



February 11, 2021

The Secretary
The Review of Sexual Offences Sub-Committee
The Law Reform Commission
4/F, East Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong

Dear Sub-Committee Members

Re: The Women's Foundation Response to Sentencing and Related Matters in the Review of Sexual Offences

The Women's Foundation (TWF) is Hong Kong's leading non-profit organisation dedicated to women's empowerment and gender equality. Our work focuses on driving measurable change in three key areas: challenging gender stereotypes, empowering women in poverty, and advancing women leaders. We run innovative community programmes, conduct ground-breaking local research, and engage in education and advocacy.

As part of our mission, we focus on safeguarding the rights, safety and sexual autonomy of women and girls in this city. 1 out of 7 women will be sexually assaulted in her lifetime in Hong Kong yet 90% of victims will choose not to report the incident¹. The reasons for not reporting include: fear of retaliation, inadequate access to legal protection, lack of knowledge around what behaviours constitute sexual violence, being unaware of formal reporting mechanisms, distrust of existing services as well as entrenched stereotypes coupled with a culture of victim-blaming. Each factor contributes to a vicious cycle where victim-survivors remain silent and do not seek the support they need. We also know from Hong Kong Police statistics that nearly a quarter of reported sexual assault cases are made by victims who are under the age of 16. Stronger legal protections will make a vital contribution to addressing some of these issues. It is from this angle that TWF is responding to the HKLRC's latest consultation.

Immediate introduction and adoption of the 2019 "Review of Substantive Sexual Offences" reforms into law

While Hong Kong is poised to welcome new laws around voyeurism and non-consensual upskirt photography in the second half of this year, we remain deeply concerned by the delayed implementation of the critically needed reforms proposed in the HKLRC's 2019 comprehensive review on the [Review of Substantive Sexual Offences](#) (Review). We have been [active respondents](#) to the public consultations that led to the overall review as well as [vocal proponents](#) of the urgent need to implement the Review's proposed reforms. As the LRC will be aware, there are many critical recommendations including updated definitions around consent and rape, gender neutrality, avoidance of distinctions based on sexual orientation, and the protective principle for particularly

¹ Women's Coalition on Equal Opportunities, "[Survey on Hong Kong Women's Experience of Sexual Violence](#)", 2013

vulnerable groups that are long overdue. The Government needs to implement these reforms without further delay.

- **Given their critical role in protecting vulnerable populations, we recommend that the Government to introduce and adopt the reforms proposed in the HKLRC's 2019 Review into law without further delay, given their critical role in protecting vulnerable populations.**

Comments on 2021 "Sentencing and Related Matters in the Review of Sexual Offences" Public Consultation

With regards to the proposed changes in the "Sentencing and Related Matters in the Review of Sexual Offences" we broadly agree with the proposed amendments, particularly gender neutral penalties. However, we have several recommendations for enhanced protections:

Proposed New Offences (Recommendation 1)

We generally agree with the recommendation to continue the current penalties for the existing offences of rape and incest (to be renamed), and welcome the protections afforded to vulnerable populations through the introduction of the new sexual offences.

In addition to the LRC's proposals, we recommend the following:

Eliminate distinction between sexual offences committed against children under 13 and children under 16: We have noted the Sub-Committee recommends higher sentences for sexual crimes committed against children under 13 than for children under 16, and we disagree with this distinction for all offences. This devalues the severity and potential long term trauma to the victims and families for sexual offences made against 13-15 year old children. All sexual offences against a minor under the age of 16 should be treated the same. The sentencing for these offences should be reflective of the higher sentence within the current proposed offences.

- **We recommend that 'children under 13' and 'children under 16' be reclassified simply as 'children under 16' with the higher maximum penalties adopted.**

Mandatory Minimum Sentences: We are concerned by the fact that there are no mandatory minimum sentences. Dr Hui, as quoted by the HKLRC (2.47), noted that only 20% of sexual offenders have received sentences of two or more years. This statistic coupled with [recent court decisions](#) that indicate a lower level of sentencing, does not adequately address the psychological and physical trauma inflicted by these crimes.

- **We recommend that mandatory minimum sentencing be explored for sexual offences.**

Treatment and Rehabilitation of Sex Offenders (Recommendation 2)

TWF has no comment on this portion of the consultation as it is outside the scope of our work.

Review of Sexual Conviction Record Check Scheme (SCRC) (Recommendation 3)

Broad Application of the SCRC Scheme: To maximise the effectiveness of the SCRC, we agree with the Sub-Committee's view that the SCRC should be expanded to apply to both existing and prospective employees as well as volunteers, interns, trainees, temporary / contract workers, and those who are self-employed, and implemented as soon as possible.

- **We agree with the LRC recommendation that the SCRC Scheme be extended to cover existing employees, self-employed persons and volunteers. We further recommend that definitions be sufficiently broad so as to cover interns, trainees, temporary / contract workers, and other relevant individuals.**

Mandatory SCRC Scheme: We disagree with the Sub-Committee's view that the SCRC Scheme should remain voluntary. In our work to raise awareness around the pervasiveness of sexual violence in Hong Kong, we have identified lack of knowledge, including prevalence and definitions, as one of the key areas of concern. It is unlikely all employers are aware of the seriousness and prevalence of sexual crimes in Hong Kong, and therefore may not feel it necessary to take the proactive step of conducting SCRC check with current and prospective employees. The law should take an active role in protecting vulnerable populations from sexual violence and abuse through a mandatory SCRC Scheme with appropriate measures for non-compliance from employers, drawing on international best practice.

- **To better protect vulnerable groups including women, children and those with mental impairments, we recommend the SCRC Scheme be made mandatory without further delay.**

Disclosure of spent convictions in relation to sexual offences: We disagree with the Sub-Committee's view not to disclose these convictions to employers. For better protections of vulnerable groups, employers should have full knowledge of current and prospective employees' spent convictions in relation to sexual offences.

- **We recommend that all spent convictions in relation to sexual offences be disclosed as part of the SCRC.**

Other matters

Sexual offences relating to children aged 16 to 17: We are aware the Equal Opportunities Commission recommended to the HKLRC in 2017 and again in 2021 to provide provisions to better protect children who have reached the age of consent (ie 16-17) from sexual harassment where it involves positions of trust. We are concerned with the vulnerability of this age group and the possibility for sexual exploitation.

- **We support the EOC's recommendation that the Government should introduce specific sexual offences relating to children between the ages of 16 and 17 where the situation involves a position of care and trust.**

We look forward to strengthening protections, especially for vulnerable groups like women and young people, and creating a safer city for all.

Sincerely

Signed.

Fiona Nott
CEO, The Women's Foundation
+852 2591 8265
Fiona.Nott@twfhk.org