



立法會CB(4)225/12-13(04)號文件
LC Paper No. CB(4)225/12-13(04)

Consultation Paper on
Rape and Other Non-Consensual Sexual Offences
強姦及其他未經同意下進行的性罪行諮詢文件

Law Reform Commission of Hong Kong
Review of Sexual Offences Sub-committee
香港法律改革委員會
性罪行檢討小組委員會

Guiding Principles

指導原則

- Clarity of the law
法律必須清晰明確
- Respect for sexual autonomy
尊重性自主權
- The protective principle
保護原則
- Gender neutrality
無分性別



Guiding Principles

指導原則

- Avoidance of distinctions based on sexual orientation
避免基於性傾向而作出區別
- Adherence to the Human Rights laws and practices guaranteed under the Basic Law
應符合受《基本法》所保障的人權法和慣例



Principal Recommendations

主要建議

1. The creation of a statutory definition of “consent” to sexual activity which reflects the need for “free and voluntary agreement” to the sexual activity and the capacity to consent;

就涉及性的行為訂立「同意」的法定定義，以反映涉及性的行為必須經對方「自由和自願地同意」，以及對方須有行為能力給予同意；



Principal Recommendations

主要建議

2. A newly-defined offence of rape which can be committed against a person of either sex and covers penile penetration of the vagina, anus or mouth;

訂立新的強姦罪定義，使強姦罪可對男性或女性而犯，並包括以陽具插入陰道、肛門或口腔；



Principal Recommendations

主要建議

3. A reformed mental element with regard to the issue of “consent”, moving away from a focus simply on the subjective belief of the accused as to whether the complainant consented, to a mixed test of subjectivity and objectivity. Currently, if an accused subjectively holds a genuine belief that the complainant consented, the accused is entitled to be acquitted even if that belief was unreasonable;

在「同意」這議題上修改相關的精神意念元素，把焦點由被控人是否單純在主觀上相信投訴人同意，轉移至客觀加主觀的混合測試。以現時來說，如被控人在主觀上真確相信投訴人同意，則即使該信念並不合理，被控人仍可獲判無罪；

Principal Recommendations

主要建議

4. 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 rape;

廢除「未經同意下作出肛交」的罪行，現受此項罪行規管的行為日後可由無分性別的強姦罪處理；



Principal Recommendations 主要建議

5. The creation of a new offence of “sexual assault by penetration” to cater for the more serious forms of conduct, not constituting rape, and currently covered by the offence of “indecent assault” ;

訂立一項「以插入的方式進行性侵犯」的新罪行，以處理現時「猥褻侵犯」（俗稱「非禮」）的罪行中較為嚴重但不構成強姦的侵犯行為；



Principal Recommendations

主要建議

6. 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 respect for the principle of protecting one’s sexual autonomy;

以新的「性侵犯」罪取代「猥褻侵犯」罪，把焦點置於「涉及性」而非「屬於猥褻」的行為，並建議為「性」此字設下定義。這樣做會最符合保障個人性自主權的原則；



A proposed definition of "sexual" 建議為「性」此字設下定義

Limb (a): Activities which are always considered sexual by a reasonable person (e.g. sexual intercourse or oral sex)

(a)項: 經常被合理的人認為是涉及性的行為 (例如性交或口交)

Limb (b): Activities which may or may not be sexual (e.g. medical examination of the vagina or anus)

(b)項: 可能涉及性亦可能不涉及性的行為 (例如對陰道或肛門進行醫學檢查)

Question: Whether in view of the circumstances and/or the purpose of any person in relation to the act, the act was in fact sexual?

提問: 以有關情況及／或某人對該項行為所懷有的目的來說，該項行為是否確實涉及性？

Answer: Take medical examination of the vagina or anus as an example, such an activity is not sexual if it was carried out for proper medical reasons. But if it was carried out for the doctor's sexual gratification, it would be considered as sexual.

解答: 以陰道或肛門的醫學檢查為例，這項行為若是基於正確醫學理由而進行便不涉及性，但如果是為了讓醫生得到性滿足而進行，便會被認為是涉及性。

Principal Recommendations

主要建議

7. “Under-the-skirt photography” should, amongst other intentional acts of a sexual nature, constitute “sexual assault” ;

某些故意作出而本質又涉及性的行為應可構成「性侵犯」，而「裙底攝影」是其中之一；



Principal Recommendations

主要建議

8. The abolition of the offence of procuring another to do an unlawful sexual act by the use of threats or intimidation (section 119 of the Crimes Ordinance) and the creation of the offence of “causing a person to engage in sexual activity without consent”, emphasising the protection of one’s sexual autonomy.

廢除以威脅或恐嚇促致他人作非法性行為的罪行（《刑事罪行條例》第119條），並訂立一項「導致他人在不同意的情況下進行涉及性的行為」的罪行，以強調對個人性自主權的保障。

Thank You 謝謝

