

## HURTFUL DIGITAL COMMUNICATIONS IN HONG KONG: STAKEHOLDER ACCOUNTS

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**Abstract:** Hurtful digital communications (HDC) is an umbrella term referring to a wide variety of text and image-based practices online, such as cyberbullying or the non-consensual distribution of intimate images (NCDII). They can cause significant harm to victims and, as elsewhere, these practices are on the rise in Hong Kong. This paper represents the first stage of a project aimed at developing a coherent, broad-spectrum response to that rise. It discusses nine interviews with stakeholder groups or representatives in Hong Kong, revealing commonalities and themes in their experiences with clients who have been victims of HDC. While Hong Kong has recently adopted piecemeal reform of criminal laws targeting certain HDC practices such as ‘up-skirting’, NCDII, and doxing, these interviews suggest that these reforms alone are unlikely prove effective. Amongst other things, the interviews reveal a desire by victims not simply for punishment but resolution and restitution. Other jurisdictions have responded to these desires through the adoption both of expanded civil actions and broader regulatory regimes. This paper sets the groundwork for justifying similar reforms in Hong Kong.

**Keywords:** Law; Technology; Cyberbullying; NCDII; Communications; Hong Kong; Privacy; Tort; Regulation

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## Table of Contents

<b>Introduction.....</b>	<b>125</b>
<b>I. Hurtful Digital Communications (HDC).....</b>	<b>126</b>
<b>II. Hong Kong’s Existing Legal Framework.....</b>	<b>127</b>
<b>III. Stakeholder Interviews .....</b>	<b>129</b>
<b>A. Interview 1.....</b>	<b>130</b>
<b>B. Interview 2.....</b>	<b>132</b>
<b>C. Interview 3.....</b>	<b>133</b>
<b>D. Interview 4.....</b>	<b>134</b>
<b>E. Interview 5.....</b>	<b>136</b>
<b>F. Interview 6.....</b>	<b>138</b>
<b>G. Interview 7.....</b>	<b>139</b>
<b>H. Interview 8.....</b>	<b>140</b>
<b>I. Interview 9.....</b>	<b>141</b>
<b>IV. Analysis .....</b>	<b>142</b>
<b>Conclusion .....</b>	<b>144</b>

## INTRODUCTION

Modern societies are increasingly composed of ‘digital natives’ who conduct substantial portions of their lives online from a young age.<sup>1</sup> Unfortunately in so doing many experience abusive behaviour from others they encounter online including threats, harassment, defamation, bullying, the non-consensual distribution of intimate images (NCDII), and doxing.<sup>2</sup> These are all examples of what this paper terms ‘hurtful digital communications’ (HDC). Regrettably, various surveys indicate such conduct is not rare in Hong Kong. Nearly one in five respondents to a 2021 Equal Opportunities Commission survey said they had been sexually harassed online within the previous year.<sup>3</sup> More than half of those said they had been sent unwanted sexual material; nearly half said they had directly been sent unwanted sexually suggestive messages online; just over a quarter reported being the victims of unwanted sexually suggestive comments or jokes online.<sup>4</sup> A separate survey of teenagers in Hong Kong in 2022 found that 40% been exposed to unwanted sexual material or messages online, while 20% reported being cyberbullied.<sup>5</sup> In another 17% of secondary school students reported being cyberbullied.<sup>6</sup> In 2023, a local non-governmental organization (NGO) revealed that it had assisted 646 victims of NCDII over a two-year period.<sup>7</sup>

There is also research that focuses on the perpetrators. In one study, nearly one in three youths had admitted to perpetrating HDC themselves, while one in four respondents said they had altered images and posted them online to mock or embarrass someone.<sup>8</sup> A 2018 survey by researchers at the University of Hong Kong suggested that 2.6% of students age 13-17 had attempted to dox someone.<sup>9</sup> Rates skyrocketed the following year when doxing of perceived ideological opponents became part of the social unrest in Hong Kong,<sup>10</sup> with the Office of the Privacy Commissioner for

<sup>1</sup> See e.g., Mark McCrindle, *Generation Alpha* (Hachette UK, 2021).

