

Review of the Control of Obscene and Indecent Articles Ordinance

Focus Group Summary Report – Women

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Location: Room 229, 2/F, Murray Building, Garden Road, Central, Hong Kong

Attendants:

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Ms. Yuen Siu-man, Amy_	Representative of The Association for the Advancement of Feminism
Mrs. Leung Sau-ling, Margaret	Regional Director, Zonta Club
Ms. Chan Man-wai, Connie	Project Officer, Hong Kong Coalition on Equal Opportunities_
Ms. Chan Wai-yui, Anne	Chairperson of Hong Kong Federation of Women Lawyers
Ms. Yeung Sin-hung_	Executive Committee Member of Hong Kong Women Development Association
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Ms. Janet Chang	Chairperson of Kowloon Women's Organizations Federation
Ms. Lai Chui-hung_	Deputy Officer of Hong Kong Federation of Trade Union Women Affairs Committee

- I. A briefing on the consultation documents of the Review of the Control of Obscene and Indecent Articles Ordinance (COIAO) by Mr. Gregory So, Under Secretary for Commerce & Economic Development of HKSAR. He also invited all attendants to express their opinions.

- II. General comments of the attendants concerning the review of COIAO:
 - There are numerous concerns over whether freedom of speech and rooms for arts would be retrained by the narrowing of definition;
 - Some challenge whether the review is aiming at the protection of children. Similar to issues like dating among secondary school students and premarital sex, parental permission is not of major concern, the root of the problem lies in whether teenagers are receiving accurate information and education. If the society is over-protective towards the children, schools might come across difficulties when implementing sex education. The education culture had been overly de-sexualized in the past, blockading the discussions on sex between social workers and the youth;
 - In the society there are not only children, but also parents and adults who would feel upset and disturbed about obscene and indecent articles;
 - General public in the society believe that moral standards have been lowered by the newspapers and magazines in the markets. They believe that it is important to protect our next generation, as they are not mature enough to distinguish between right and wrong;
 - Some point out that the consultative documents do not carry any gender perspective.

- III. Suggestions for the review raised by the attendants are summarized as follows:

Opinions raised and areas of concern:

1. Definition

1.1 Comments on the current system:

- 1.1.1 The ambiguity of the definition in the Ordinance led to inconsistent decisions of Obscene Articles Tribunal (OAT)
- 1.1.2 The lack of criminal wordings in the old definition disable an effective sanction and control over the distribution of those articles;
- 1.1.3 According to previous cases, since the public always doubt the openness of the trials, the ordinance and the principles behind the definitions, widespread social controversy is often resulted.

1.2 Addition of phrases like 'unpleasant consciousness' or 'against moral standards' in the definition:

Supportive opinions of the suggestion:

- 1.2.1 Previous photos of Renee Lee and the secret shooting of artists in Malaysia were extremely unpleasant and posed direct damages to children. Since there isn't a principle for 'unpleasant consciousness' or 'moral violation', the authority was unable to prosecute the publisher within the definition of obscene and indecent. Supervision is insufficient and it is a great damage to the social atmosphere, children, mothers and women;
- 1.2.2 Since the ordinance aims at the protection of the next generation, it should be amended with the youth in mind. If such moral standards are agreed by most parents, the society is responsible for upholding them.
- 1.2.3 There should be an objective standard for 'moral', which indicates whether something is 'true or false, right or wrong, should or shouldn't be done'. Although each individual might carry a different set of standards, there should be some common values in the society. Further detailed considerations are required in order to set up principles based on the common values;
- 1.2.4 Morals can also be interpreted as a restriction for women. However, since Hong Kong is a Chinese society, some principal values are

still indispensable; there also exist some mainstream moral standards. From a moral perspective, the right and wrong of issues like incest and insulting a mentally-disabled are still obvious;

- 1.2.5 The definition of 'moral' is too vague, breakdowns of definition are required.
- 1.2.6 To bring harm or denunciation to others can be considered to as a violation to morality.

Remain neutral and hold conversations on the suggestions:

- 1.2.7 Morality is ambiguous. Different people will have different moral standards and it changes much more rapidly within the scope of informational technology;
- 1.2.8 What kind of ideology is moral and sex? What kind of consciousness can be regarded as unpleasant? Is scolding the government something unpleasant?
- 1.2.9 In terms of morality, lots of women do not want to be shot in secrecy. However, moral is a restriction to women in the past, prohibiting them from stepping out of their household and meeting with friends. In that sense, is moral something positive to women?
- 1.2.10 Worried that moral standards are being used, for instance, to package subjective likes and dislikes as morality and prevent the public from accepting certain things.

