



Submission to the Security Bureau on the Public Consultation on Improving the Laws on Sexual Offences in Hong Kong

Amnesty International Hong Kong Overseas

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Background

Amnesty International Hong Kong Overseas makes this submission in response to the Security Bureau's public consultation on improving the laws on sexual offences in Hong Kong, launched in July 2026.

Under Article 39 of the Basic Law, the provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong remain in force and are given effect in domestic law through the Hong Kong Bill of Rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) likewise applies to Hong Kong; its Articles 1 and 5 require States parties to eliminate discrimination against women, including prejudices and customary practices based on stereotyped notions of gender.

This submission also refers to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) as a point of reference. Although the Istanbul Convention is not a treaty binding on Hong Kong, the standards it sets on consent, sexual-history evidence and the protection of survivors are widely cited as a comparative benchmark for sexual-offences legislation, and this submission refers to it to illustrate the specific content of the relevant standards.

This submission assesses the proposals against the standards above and identifies the gaps between the draft proposals and international human rights standards.

1. The mental element of rape should focus on whether the defendant confirmed consent

Article 36 of the Istanbul Convention provides that consent must be given voluntarily as the result of the person's free will, assessed in the context of the surrounding circumstances.¹ The

¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), CETS No. 210, 11 May 2011, Art. 36(2).

CEDAW Committee, in *Vertido v. the Philippines*, recommended that the definition of sexual assault require the existence of "unequivocal and voluntary agreement" and require proof by the accused of steps taken to ascertain whether the complainant was consenting. The core of this standard is to focus on whether the defendant took active steps to confirm the other person's consent, rather than on whether the survivor refused or resisted.

Amnesty International Hong Kong Overseas welcomes the proposed introduction of a statutory definition of consent and a list of circumstances in which consent is absent.² However, as to the mental element of rape, the proposals require the prosecution to prove that the survivor does not consent, and that the defendant knows that the survivor does not consent, or that the defendant does not reasonably believe that the survivor consents.³ This element turns on whether the defendant's belief was reasonable: even where the defendant took no active step to confirm whether the survivor was consenting, the offence may not be made out so long as that belief is regarded as reasonable; the element does not focus on whether the defendant took active steps to confirm consent.

The Government should therefore provide in the legislation that the question whether the defendant reasonably believed that the other person consented, is to be determined having regard to all the circumstances, including whether the defendant took steps to ascertain consent, and that where the defendant took no such step, the belief should not be regarded as reasonable. This does not alter the prosecution's burden of proving the elements of the offence; rather, it shifts the focus of the law from whether the refused or resisted to whether the person took active steps to confirm consent.⁴

2. Sexual-history evidence should be admissible only under a statutory threshold

Article 54 of the Istanbul Convention provides that evidence of a survivor's sexual history shall be admitted only where it is relevant and necessary, that is, where it is relevant to a specific issue at trial and of significant probative value.⁵

The survivor-protection measures under Scope (5) of the draft proposals cover anonymity of complainants, restrictions on cross-examination as to sexual experience, and facilitation of evidence-giving.⁶ Section 154(1) of the Crimes Ordinance already restricts such questioning, so

² Security Bureau, Consultation Paper on Improving the Laws on Sexual Offences in Hong Kong (2026), paras. 20 to 22.

³ *Ibid.*, para. 22.

⁴ On the model of setting the taking of steps to ascertain consent as a criterion for the reasonableness of belief, while leaving the burden of proof with the prosecution, see Sexual Offences Act 2003 (England and Wales), s. 1(2).

⁵ Council of Europe, Explanatory Report to the Istanbul Convention, CETS No. 210 (2011), paras. 277 to 278.