<sup>2</sup> See e.g., Robert Faris et al., “Understanding Harmful Speech Online” (2016) Research Publication No. 2016-21, *Berkman Klein Center for Internet & Society at Harvard University*, online: <https://cyber.harvard.edu/publications/2016/UnderstandingHarmfulSpeech>.

<sup>3</sup> “Survey on Sexual Harassment in Hong Kong 2021”, *Equal Opportunities Commission*, May 2022, online: <https://www.eoc.org.hk/compass/wp-content/uploads/2022/05/Territory-wide-Representative-Survey-on-SH-in-HK-2021-Infographic-EN.pdf>.

<sup>4</sup> Ibid.

<sup>5</sup> “Hong Kong Kids Online”, *Save the Children*, May 2022, online: <https://savethechildren.org.hk/wp-content/uploads/2022/05/Hong-Kong-Kids-Online-Report-English-Final.pdf>.

<sup>6</sup> “Survey Results on Cyberbullying in Hong Kong”, *Zonta Club of Hong Kong East*, 14 Jan 2022, online: [https://m21.hk/zontaHKE2023/download/ZONTAHKE\\_Cyberbully\\_Survey\\_Report\\_2022.pdf](https://m21.hk/zontaHKE2023/download/ZONTAHKE_Cyberbully_Survey_Report_2022.pdf)

<sup>7</sup> Irene Chan, “Hong Kong NGO requests removal of over 1,300 non-consensual intimate images from online platforms” *Hong Kong Free Press*, 8 Aug 2023, online: <https://hongkongfp.com/2023/08/08/hong-kong-ngo-alerted-to-over-1300-intimate-images-online-as-it-urges-platforms-to-honour-removal-requests/>.

<sup>8</sup> Emily Hung, “How common is cyberbullying among young people in Hong Kong? NGO says third are targeting peers online and calls for more prevention measures”, *South China Morning Post*, 9 Sep. 2023, online: <https://www.scmp.com/news/hong-kong/education/article/3233991/how-common-cyberbullying-among-young-people-hong-kong-ngo-says-third-are-targeting-peers-online-and>

<sup>9</sup> Ruby Fung & Michael Cheung, “An in-depth case study of doxing in Hong Kong”, *Tackling Cyberbullying: A Comparative and Interdisciplinary Symposium*, 4 Sep. 2018, online: <https://www.hku.hk/f/upload/18335/Ruby%20Lo.pdf>.

<sup>10</sup> See Anne Cheung, “Doxing and the Challenge to Legal Regulation: When Personal Data Becomes a Weapon” in Jane Bailey, Asher Flynn & Nicola Henry, eds., *THE EMERALD INTERNATIONAL HANDBOOK OF TECHNOLOGY-FACILITATED VIOLENCE AND ABUSE* (Emerald Publishing Limited, 2021) 577; see also Yao-Tai Li & Katherine Whitworth, “Coordinating and doxing data: Hong Kong

Personal Data (PCPD) reporting a nearly 400% increase cases between 2018 and 2019.<sup>11</sup> While the survey results may differ year on year and as between different organizations and methodology, the above information shows that in a general sense – as in other jurisdictions – the frequency of HDC in its various forms appears to be on an upward trend in Hong Kong.

This paper describes the first stage of a multi-year project that seeks to identify appropriate *non-criminal* forms of regulating HDC conduct. This stage consisted of a series of interviews with local stakeholder groups and individuals; generally speaking non-governmental organizations in Hong Kong who work with or advocate for victims of HDC rather than victims themselves. It collates and analyses the commonalities and themes emerging from the interviews that ought to inform future legislative and regulatory change. The interviews suggest that the problem of HDC is on the rise in Hong Kong and affects even young children, that cyberbullying and NCDII are the two most common forms of HDC that relevant NGOs come across, a dissatisfaction with how the relevant criminal law is applied, and that a lacuna in the law that makes obtaining removal of harmful material online more challenging than it ought to be.

