



母親的抉擇
Mother's Choice

Changing Life Stories:

Understanding the Legal Aspects of
Working with Children and Families

Sexual Offences



An Introductory Manual for Child Welfare Professionals

About the Authors



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Mother's Choice is a charity serving the many children without families and pregnant teenagers in Hong Kong. We join hands with our community to give hope, and change the life stories of vulnerable girls and babies. We are a champion for children and a voice for every child to be in a safe, loving and permanent family.

www.motherschoice.org

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Sexual Assault and Underage Sex

United Nations Convention on the Rights of the Child

Article 34

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

- a. *The inducement or coercion of a child to engage in any unlawful sexual activity*
- b. *The exploitative use of children in prostitution or other unlawful sexual practices*
- c. *The exploitative use of children in pornographic performances and materials”*

Introduction

The government has a legal duty to take appropriate steps to protect children from sexual exploitation and sexual abuse. One way to do this is to criminalize such acts and prosecute offenders effectively and strictly in accordance with the relevant laws.

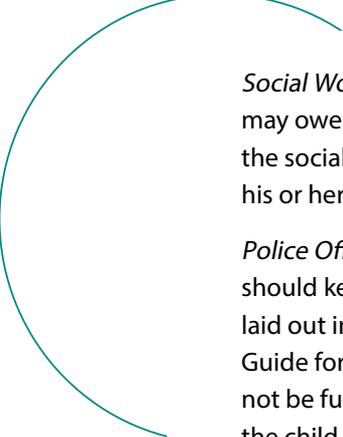
In order to best protect child victims of sexual abuse, it is important to understand the legal definitions of various sexual offences (including rape, underage sex and other types of sexual assault) under Hong Kong law. It is also necessary to know how to report crimes to the police, the subsequent procedures involved and the kind of evidence required to establish a case. There are many parties who can play a role in ensuring that children have the best possible support and protection.

WHAT ROLE CAN PROFESSIONALS PLAY?

There is generally no *legal* requirement to report suspected sexual offences or other crimes to the police. However, the Social Welfare Department recommends that when a child is suspected of having been maltreated, professionals should take preliminary actions (including connection of basic information) and conduct initial assessment or report to an appropriate unit (such as the Family and Child Protective Services unit of the Social Welfare Department, the responsible social worker of the concerned service unit for known cases, or the police)¹.

Professionals can also play an important role in supporting the recovery of children and their families in cases of sexual abuse as well as supporting them to report where appropriate, acting as an advocate through criminal justice investigations and implementing case plans which uphold safety, dignity and protection.

1 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) p,47 para 4.1, p. 43



Social Workers – Depending on the facts of the case, a social worker may owe a duty of care to the child, and if the child is harmed because the social worker has breached this duty by failing to report, the child or his or her representative can bring a lawsuit against the social worker.²

Police Officers – In investigating sexual abuse cases, police officers should keep in mind the governing principles and specific requirements laid out in the Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation. In particular, the child must not be further traumatized by the investigation and the best interests of the child must always be protected. Police officers may achieve this by minimizing the number of times a child is interviewed and employing special procedures to reduce the stress on child witnesses.³

Parents, medical professionals, schools and government officials have a responsibility to report cases as well as to cooperate with any investigations and/or meetings relating to the child’s safety. All involved professionals have a responsibility to respond sensitively to cases of abuse, upholding confidentiality where it does not pose additional risk and taking care not to impose feelings of shame, blame or guilt upon child and family victims.

WHAT IS THE LEGAL DEFINITION OF RAPE?