⁶ Security Bureau, Consultation Paper on Improving the Laws on Sexual Offences in Hong Kong (2026), Scope (5), paras. 117 to 124.

as to prevent the survivor's character being disparaged to create a situation favorable to the defendant, a purpose consistent with Article 54.⁷

The restriction, however, applies only to the survivor's sexual experience with persons other than the defendant, and under footnote 89 of the Consultation Paper such questioning may still be allowed. The proposals do not provide in legislation for the threshold required by Article 54, nor do they address the manner in which such evidence, once admitted, is to be presented.

The Explanatory Report of the Istanbul Convention provides that where a court admits evidence of a survivor's sexual history, it should be presented only in a way that does not lead to secondary victimization, so that may seek legal recourse without suffering additional trauma on account of their sexual history and conduct.⁸

The Government should expressly provide in legislation for the threshold required by Article 54, namely that sexual history evidence may be admitted only where it is relevant to a specific issue at trial and of significant probative value; should require the court to record its reasons when permitting such questioning, and should ensure that, where such evidence is admitted, the questioning is conducted in a manner that does not lead to secondary victimization.⁹

3. Image-based sexual abuse and deepfake intimate images

CEDAW General Recommendation No. 35 states that gender-based violence against women includes violence perpetrated in technology-mediated settings.¹⁰ The production of non-consensual sexual images through generative artificial intelligence is a form of such technology-facilitated sexual violence. Women, girls, LGBTI people and women human rights defenders are disproportionately targeted by technology-facilitated sexual violence, which is increasingly used to silence public participation, damage reputations and reinforce gender-based discrimination.

⁷ Security Bureau, Consultation Paper on Improving the Laws on Sexual Offences in Hong Kong (2026), Scope (5), para. 119; Crimes Ordinance (Cap. 200), s. 154(1). See also Council of Europe, Explanatory Report to the Istanbul Convention, CETS No. 210 (2011), para. 277.

⁸ Explanatory Report, CETS No. 210, para. 278. The Explanatory Report also makes clear that Article 54 does not rule out the admissibility of such evidence.

⁹ On a legislative model giving effect to this threshold, see Criminal Code (Canada), ss. 276, 278.93 and 278.94: evidence of a complainant's sexual activity, whether with the accused or with any other person, is inadmissible to support an inference that the complainant is more likely to have consented or is less worthy of belief (s. 276(1)), and is otherwise admissible only where it is relevant to an issue at trial and of significant probative value (s. 276(2)), subject to the factors in s. 276(3) and the written application and hearing procedure in ss. 278.93 and 278.94, under which the court must provide and record reasons stating the manner in which the evidence is expected to be relevant to an issue at trial (s. 278.94(4) and (5)).

¹⁰ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, UN Doc CEDAW/C/GC/35 (2017), para. 20.

Hong Kong's current regulation of image-based sexual abuse derives from the 2021 legislative amendments, which created offences of voyeurism, unlawful recording or observation of intimate parts, publication of images originating from the above two offences, and publication or threatened publication of intimate images without consent.¹¹

However, the present consultation only brings voyeurism-related offences within the scope of survivor protection and expands the application of the disposal order. While the definition of "intimate image" under section 159AA of Hong Kong Crimes Ordinance (Cap. 200)¹² already includes an image altered to appear to show an individual's intimate parts, the existing offences enacted by the 2021 amendments attach only to publication or threatened publication; the production or generation of a non-consensual intimate image, absent publication, is not an offence at all, and it is uncertain whether an image wholly generated by artificial intelligence, without altering any existing image, falls within the definition. The Legislative Council Research Office has confirmed this gap, noting that the mere generation of intimate images using AI without publication is not subject to specific offences.¹³

Amnesty International is of the view that the harm caused by such images arises the moment they are produced. Harm does not depend on whether they have been published or disseminated; so long as the images exist, the survivor is unable to control their own image and reputation. The Government should expressly bring the production and publication of non-consensual deepfake and other synthetic intimate images within the criminal law, and should confirm that the expanded disposal order covers all intimate images obtained or produced without consent, and not only those already published.

