raised a similar concern about the work progress and concurred with the proposed way forward of the implementation and consultation work as suggested by Mr CHAN Chi-chuen.

8. Mr Philip ROSS responded that the Sub-committee had planned to issue one final global report based on individual reports of the four consultation exercises. Since two more consultation papers were yet to be issued, it would be premature at this stage to lay down the deadline for the submission of the reports and the timeframe for the legislative amendments.

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9. Ms Michelle AINSWORTH, Secretary to the LRC, supplemented that the Sub-committee had planned to issue one global final report in order to maintain consistency in the underlying themes and legal principles running through the consultation papers. However, the way forward on the implementation and consultation work as suggested by members would be further considered by the Sub-committee. Mr Philip ROSS further said that since most of the staff under the Sub-committee were part-timers working on voluntary basis, the Sub-committee would need more resources and manpower support from the Administration in order to expedite its work. However, Mr ROSS assured that his team would be fully committed to produce the reports as soon as practicable.

10. Dr Fernando CHEUNG suggested the Panel to issue a letter to Department of Justice ("DoJ") expressing the concern over the prolonged time needed to implement the recommendations made in the Consultation Paper. The Chairman concurred with Dr CHEUNG and said that she would write to DoJ on behalf of the Panel if no members raised any objection.

Age of consent and gender issues (recommendation 1 and 2)

11. Mr CHAN Chi-chuen expressed support of the recommendation that there should be a uniform age of consent of 16 years in Hong Kong, which should be applicable irrespective of gender and sexual orientation.

12. The Chairman also agreed that offences involving children and young persons should be gender-neutral.

Protection for young persons aged 16 or above but under 18 (recommendation 40)

13. Mr CHAN Chi-chuen considered that the enactment of legislation for the protection of "young persons" aged 16 or above but under the age of 18 was unnecessary if the uniform age of consent was to be set at 16. Mr CHAN further said that if additional protection for "young persons" was considered necessary, the Administration should consider setting the age of consent at 18 instead of having separate provisions for protection of the 16 and 17 years-olds.

14. In response to Dr Elizabeth QUAT's enquiry about the Sub-committee's views on the above issue, Mr Philip ROSS said that owing to the divergent views on the issue, the Sub-committee took the view that this issue should be further considered subject to the public opinions collected during the public consultation exercise.

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Offences involving children between the age of 13 and 16 (recommendation 6)

15. Mr Holden CHOW agreed that absolute liability should apply to offences involving children between the age of 13 and 16 so as to enhance the protection for children. Mr CHOW also agreed with the Sub-committee's view that the public should be further consulted on the issue of whether or not in this context a distinction should be made between penetrative and non-penetrative sexual activity.

16. Taking note of paragraph 6 of RainLily's submission, Dr Elizabeth QUAT agreed with RainLily's view that the distinction between penile and non-penile penetrative sexual offences was unnecessary.

Consensual sexual activity between persons who were between the age of 13 and 16 (recommendation 8)

17. On whether consensual sexual activity between persons who were between the age of 13 and 16 should be criminalized, Mr CHAN Chi-chuen noted that three possible approaches had been set out in paragraph 53 of the executive summary of the Consultation Paper. In this regard, Mr CHAN opined that a more liberal approach should be taken for consensual sexual activities, especially those took place in puppy love situations.

18. Acknowledging that young persons did engage in sexual activity at an early age nowadays, the Chairman opined that a more liberal approach should be taken for consensual sexual activities which took place in puppy love situations and that these situations should be well-distinguished from cases of sexual grooming and/or sexual exploitation. The Chairman further said that any proposal which would result in the keeping of criminal records for young persons who engage in consensual sexual activities should also be carefully considered.

Sexual grooming (recommendation 22)

19. Dr Elizabeth QUAT pointed out that there might be situations where an offender might groom a child, where the act of grooming was commonly carried out on the internet, with a view to engaging in conduct which constituted a sexual crime against the child. Dr QUAT then asked whether there would be any proposal to enhance the protection for children in the situations she mentioned above.