A man commits rape if:

- a. he has unlawful sexual intercourse with a woman or girl who at the time of the intercourse does not consent to it; and
- b. at the time he knows that she does not consent to the intercourse or he is reckless as to whether or not she consents to it.⁴

It is important to know the definition of the relevant terms:

- a. “Sexual intercourse” means penetration of the vagina by the penis.⁵ Any other types of sexual acts do not qualify as rape. For example, penetration of the mouth, non-vaginal penetration by the penis or non-penile vaginal penetration will not be considered rape, though they may amount to other offences, such as indecent assault.⁶
- b. “Consent” means that a woman or girl agrees to sexual intercourse. A woman or girl can change her mind and withdraw her consent during intercourse. A man who continues with sexual intercourse after the woman or girl has told him to stop commits rape.⁷

2 *CN & GN v Poole BC* [2019] UKSC 25, para 88-89

3 Protecting Children from Maltreatment — Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) Chapter 10

4 Crimes Ordinance (Cap 200), s 118(3).

5 *R v Lee Wing On* [1994] 1 HKC 257, at 262 (CA).

6 The Law Reform Commission of Hong Kong Review of Sexual Offences Sub-Committee Consultation Paper on Rape and other Non-Consensual Sexual offences, September 2012 <https://www.gov.hk/en/residents/government/publication/consultation/docs/2012/Rape.pdf>

7 *Tamaitirua Kaitamaki v The Queen* [1985] A.C. 147.

c. "Reckless" means the defendant could not care less whether the woman or girl was consenting or not but pressed on regardless.⁸ On the other hand, where the defendant genuinely, but mistakenly believed that the woman or girl was consenting, this element is not satisfied.⁹

A man who commits rape is liable on conviction to imprisonment for life.¹⁰ In practice, depending on the facts and the circumstances of a case, the terms of imprisonment start, at the very least, at 5 years.¹¹

SEX WITH AN UNDERAGE GIRL AND/OR MENTALLY INCAPACITATED GIRL OR WOMAN

It is illegal for a man to have sexual intercourse with any girl under the age of 16.¹² Consent is irrelevant in underage sex cases.¹³ In other words, if the girl is under the age of 16, any man engaging in sexual intercourse with her has committed a crime, irrespective of whether the girl has consented to the intercourse.

If the girl is under the age of 16, but above the age of 13, the man could face a sentence of up to five years imprisonment.¹⁴ If the girl is under the age of 13, the man could be sentenced to life imprisonment.¹⁵ In practice, the precise age of the girl and the accused are most relevant to the sentence. Sentences in the range of 6 to 18 months' imprisonment in cases of girls above 13 years of age will fall for consideration.¹⁶

It is also a crime for a man to have sexual intercourse with a mentally incapacitated girl or woman of any age, where the man committing the act knows that the girl or woman is mentally incapacitated.¹⁷ It is irrelevant whether the mentally incapacitated girl or woman has given consent as she is deemed not to have legal capacity to consent to sexual activities. A mentally incapacitated person is described in legal terms as a mentally disordered person or a mentally handicapped person whose mental disorder, or mental handicap, as the case may be, is of such a nature or degree that the person is incapable of living an independent life or guarding himself against serious exploitation, or will be so incapable when of an age to do so.¹⁸

8 R v Kimber [1983] 1 WLR 1118.

9 HKSAR v Ho Yin Ting [2013] HKEC 278. See also HKSAR v Chan Mei Wah Yummy [2017] para.19

10 Crimes Ordinance (Cap 200), s118(1).

11 Sentencing in Hong Kong, I Grenville Cross, SC, Patrick WS Cheung, Eighth Edition (2018), p. 824.

12 Crimes Ordinance (Cap 200), s 123, 124.

13 Crimes Ordinance (Cap. 200) S. 122(1).

14 Crimes Ordinance (Cap 200), s 123.

15 Crimes Ordinance (Cap 200), s 123.

16 Sentencing in Hong Kong, I Grenville Cross, SC, Patrick WS Cheung, Eighth Edition (2018), p. 825.

17 Crimes Ordinance (Cap 200), s 125.

18 Crimes Ordinance (Cap 200), s 117(1).

SEXUAL OFFENCES UNDER THE CRIMES ORDINANCE (CAP 200)