4. Resources for implementation

CEDAW General Recommendation No. 35 requires States parties to exercise due diligence to prevent, investigate and punish gender-based violence against women, including by ensuring accessible, appropriate and adequately funded protection and support services, and by providing systematic training for judicial and law-enforcement personnel;¹⁴ General Recommendation No. 19 similarly recommends appropriate protective and support services, gender-sensitive training for judicial and law-enforcement personnel, and refuges, counselling

¹¹ Security Bureau, Consultation Paper on Improving the Laws on Sexual Offences in Hong Kong (2026), para. 10.

¹² Crimes Ordinance (Cap. 200), ss. 159AA and 159AAE.

¹³ Legislative Council Secretariat, Alternative Redress System for Intimate Image Abuse in Australia and Canada, Essentials ISE04/2026 (2026), endnote 5.

¹⁴ CEDAW Committee, General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, UN Doc CEDAW/C/GC/35 (2017), paras. 24 and 30.

and rehabilitation services for survivors.¹⁵ Article 8 of the Istanbul Convention requires States parties to allocate adequate financial and human resources, and Article 25 requires the establishment of appropriate and readily accessible support centers for survivors of sexual violence; these provide further support.¹⁶

The effective implementation of the reform depends not only on the text of the offences but also on adequate support services and professional training. The Government should, in taking the reform forward, allocate adequate financial and human resources, including survivor support services and training for judicial and law-enforcement personnel.

Recommendations

Amnesty International Hong Kong Overseas urges the Government to:

- i. Provide in the legislation that whether the defendant's belief in the other person's consent is reasonable is to be determined having regard to all the circumstances, including whether the defendant took steps to ascertain consent, and that where the defendant took no such step, the belief shall not be regarded as reasonable; this approach better reflects the realities of sexual violence by moving away from assumptions about how a survivor should respond and instead recognizing that the absence of resistance cannot be taken as evidence of consent.
- ii. Provide in legislation for the threshold required by Article 54 of the Istanbul Convention, namely that sexual-history evidence may be admitted only where it is relevant to a specific issue at trial and of significant probative value; require the court to record its reasons when permitting such questioning; and ensure that, where such evidence is admitted, the questioning is conducted in a manner that does not lead to secondary victimization.
- iii. Introduce provisions addressing rape myths, gender stereotypes, and discriminatory assumptions, and provide training for judicial, prosecutorial and law-enforcement personnel, so as to reduce secondary victimization caused by bias at the reporting, investigation and trial stages.
- iv. Expressly bring the production, as well as the publication, of non-consensual deepfake and other synthetic intimate images within the ambit of criminal law, and confirm that the expanded disposal order covers all intimate images obtained or produced without consent, and not only those already published.

¹⁵ CEDAW Committee, General Recommendation No. 19 on violence against women (1992), UN Doc A/47/38, para. 24(t), recommending appropriate protective and support services, gender-sensitive training of judicial and law-enforcement officers, and rehabilitation and support services including refuges and counselling.

¹⁶ Istanbul Convention, CETS No. 210, 11 May 2011, Arts. 8 and 25.

- v. Allocate adequate financial and human resources to the implementation of the reform, including survivor support services and training for judicial and law-enforcement personnel.
- vi. Ensure that the principles of equality and non-discrimination including on the basis of sexual orientation, as set out in the Consultation Paper, are carried through to the actual conduct of reporting, investigation, training and support services; to this end, the training referred to in recommendation 3 should address the eliminating bias against marginalized group, including but not limited to sexual orientation, gender identity and engagement in sex work. Support services referred to in recommendation 5 should be appropriate and accessible to all survivors, including LGBTI individuals and sex workers, so that no one faces additional barriers in seeking the protection of justice due to their identity or circumstances.¹⁷

¹⁷ CEDAW Committee, General Recommendation No. 33 on women's access to justice, UN Doc CEDAW/C/GC/33 (2015), on eliminating barriers to justice and addressing intersecting forms of discrimination.