1.3 How can the current definition of 'obscene' and 'indecent' be complemented?

- 1.3.1 People are the main constitution of the adjudication system, hence changes of time and combination of people will end up with different mentalities and values. Attendants agreed to include some principle standards, such as whether the articles are belittling positions of women, disturbing, harmful to public interest, harmful to social values, miserable etc, in order to reduce the media exaggerating materials or reporting with sex and violence. Freedom of speech must be retained when including new definitions;
- 1.3.2 Make use of other aspects of the ordinance, e.g. adjudication and penalty system to cover any insufficiency of the definition.

1.4 Other practical suggestions:

- 1.4.1 The definition of classification has to be specific, but the government should not include specific definition in the ordinance, otherwise, flexibility would be lost;
- 1.4.2 Some attendants suggested to establish a binding independent committee to review and announce guidelines for OAT to follow when making decision.

2. Adjudication system

2.1 Comments on the current system:

- 2.1.1 There should be censorship on the application for becoming a tribunal member, the current system is too loose;
- 2.1.2 Challenge the representative of volunteer tribunal members;
- 2.1.3 Unsymmetrical number of tribunal members and cases;
- 2.1.4 Challenge the application system of tribunal members, there are applications that were sent but not replied;
- 2.1.5 The Chief Executive verbally promised to increase the tribunal member number from 300 to 600 and take the initiative to invite women's participation, yet no progress is seen up till now;
- 2.1.6 The structure and members of tribunal does not emphasis a gender perspective.

2.2 Opinions and concerns for improving the tribunal

- 2.2.1 Emphasis is put on the representation of OAT, challenged whether women, parents, the modern-minded and people from different age groups are being represented;
- 2.2.2 Recommend the tribunal to include certain professional and a fixed proportion for different ages and genders;
- 2.2.3 Support to include certain number of tribunal members from specific sectors, e.g. the social welfare, culture, education, women, or even media and sex workers can be counted as a sector. Or there should be particular proportion of women participation in several sectors;
- 2.2.4 Recommend to have 1/3 of the tribunal members from specific

- sectors like social, culture and social welfare, since these are the people who are involved in similar works. The remaining 2/3 can be open to public;
- 2.2.5 Emphasis is put on the openness and transparency of the adjudicating process, by doing so the public may understand and supervise its operation by discussion and the data released. It is not the most important to have the jury, tribunal member or the court to classify articles;
- 2.2.6 Background of tribunal members has to be expanded, so that the adjudicating standards can keep up with times.
- 2.2.7 Attendant believed that it was controversial to assigned sector participations in the adjudicating system. How should the sectors be classified? Some sectors may not have an actual intersection with the ordinance, but that doesn't mean that their opinions are insignificant. Whether somebody understands social value is out of the question. The values of people who do have a low education level cannot be avoided. Therefore, various social problems will arise if the tribunal composition is made up of people from different sectors;
- 2.2.8 Hong Kong society is very diverse. Can we include newcomers in the women sector? If there are representatives for men and women, will there be a sector for transsexuals? What about the homosexuals? The rights of ethnic minorities receive more and more attention these days, will they be included? What about the religious groups? Would the artists think that the adjudicating system lack perspectives of their sector? With regard to age, since the consultation papers stress a concern of children, can children have their own sector? If the representative sectors cannot represent the public, it is meaningless to have the jury or representative sectors included. In fact, moral standards cannot be used as subjective guidelines for determining whether the public should get in touch with certain articles;
- 2.2.9 Although the adjudicating system cannot include all sectors, there is not a perfect solution for everything, we can only choose to consult the affected stakeholders. Consultation is an interactive process, stakeholders can join and leave at different stages in order to keep the system up-to-date;
- 2.2.10 Concerns the recipients' faith towards the representation and the

whole adjudicating system. Attendants believed that it needed to be strengthened.

2.3 *Should there be a specific gender proportion?*

- 2.3.1 Since most targets of offense are women, the men/women ratio sitting on the tribunal should be 50/50; or the authority should enhance the training and support on gender perspective for the tribunal members;
- 2.3.2 Gender ratio is vital in the adjudicating system. Attendants suggested to send representatives from the over 300 women organizations since numerous aspects in the ordinance are of concern of them. Moreover, the women groups are cross-class and have greater representation. However, there are also opinions doubting the selection of representatives from the 300 women organizations;
- 2.3.3 The adjudication should reflect gender perspective of the society;
- 2.3.4 Disagree to invite only women as tribunal members, the system should be open to various sectors. Ordinary citizens would have their own moral standards and would be able to voice comments on the information they receive.

2.4 *Shall tribunal members be selected from the jury's list?*

- 2.4.1 Tribunal members are working on voluntary basis while the jury is mandatory. Volunteers would be more responsible and have a better judging perspectives;
- 2.4.2 The adoption of jury's list may not be feasible, since members of the jury must attain certain education level. However, the consultation papers mentioned the protection of the underprivileged and minorities (including the powerless ones and members of particular occupation e.g. sex workers). They are not included in the jury lists, thus it will be unfair.