Section 47	Incest by men
Section 48	Incest by women of or over 16
Section 118	Rape
Section 118A	Non-Consensual Buggery
Section 118B	Assault with intent to commit buggery
Section 118C	Homosexual Buggery with or by a man under 16
Section 118D	Buggery with a girl under 21
Section 118E	Buggery with a mentally incapacitated person
Section 118G	Procuring others to commit homosexual buggery
Section 118H	Gross indecency with or by a man under 16
Section 118I	Gross indecency by a man with a male mentally incapacitated person
Section 119	Procurement of an unlawful sexual act by threats or intimidation
Section 120	Procurement of an unlawful sexual act by false pretences
Section 121	Administering drugs to obtain or facilitate an unlawful sexual act
Section 122	Indecent Assault
Section 123	Sexual Intercourse with a girl under 13
Section 124	Sexual Intercourse with a girl under 16
Section 125	Sexual Intercourse with a mentally incapacitated person
Section 126	Abduction of an unmarried girl under 16
Section 127	Abduction of an unmarried girl under 18 for sexual intercourse
Section 128	Abduction of mentally incapacitated person from parent or guardian for sexual act
Section 129	Trafficking in persons to or from Hong Kong for the purpose of prostitution
Section 130	Control over persons for the purpose of unlawful sexual intercourse or prostitution
Section 131	Causing prostitution
Section 132	Procurement of a girl under 21
Section 133	Procurement of a mentally incapacitated person to have unlawful sexual intercourse
Section 134	Detention for intercourse or in a vice establishment
Section 135	Causing or encouraging prostitution of, intercourse with, or indecent assault on, a girl or boy under 16.

CONT'D

Section 136	Causing or encouraging prostitution of a mentally incapacitated person
Section 138A	Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances.
Section 140	Permitting a girl or boy under 13 to resort to or be on premises or vessel for intercourse, prostitution, buggery, or homosexual act.
Section 142	Permitting a mentally handicapped person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act.
Section 146	Indecent conduct towards a child under 16

PREVENTION OF CHILD PORNOGRAPHY ORDINANCE (CAP 579)

Section 3 – Offences relating to Child Pornography

RELATED OFFENCES

- Inciting another to commit any of the above offences
- Aiding, abetting, counselling or procuring the commission of any of the above offences
- Conspiracy to commit any of the above offences
- Attempted to commit any of the above offences

Note: In Hong Kong law, while rape refers to male perpetrators only, other sexual offences refer to 'any person' as potential perpetrators (See individual offences for clarity).

Buggery: The act of Buggery (anal sexual intercourse with a man by a man or with a woman by a man) is in itself not illegal in Hong Kong where both parties are over 16, if both male and consenting (this changed in 2014), or where the woman is over 21 and consenting, if with a woman by a man.

NOTE

CAN YOUNG BOYS BE GUILTY OF COMMITTING RAPE OR UNDERAGE SEX?

"Man" in both the Hong Kong legal definition of rape and the legal definition of illegal underage sex means any male over the age of 10.

This means that in Hong Kong even young boys, for example those under the age of 14, can be guilty of committing rape or underage sex under Hong Kong law. This is true even if the boy is close in age to the girl. In these cases, it is up to the government prosecutor to decide whether to bring criminal charges against the boy.¹⁹

19 See paragraph 3.2.6.2 below for the test for prosecution.

In the past, there was a legal presumption that boys under 14 were not capable of committing a sexual offence. This was however changed in 2012. Boys under 14 can now be found guilty of such crimes.²⁰ In Hong Kong, children under 10 cannot be guilty of ANY criminal offences, and therefore cannot be found guilty of rape, underage sex, or any other sexual offences.²¹

CAN A BOY BE A VICTIM OF RAPE?

In Hong Kong, rape or underage sex can only be committed by a man upon a woman. This definition means that, under current law, a boy cannot be the victim of rape or underage sex. *However*, sexual assault against a boy amounts to a different type of crime, for example indecent assault or homosexual buggery with a man under 16. (See table of sexual offences above)

IS IT COMPULSORY TO REPORT A CASE OF RAPE OR UNDERAGE SEX?