20. Mr Philip ROSS responded that the proposed new offence of sexual

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grooming would allow Police to take early action to investigate into suggested cases of abuse of children and get an early chance of charging people of attempted offences before the offenders actually met up with the children and/or before the sexual offences took place.

Reform of legislation in respect of mentally incapacitated persons / persons with mental impairment

21. Dr Fernando CHEUNG noted that the definition of a mentally incapacitated person ("MIP") was discussed in the Consultation Paper. Instead of using MIP (as defined in section 117(1) of the Crimes Ordinance (Cap 200)), persons with mental impairment ("PMIs") was used, as a general term, in the Consultation Paper. Dr CHEUNG considered that the word "impairment" was a medical term and asked the Sub-committee to further consider the appropriate term to be used in this regard. Dr CHEUNG further said that in the context of the current reform that the new proposed offences involving PMIs would apply to any mentally disordered persons or mentally handicapped persons. The distinction between persons with mental disorders/diseases and mentally handicapped persons had to be made.

22. In respect of the approaches that might be adopted for reform of legislation in respect of MIPs, Dr Fernando CHEUNG noted that the presumption that a PMI was incapable of consenting to sexual activity was proposed to be removed. Instead, questions in respect of a PMI's ability to perform three acts set out in paragraph 131 of the executive summary of the Consultation Paper had to be asked in order to ascertain the PMI's capacity to consent. Quoting the "Bridge of Rehabilitation Company" incident as a case on point, Dr CHEUNG raised the concern as to the ability of PMIs to testify during trial. Dr CHEUNG further pointed out there might be gray areas in ascertaining the PMI's capacity to consent, particularly for mildly mentally handicapped persons, and thus he was concerned about the potential difficulties in obtaining evidence as to whether the alleged victim had consented to the sexual activity.

23. Mr Holden CHOW also expressed concern about the ability of PMIs to testify in court. Mr CHOW then asked whether the Sub-committee had considered introducing the absolute liability on sexual offences against PMIs, at least for those penetrative sexual activities. Mr CHOW further said that his suggestion could enhance the protection of PMIs by saving them from the need to give evidence at trial. Mr Philip ROSS responded in the negative and said that this suggestion would be further considered by the Sub-committee.

24. The Chairman said that issue of whether MIPs or PMIs had the capacity to consent and the latest development in the regime of hearsay in

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criminal proceedings were areas of concern. The Chairman then sought clarification on whether the Sub-committee had set out a clear direction in the reform of these areas.

25. Mr Philip ROSS said that the regime of hearsay in criminal proceedings was outside the terms of reference of the Sub-committee and clarified that the Sub-committee only dealt with the review of substantive content of the sexual offences. Ms Michelle AINSWORTH supplemented that DoJ had issued a consultation paper in April to invite comments on the proposed Evidence (Amendment) Bill 2017 which sought to implement the recommendations of the LRC's report on hearsay in criminal proceedings.

26. Ms Michelle AINSWORTH further said that the suggestion and concern discussed during this meeting, including the preparation of a "user-friendly" report and the legislative timetable to implement the recommendations in the Consultation Paper, would be reflected to the LRC.

Conclusion

27. The Chairman said that Panel members and some deputations had raised similar concern on a number of common issues, in particular, the slow progress of the reform on sexual offences and the issue of insufficient resources faced by the Sub-committee. The Chairman said that she would write to DoJ to reflect the views and suggestions discussed during this meeting. She also urged the Sub-committee to work on a simplified version of the Consultation Paper and urged the Administration to expedite its work in relation to the implementation of the LRC's report on hearsay in criminal proceedings.

(post meeting note: The Chairman issued a letter on 13 June 2017 to the Secretary for Justice to express the concern of the Panel members and some deputations discussed during this meeting.)