2.5 *Shall OAT be abolished and have the magistrates to decide the classification of articles?*

- 2.5.1 Some attendants believed that it was practical follow the examples of UK and Canada in which courts are responsible for the judgment.

However, in-depth social discussion is required in order to establish the principles of judgment. For instance, foreign courts are able to collaborate or integrate social viewpoints and values in order to come up with specific principles, or to establish rules that help judges make decision in the process of legislation. Those principles might include the following concerns: whether the distributed articles contain violent elements that suppressed the others, in violation to freedom of speech, harmful to other parties etc.

Moreover, court verdicts are open to supervision of the public;

- 2.5.2 Since articles for adjudication are many, the classification should become Class I and II (to replace obscene and indecent) which do not involve the system concerned. The final class is the most inhumane and unacceptable to the public and may receive punishment by a prosecution of court or the government. The judicial system allows the public to attend the hearing, which is the most fair, open and just. Judicial training helps judges make decisions with reference to the circumstantial evidence and precedents;
- 2.5.3 Some attendants support that, for the ease of administration, cases can be first referred to the tribunal for evaluation. A system of appeal is also recommended. In an appeal court case, it is not necessary to assign a judge to decide the case, because it is difficult to have a judge to represent the whole society. The decision shall be made by the jury;
- 2.5.4 Attendants pointed out that, if a person become a qualified tribunal member, he or she should have a better understanding of numerous information and concepts (not a spoon-feeding of moral values) or to learn about certain tools, e.g. knowledge and perspectives of aesthetics etc. An ordinary court may not be able to accomplish all these. It is already difficult to have all judges to attend such trainings, and it'd be even harder to train up 570,000 jury members.

3. Classification system

3.1 In terms of classification, shall numbers be adopted to replace wordings like obscene and indent to retain neutrality?

- 3.1.1 The association of words like obscene and indecent cannot reflect

the reality. Violence is also included in the sphere of obscenity and indecency. Some attendants suggested to replace ‘obscene’ and ‘indecent’ with some neutral wordings like Class I, II etc;

- 3.1.2 The overall circumstances shall be considered when doing classification, e.g. the location of the article.

3.2 *Practical suggestions :*

- 3.2.1 The provision of parental guidance is feasible since the final rights of teaching children lie in the hands of parents;
- 3.2.2 Reference can be taken to the Film Censorship Ordinance’s I, II, III classification, and to divide the II class into three different categories, IIA is not suitable for children, IIB is not suitable for young persons and children, IIC can only distribute to aged over 18, while III is prohibited for distribution. However, other attendants stated that if the categories are added before clarifying the definitions, it will be difficult to implement and arouse greater controversies. There are also worries about the responsibility of the seller in such cases.

4. New Media

- The governance of new media is not only focusing on the media, but each and every citizen to make use of the internet to distribute information. Therefore it should be handled with special care.

4.1 *Regulation and filtering of internet content – a responsibility of the ISP, parents or government?*

- 4.1.1 It is impractical to rely only on the ISP. It is impossible for them to defend everything. There are also concerns about parents escaping their responsibilities by leaving it to the ISP. Therefore, parents should learn how to handle sex information and educate their children proper attitudes and reaction of receiving sex content;
- 4.1.2 Most attendants agreed that each party shall shoulder part of the responsibility. E.g. The ISP should provide the option of filtering software for the public to choose, while ultimate responsibility lies in the hands of parents. Schools can also inform the parents with

the latest technological development, adopt a diverse social education model to help different sectors understand the latest technological advancement. Some attendants worried that the filtering software might increase the economic burden of some families as IT developments are ever-changing and ISP needs to put tremendous resources into updating their services, and ends up transferring the costs to customers. Some said that the government can encourage the ISP to shoulder their social responsibility by offering free services to the poor families;

- 4.1.3 When asked about the understanding of grass-root parents about internet operation, attendants stated that publicity and education can help grass-root parents understand the impact of inappropriate internet content on the intellectual and psychological development of children;
- 4.1.4 Finally, most attendants believed that parents/caretakers' concern towards the children or youth's use of the internet were much more important than any regulative acts.

4.2 *Tightening only the obscene information on the internet?*

- 4.2.1 Some attendants did not understand why the government is only regulating on obscene information. If the objective is to protect children, cruel and violence information will also impact the kids.
- 4.2.2 Adults have the need to receive obscene and indent information. Interest in sex can be stimulated between couples, some doubt whether the regulation of sex information will sacrifice the sex fun of parents.