Generally, there is no legal duty to report crimes in Hong Kong.

However, the Social Welfare Department has recommended that where there is a suspected child maltreatment case, it is best practice to (a) refer such cases to the Family and Child Protective Services Units of the Social Welfare Department (if it is a new case) or to the responsible service units (if it is a known case) and/or (b) make a report to the Police for investigation or assistance as soon as possible.²² There are exceptions within the Personal Data (Privacy) Ordinance (Cap. 486) allowing usage and sharing of personal data for cases where (a) the personal data related to the physical or mental health of the subject and maintaining privacy of that information would cause serious physical or mental harm to the subject or other individuals (Section 59), or (b) the personal data is necessary for detection or prevention of crime or seriously improper conduct and maintaining privacy of such information would hinder such purposes (Section 58). However, each case must be determined on its own merit.²³

In addition, depending on the facts of the case it may be that social workers owe a duty of care to their clients²⁴ to report cases of abuse. In that case, if a child is harmed because a social worker breached such duty and did not report a case, the child or their representative may be able to bring a lawsuit arguing that the social worker breached their professional duties by allowing harm to come to that child.

Government policy requires that civil servants report crimes or suspected crimes to the proper officials, regardless of whether they heard about the crime through their official or personal capacity.²⁵ In addition, the government asks that every other

20 Crimes Ordinance (Cap 200), s 118O.

21 Juvenile Offenders Ordinance (Cap 226), s 3.

22 Social Welfare Department, Procedural Guide for Multi-disciplinary Co-operation (2020 Version), p.43, Flowchart 1

23 Protecting Children from Maltreatment – Procedural Guide for Multi-disciplinary Co-operation (Revised 2020) (Annex 2) p. 9, para. 8

24 CN & GN v Poole BC [2019] UKSC 25, para 88-89

25 Civil Bureau Circular, Civil Bureau Circular No. 7/2012 (2012), para. 1, available at http://hksargegu.org.hk/public_html/GOV_CIR/2012%20CSB%20CIR_072012.pdf

member of the community help law enforcement agencies by reporting crime.²⁶

HOW TO REPORT A RAPE OR SEXUAL OFFENCE TO THE POLICE²⁷

Anyone wishing to report a crime to the Police can call “999” for urgent matters or go directly to a Police Station.²⁸ If a victim wishes to report the case directly in a Police Station, it is best to report the case to the Police Station within the District where the crime took place. If requested to do so by the victim and/or his/her parents, professionals working with the family staff may support attendance.

If the offence was recent, the police may request the victim to not clean or throw away any clothes, sheets, or tissues used to clean themselves, or other evidence.

The victim will be interviewed by an officer of the same sex as the victim (unless the victim requests otherwise). Parents/guardians may accompany the parent²⁹. He or she will be asked to give a formal statement.

If the victim is under 17 years of age, they will be asked to be interviewed while being video-recorded, and if the child is under 18 years of age at the time of the court hearing, the video may be shown.³⁰

Actions may be taken at the scene and/or follow-up enquiries will be carried out:³¹

- a. Medical services will be arranged immediately if required.
- b. Police will visit the scene to collect evidence.
- c. Forensic evidence may be collected from the victim (if the victim or their parent/guardian consents to this). There are various different forms of evidence, depending on the nature of the offence but may include clothing, bedsheets and bodily swabs to detect DNA.
- d. A police photographer may take photographs of any injuries.
- e. With the victim’s consent, a referral may be made to the Social Welfare Department for specialized crisis intervention and after-care.
- f. An identification parade may be conducted.

The time needed by the police to investigate will depend on a number of factors, for example whether the suspect can be located. If the woman or girl becomes pregnant as a result of the incident, the police may wait until after the girl gives birth in order to collect DNA evidence.