II. Any other business

28. There being no other business, the meeting ended at 10:40 am.

Panel on Administration of Justice and Legal Services

Special meeting on Monday, 8 May 2017, at 9:00 am

Receiving public views on "Law Reform Commission's Consultation Paper on Sexual Offences Involving Children and Persons with Mental Impairment"

Summary of views and concerns expressed by deputations/individuals

No.	Name of deputation/individual	Submission/Major views and concerns
1.	Amnesty International Hong Kong	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)902/16-17(03) (English version only)
2.	Anti-480	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)963/16-17(03) (Chinese version only)
3.	The Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB")	<ul style="list-style-type: none"> ● in support of the reform on sexual offences involving children and persons with mental impairment ("PMIs") ● <u>recommendation 6 of the consultation paper</u> <ul style="list-style-type: none"> - opined that absolute liability should be apply to offences involving children between the age of 13 and 16. However, in considering this matter, the distinction between penetrative and non-penetrative sexual activity should not be a relevant factor for consideration. Instead, the focus should be the protection for children against sexual exploitation. ● <u>recommendation 7 of the consultation paper</u> <ul style="list-style-type: none"> - considered that the effect of abolishing the marital defence on ethnic minorities who were married under the age of 16 should be carefully considered

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No.	Name of deputation/individual	Submission/Major views and concerns
		<ul style="list-style-type: none"> ● <u>recommendation 8 of the consideration paper</u> <ul style="list-style-type: none"> - In support of the recommendation of criminalizing consensual sexual activity between persons between the age of 13 and 16 and recognizing that prosecutorial discretion would be exercised as to whether it was appropriate for a charge to be brought
4.	Association Concerning Sexual Violence Against Women	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)963/16-17(02) (Chinese version only)
5.	Hong Kong Bar Association	<ul style="list-style-type: none"> ● considered that most of the recommendations set out in the consultation paper were social issues and thus those issues should be put to the general public for comment ● the only concern was the issue relating to absolute liability in sexual activities involving children between the age of 13 and 16. In particular, whether the issue of "consent" or "mistaken belief" should be an element of the offence for the prosecution to prove or just a defence available to the accused should be carefully considered
6.	Division of Clinical Psychology, the Hong Kong Psychological Society Ltd	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)902/16-17(01) (English version only)
7.	Against Child Abuse	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)902/16-17(02) (Chinese version only)
8.	The Democratic Party	<ul style="list-style-type: none"> ● opined that the current legislation on sexual offences involving children and PMIs was anachronistic ● welcomed the proposal that new proposed offences involving PMIs would

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No.	Name of deputation/individual	Submission/Major views and concerns
		<p>also apply to mentally disordered persons or mentally handicapped persons</p> <ul style="list-style-type: none"> ● in support of the recommendation that there should be a uniform age of consent of 16 years in Hong Kong, which should be applicable irrespective of gender and sexual orientation ● in support of having a range of offences involving children under 13 and another range of offences involving children under 16 ● opined that absolute liability should not apply to offences involving children between the age of 13 and 16 ● expressed reservation on the prosecutorial discretion as to whether a case was appropriate for a charge to be brought. In this regard, reference should be made to "兩小無猜條款" adopted in Taiwan ● opined that sex education in Hong Kong should be strengthened
9.	The Civic Party	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)963/16-17(01) (English version only)
10.	Chosen Power (People First Hong Kong)	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)984/16-17(02) (Chinese version only)
11.	Ms AU Yim-fong	<ul style="list-style-type: none"> ● presentation of views as set out in submission LC Paper No. CB(4)984/16-17(03) (Chinese version only)
12.	Mr LEUNG Hoi-fu	<ul style="list-style-type: none"> ● in support of the recommendation that there should be a uniform age of consent in Hong Kong, which should be applicable irrespective of gender and sexual orientation ● considered that the age of consent should be 13 ● opined that prosecutorial discretion should be avoided ● opined that sexual autonomy of PMIs should be respected

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No.	Name of deputation/individual	Submission/Major views and concerns
13.	林倩雯女士	<ul style="list-style-type: none">● opined that the current legislation on sexual offences involving children and PMIs was anachronistic● opined that the legal protection for children against sexual exploitation should be enhanced● expressed concern about the ability of PMIs to testify in court● opined that sex education in Hong Kong should be strengthened● suggested the introduction of a register of sex offenders, in particular, setting up a mechanism allowing criminal record checks of staff working in schools, private educational centres and child care centres.● suggested that a simplified version of the Consultation Paper should be prepared