4.3 *Controversy of the addition of a browser control system, e.g. require viewers of indecent information to insert credit card details in order to verify their identity*

- 4.3.1 Not every adult owns credit cards. They have the rights to choose for different information no matter they have credit cards or not;
- 4.3.2 Challenge the necessity of provision of personal information while browsing information online;
- 4.3.3 Attendants suggest that it is more important to encourage citizens to report unpleasant information than to regulate login with credit cards.

4.4 *What are some practical ways of regulating the distribution of public information on the internet? Shall personal information distribution be covered by the legal framework?*

4.4.1 There are worries over the regulations on personal data communication, e.g. emails. They believed that the Police were already very busy and it would be impractical to ask them to take up the post of an information cop;

4.4.2 Agree to review the current legal framework since personal communication, whether obscene or not, shall not be intervened by a public authority. Once precedent is established, such authority can be applied on many other aspects;

4.4.3 Agree to hold conversations over the regulations on P2P communication, yet also suggested is a practical reporting system so that the recipients and those who are being harassed would have the rights to report it.

5. Enforcement

5.1 The public does not know about TELA and its title doesn't match with some of its functions;

5.2 The enforcement isn't strong enough;

5.3 If TELA is to establish a committee for internet cases, it has to strengthen its organization, manpower and IT education in order to handle the endless patrolling and reported cases.

5.4 If the Police is to implement such laws, there will be difficulties for the Police to join forces with different departments. The Police also need to review its organization structure. Some queried whether the Police can establish an independent team to support the work of TELA.

6. Penalty

6.1 The biggest problem of the ordinance is the system of penalty determination and the starting point of punishment. Since the implementation of the ordinance, no publisher has been sentenced for the maximum penalty, i.e. 1 million dollars penalties. When they calculate their business costs, they might have already included the penalty. Also,

the punishment puts no moral burden on the publisher, some suggested that whether they can continue to do business with such tools is more important to the publishers;

- 6.2 Favor increasing the penalty for a repeated offender. Apart from penalty, attendants suggested to ban them from publishing or order them to stop publishing. Also suggested is to calculate the profit gained by the repeated offender from selling obscene and indecent articles, and to link the penalty with the profit in order to deter them from committing the offense. However, there are also opinions stating that the penalty cannot be launched without a ceiling, and limited penalty will not root out the issuance of such publications;
- 6.3 Some cultural and artistic creations might aim at challenging the community's concept of sex, too high a penalty would limit the creativity and mentality of artists. We need to strike a balance between them. Opinions also cited that freedom cannot be left boundless, the communication of knowledge and information should go parallel with freedom of speech and rooms for creativity.

7. Publicity and Public Education

7.1 *Public Education*

- 7.1.1 Recognizes the importance of education and believe that the authority concerned should allocate more resources to promote the ordinance. The education should not limit to children alone, adult education is also essential. Also pointed out is that there should be a principle for a good education, i.e. the ability of distinguishing between right and wrong;
- 7.1.2 Apart from evaluating the ordinance, the government and society as a whole are also responsible for spreading healthy information in appropriate means to counter with the unpleasant information. Other than regulation, sex education at schools is also a mean for countering a culture that over-stresses sex and violence. The sex education should emphasize on love and responsibility, respect for a sexual relationship, how to deal with sex information and the equality of two genders etc. Seminars can be held after some controversial occurrences in order to help youth grasp the discussion focus of the news;

- 7.1.3 Some attendants believed that the existence of gender injustice and women suppression were the results of interpersonal relationship and power, obscene articles are just a reflection of this situation. Unequal relationship is not going to disappear just because certain articles are banned. The government and society as a whole has to be more open-minded and cultivate in the youth an accurate value despite the existence of obscene and indecent articles;
- 7.1.4 The curriculum of sex education is not updated enough. Attendants suggested to begin it in primary schools and to adopt a more diverse approach. Apart from those old-fashioned topics like premarital sex, youth would also like to discuss about whether they should fall in love with the same sex or opposite sex; whether they would like to have sex with 3-4 people etc. Education should inspire youth to choose a lifestyle that they like and teach them about the commitments and responsibilities that come with that choice;
- 7.1.5 Educating individuals about their responsibility towards the mass media is also important. For instance, if the person involved in the artists sex photo scandal was aware of his own social responsibility, he could have apply for an injunction to prevent the subsequent social impact;
- 7.1.6 Some adult sex education programs are misunderstood as ‘sex’. Thus sex education and regulation on sex are absolutely interrelated. Being over-sensitive might hinder the reflection on sex education.

7.2 *Publicity*

- 7.2.1 Opinions stated that the occurrence and timing of promotion worth consideration. The way of promotion should be precise and specific. For instance, those shocking and abhorring video clips being used in the anti-drug campaign are viable. TV clips outlining the internet trips would also be a good start.
- 7.2.2 The government did not take the initiative to invite people to the tribunal in the past, attendants believed that the government should strengthen the promotion in this aspect.