26 The Victims of Crime Charter https://www.doj.gov.hk/en/publications/pdf/vcc_e.pdf

27 Social Welfare Department – Procedural Guidelines for Handling Adult Sexual Violence Cases (revised 2007) S.2 p.14-19 [https://www.swd.gov.hk/doc/fcw/proc_guidelines/sexual_violence/Procedural%20Guidelines%20\(Sexual%20Violence\)%20\(Rav%202007\)%20\(Eng\)%20\(080911\).pdf](https://www.swd.gov.hk/doc/fcw/proc_guidelines/sexual_violence/Procedural%20Guidelines%20(Sexual%20Violence)%20(Rav%202007)%20(Eng)%20(080911).pdf)

28 Advice to Persons Reporting a Crime – Procedures of Handling Sexual Violence, Hong Kong Police Force (retrieved Dec. 10, 2020), available at http://www.police.gov.hk/info/doc/cpa/sexvio_en.pdf

29 Advice to Persons Reporting a Crime – Procedures of Handling Sexual Violence, Hong Kong Police Force (retrieved Dec. 10, 2020), available at http://www.police.gov.hk/info/doc/cpa/sexvio_en.pdf

30 Criminal Procedure Ordinance (Cap. 221), s.79A, s. 79C.

31 Advice to Persons Reporting a Crime – Procedures of Handling Sexual Violence, Hong Kong Police Force (retrieved Dec. 10, 2020), available at http://www.police.gov.hk/info/doc/cpa/sexvio_en.pdf

AFTER A REPORT IS MADE TO THE POLICE, WHAT HAPPENS NEXT?

Where a suspect is identified, the suspect will be arrested and brought before a police officer in charge of the relevant police station, provided that the police officer in arresting the suspect has a reasonable suspicion of the person being guilty of an offence.³² The police will decide whether to bring charges, usually in consultation with the Department of Justice (which holds ultimate responsibility for commencing criminal prosecution in Hong Kong).³³ After charging, unless the offence appears to be of a serious nature or the police officer reasonably considers that the person ought to be detained, the charged person will be granted bail on the understanding that s/he will return home and appear at the court on a specified date. If the charged person is to be detained in custody, the police are required to bring him/her before a magistrate as soon as practicable and generally within 48 hours after his arrest.³⁴ At this first appearance, the magistrate has full power to make a decision to remand the defendant in custody or release him/her on bail.³⁵

Following charging and investigation the police will present the case to the Department of Justice for them to decide whether to continue the prosecution of the defendant by proceeding with the same charge(s) laid by the police, or may amend, withdraw or add to the charges. Generally, a prosecutor will only prosecute an individual if (a) the evidence available is sufficient to justify instituting or continuing proceedings, and (b) the general public interest requires a prosecution to be pursued. In deciding where the public interest lies in a particular case, the prosecutor must consider the justice of the situation and examine all of the factors, including, among other things, the seriousness and circumstances of the offence, and the age or aptitude of the suspect or victim.³⁶

If the Department of Justice decides to proceed with the prosecution, the case will go to court. Depending on the offences involved, the defendant may have to plead either guilty or not guilty on their first or subsequent appearance before the magistrate. If he/she pleads guilty, the victim will not need to appear in court. If the defendant pleads innocent, the victim will be required to go to court to testify.

For certain serious offences, including rape, the matter can only be tried by the Court of First Instance.³⁷ In those circumstances, there will usually be initial proceedings called "committal proceedings" held in the Magistrates Court. Unless the defendant elects otherwise, the magistrate will conduct a preliminary inquiry to determine whether the defendant should be committed to the Court of First Instance (but the magistrate has no power to determine the guilt of the defendant).³⁸ During this preliminary inquiry, the victim may be called as a prosecution witness to give evidence and be cross-examined by the defendant's lawyers.³⁹ If the magistrate determines that the defendant has a case to answer, he or she should also ask if the defendant wishes to plead guilty.⁴⁰ If the defendant pleads guilty, s/he will be committed for sentence in

32 Police Force Ordinance (Cap. 232), ss. 50(1), (1A) and (1B).

33 Criminal Procedure Ordinance (Cap. 221), s.14(1); see also paragraph 3.2.6.2 below.

34 Police Force Ordinance (Cap. 232), s. 52(1).

35 Criminal Procedure Ordinance (Cap. 221), ss. 9D and 9G; Magistrates Ordinance (Cap. 227), ss. 79 and 102.

36 Prosecution Code, Department of Justice 2013, paras 5.1 – 5.10.

37 Indictable offences listed in Part III of the Second Schedule to the Magistrates Ordinance can only be determined by the Court of First Instance, see Magistrates Ordinance (Cap.227), s. 88.

38 Magistrates Ordinance (Cap. 227), s.80A-C.

39 Magistrates Ordinance (Cap. 227), s.81.

40 Magistrates Ordinance (Cap. 227), s.82(1).

the Court of First Instance.⁴¹ This means that the victim will not be asked to go to court again. If the defendant does not plead guilty, however, and there is sufficient evidence to put the defendant upon the trial for an indictable offence or if the evidence raises a strong or probable presumption of the defendant's guilt, s/he will be committed to a trial at the Court of First Instance⁴², during which the victim may be called to testify as a prosecution witness again.

If the case is a rape case, the whole process can often take over a year. Where the victim is a child or a mentally incapacitated person, a magistrate may order that the accused is committed to the Court of First Instance for trial without the option of a preliminary inquiry first.⁴³

NOTE

SPECIAL PROTECTIONS FOR CHILD VICTIMS AND WITNESSES

If necessary, the victim may request the use of a one-way viewing facility at an identification parade.⁴⁴

On the day the victim goes to the court, police accompaniment through a separate entrance can be put in place. There should also be a support person sitting with the victim in the waiting room.⁴⁵

In some cases, particularly when interviewing a child about a sensitive or traumatic topic such as a sexual or violent offence, a video recording may be used as evidence and/or the child may be allowed to give testimony via a closed circuit television link or a live video link, so that he/she does not have to appear in the courtroom.⁴⁶

WHAT EVIDENCE IS CONSIDERED IN A CASE OF RAPE OR UNDERAGE SEX?

There is direct and indirect evidence.

- a. Direct evidence is what a person saw, heard, smelled, tasted, or felt.
- b. Indirect evidence is evidence other than direct evidence that can also help to prove a case. Examples of indirect evidence might include: bed sheets with the bodily fluid of the suspect, torn clothing, CCTV of the building in which the crime took place, tissues used by the victim to clean themselves, fingerprints of the suspect, photographs, witnesses, or a record of communication between the victim and the suspect (both before and after the sexual offence).

It is important to collect any evidence and submit it to the police as this can be critical in establishing a case.

41 Magistrates Ordinance (Cap.227), s.81B(2).

42 Magistrates Ordinance (Cap. 227), s.85(2).

43 Criminal Procedural Ordinance (Cap 221), s.79F.

44 Rights of Victims and Witnesses of Crime, Hong Kong Public Force, December 2020, available at http://www.police.gov.hk/ppp_en/04_crime_matters/rvwc.html

45 Ibid.

46 Criminal Procedure Ordinance (Cap 221), s 79B, 79C, 79D.

WHAT ARE A VICTIM'S RIGHTS IN REGARDS TO REPORTING A SEXUAL ASSAULT CASE? DO THE POLICE HAVE TO PROVIDE UPDATES ABOUT THE CASE?

The relevant police officers and prosecutors should inform victims of their role in, and the procedures of, the prosecution and court process. They should also update victims of the progress and result of the investigation.⁴⁷ For serious crimes, including rape, victims should be updated at least every six months in any event.⁴⁸

The victim should be given the contact number of the Investigating Officer of the case and the police reference number for the case. The victim is entitled to call the responsible Investigating Officer at any time for an update. Social workers can obtain information about the investigation on the client's behalf so long as they have given consent to the police.

SOURCES OF ADDITIONAL SUPPORT (The following is non-exhaustive, please check the internet for the most up-to-date services in your area)

Rain Lily

Provides hotline and crisis center for female victims of sexual violence.

Tel: 2375 5322 / www.rainlily.org.hk

Tung Wah Group of Hospitals CEASE Crisis Centre

Crisis intervention and support services for victims of sexual violence.

Tel: 18281 / www.ceasecrisis.tungwahcsd.org

The Victims of Crime Charter

www.doj.gov.hk/eng/public/pub200004.html

Criminal and Law Enforcement Injuries Compensation (CLEIC) Scheme

https://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_criminalan/

LAW REFORM COMMISSION'S REVIEW OF SUBSTANTIVE SEXUAL OFFENCES

In December 2019, the Law Reform Commission ("LRC") of Hong Kong published a report on Review of Substantive Sexual Offences. The LRC recommends various amendments to the Crimes Ordinance (Cap 200), including creation of various non-consensual sexual offences, unification of age of consent at 16 years old, creation of new sexual offense involving children and reform of miscellaneous sexual offences. The report had taken into account three consultation exercises launched by the LRC in September 2012, November 2016 and May 2018.⁴⁹

Some of the major recommendations contained in the report include:

- a. the creation of a statutory definition of "consent" to sexual activity to the effect that a person consents if the person freely and voluntarily agrees and has the capacity to consent;
- b. discard of the term "rape", to name the offence "sexual penetration without consent", and the offence should cover penetration of the vagina or anus, and penile penetration of the mouth of another person;

47 Department of Justice, 2009 'The Statement on the Treatment of Victims and Witnesses', available at <https://www.doj.gov.hk/en/publications/pdf/tvw20090901e.pdf>

48 Performance Pledge, Hong Kong Police, August 2015, available at http://www.police.gov.hk/info/doc/pledge/2016/pdf/pp-crime_en.pdf

49 Review of Substantive Sexual Offences, 5 December 2019, available at https://www.hkreform.gov.hk/en/publications/rsubstantive_sexual_offences.htm

- c. the addition of the mental element of "recklessness" to the act of sexual penetration without consent and to the relevant acts in the other non-consensual sexual offences (i.e. the act must be committed intentionally or recklessly);
- d. the abolition of the offence of "non-consensual buggery", so that the conduct which is the subject of such an offence would be covered in future by the gender neutral offence of sexual penetration without consent;
- e. substituting the offence of "indecent assault" with a new offence of "sexual assault" focusing on conduct which is "sexual" rather than "indecent", with a proposed definition of "sexual". It is considered that this would best accord with the principle of respecting one's sexual autonomy;
- f. there should be a uniform age of consent in Hong Kong of 16 years of age, which should be applicable irrespective of gender and sexual orientation;
- g. offences involving children and young persons should be gender neutral with two separate types of offences, one involving children under 13 and the other involving children under 16, and capable of being committed by either an adult or a child;
- h. consensual sexual activity between persons who are aged between 13 and 16 should remain to be criminalised while recognising the existence of prosecutorial discretion;
- i. the creation of a new offence of sexual grooming to protect children against paedophiles who might groom them by communicating with them on a mobile phone or on the internet to gain their trust and confidence with the intention of sexually abusing them;
- j. the proposed new offences involving persons with mental impairments should apply to a mentally disordered person or mentally handicapped person (as defined in the Mental Health Ordinance (Cap 136)) whose mental disorder or mental handicap, as the case may be, is of a nature or degree that the person is incapable of guarding himself or herself against sexual exploitation;
- k. the offence of incest should be reformed to become gender neutral; to cover all penile penetration of the mouth, vagina and anus and other forms of penetration; and be extended to cover uncles (aunts) and nieces (nephews) who are blood relatives as well as adoptive parents;
- l. the proposed creation of a new offence of sexual exposure to cover exposure of one's genitals in private or public in a sexual manner targeting a specific victim;
- m. the existing offence of bestiality be replaced by an offence of sexual intercourse with an animal;
- n. the creation of a new offence of sexual activity on a dead person; and
- o. the abolition of a number of the existing homosexual-related offences.

As the next stage of sexual offences reform, in November 2020 the LRC published consultation paper regarding sentencing and other matters relating to the proposed sexual offenses, though the recommendations in the consultation paper do not necessarily represent the LRC's final conclusions.⁵⁰

50 Views sought on sexual offence laws, 12 November 2020. https://www.news.gov.hk/eng/2020/11/20201112/20201112_154153_944.html

What are the Rights of the Child?

We have a responsibility to uphold children's rights. How does understanding the rights of children help us to be the voice for vulnerable children and families?

- 1 Everyone under 18 has these rights
- 2 All children have rights, and I should be treated fairly and equally no matter who I am, what I look like, where I live, what language I speak, what my religion is, whether I am a boy or a girl and whether I have a disability.
- 3 Adults must do what is best for me.
- 4 The government has a responsibility to make sure my rights are protected and respected.
- 5 My family has the responsibility to help me learn to exercise and protect my rights.
- 6 I should be supported to live and grow.
- 7 I have the right to a name, and to belong to a country.
- 8 I have the right to an identity which no one can take away.
- 9 I have the right to live with a family who cares for me.
- 10 I have the right to be together with my family if we live in different countries.
- 11 I have the right to be protected from kidnapping.
- 12 I have the right to be listened to, and to be taken seriously.
- 13 I have the right to find out and share information, unless it harms or puts someone in danger.
- 14 I have the right to have my own beliefs and choose my own religion, with my parents' guidance.
- 15 I have the right to meet with friends and join groups, unless it harms or puts someone in danger.
- 16 I have the right to my privacy.
- 17 I have the right to get information in lots of ways, and adults have a responsibility to make sure it is not harmful.
- 18 I have the right to be raised by both parents if possible.
- 19 I have the right to be protected from abuse – from being hurt or badly treated in body and mind.
- 20 & 21 I have the right to special protection, care and support if I cannot live with my parents. I have the right to have care and protection if I am adopted or living in foster care.
- 22 If I am a refugee (if have been forced to leave my home country), I have the same rights as children in my new country.
- 23 If I have a disability, I have the right to special care and education.
- 24 I have the right to good quality healthcare, to clean water, and good food.
- 25 If I am waiting for my safe, loving, and permanent family, I have the right for my care to be reviewed regularly to make sure it is good for me.
- 26 I have the right to receive help from the government if my family doesn't have enough money.
- 27 I have the right to a safe place to live, food, and clothing to help me reach my potential.
- 28 I have the right to an education, and I should be encouraged to go to school to the highest level I can.
- 29 I have the right to an education which allows me to thrive, live peacefully, protect the environment, and respect others.
- 30 I have the right to speak my own language, and follow my family's religion and culture if I choose.
- 31 I have the right to play and rest.
- 32 If I work, I should be paid fairly, and I should not be made to do work that is dangerous or hinders my education and development.
- 33 I should be protected from dangerous drugs.
- 34 I have the right to be free from sexual abuse. No one should touch me in ways that make me feel uncomfortable, unsafe, or sad.
- 35 I should not be kidnapped, or sold.
- 36 I have the right to protection from being taken advantage of.
- 37 I have the right not to be punished in a cruel or hurtful way.
- 38 I have the right to not be enlisted in the army until I am 15 (18 years old in HK).
- 39 I have the right to help if I have been hurt, neglected, or badly treated.
- 40 I have the right to legal help and to be treated fairly if I have been accused of breaking the law.
- 41 If my country has laws that treat me better than the UNCRC, then those laws apply.
- 42 I have the right to know my rights! And everyone around me should learn about my rights.
- 43-54 These articles are about how governments and international organizations will work together to give children our rights.

Hong Kong agreed to the United National Convention on the Rights of the Child (UNCRC) in 1994.

I am a child, and I have all of these rights.

As I grow older, I have more responsibility to make choices and exercise my rights.

These rights will help me thrive and reach my full potential.