## I. HURTFUL DIGITAL COMMUNICATIONS (HDC)

Lenhart et al. argue that the shared element to various HDC practices is “unwanted contact that is used to create an intimidating, annoying, frightening, or even hostile environment for the victim and that uses digital means to reach the victim.”<sup>12</sup> Notwithstanding this digital mediation, HDC can result in severe consequences for victims including anxiety, embarrassment, shame, depression, social withdrawal, and even thoughts of suicide.<sup>13</sup> There can be reputational harm,<sup>14</sup> harassment by third parties,<sup>15</sup> and professional/financial loss as victims withdraw from social or economic life.<sup>16</sup> The digital nature of HDC means that victimisation can be an ongoing state –

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protesters’ and government supporters’ data strategies in the age of datafication” (2023) *SOCIAL MOVEMENT STUDIES* 1–18. <https://doi.org/10.1080/14742837.2023.2178404>.

<sup>11</sup> “PCPD Sets Up Enquiry/Complaint Hotline about Doxxing and Releases the Results of a Survey on Protection of Personal Data Privacy”, *Office of the Privacy Commissioner for Personal Data*, 28 Jan. 2021, online: [https://www.pcpd.org.hk/english/news\\_events/media\\_statements/press\\_20210128.html](https://www.pcpd.org.hk/english/news_events/media_statements/press_20210128.html).

<sup>12</sup> Amanda Lenhart, Michelle Ybarra, Kathryn Zickuhr, and Myeshia Price-Feeney, “Online Harassment, Digital Abuse, and Cyberstalking in America” *Data & Society Institute*, November 21, 2016, online: <https://datasociety.net/output/online-harassment-digital-abuse-cyberstalking/>, cited in Robert Faris et al., *supra* note 3.

<sup>13</sup> See e.g., Laura Leets & Howard Giles, “Words as weapons - when do they wound? Investigations of Harmful Speech” (1997) 24 (2) *HUMAN COMMUNICATION RESEARCH* 260; Allisdair A. Gillespie, “Cyber-bullying and the harassment of teenagers: the Legal Response” (2006) 28 (2) *JOURNAL OF SOCIAL WELFARE & FAMILY LAW* 123; Robert Faris et al., *supra* note 3; Samantha Bates, “Revenge Porn and Mental Health: A Qualitative Analysis on the Mental Health Effects of Revenge Porn on Female Survivors” (2017) 12(1) *FEMINIST CRIMINOLOGY* 22; Penza, Dylan E., “The Unstoppable Intrusion: the Unique Effect of Online Harassment and What the United States Can Ascertain from Other Countries’ Attempts to Prevent It” (2018) 51(1) *CORNELL INTERNATIONAL LAW JOURNAL* 297.

<sup>14</sup> See e.g., Danielle Keats Citron & Mary Anne Franks, “The Internet as a Speech Machine and Other Myths Confounding Section 230 Reform” (2020) *UNIVERSITY OF CHICAGO LEGAL FORUM* 45; Ganaele Langlois & Andrea Slane, “Economics of Reputation: the Case of Revenge Porn” (2017) 14(2) *COMMUNICATION AND CRITICAL/CULTURAL STUDIES* 120.

<sup>15</sup> See e.g., Nicola Henry, Asher Flynn & Anastasia Powell, “Responding to ‘revenge pornography’: Prevalence, nature and impacts” (2019) *Report to the Criminology Research Advisory Council* (CRG 08/15-16).

<sup>16</sup> See e.g., Citron & Franks, *supra* note 15.

once an image, video, or abusive message is uploaded to a website, it may be virtually impossible to prevent its further spread, regardless of criminal penalty.<sup>17</sup>

## II. HONG KONG'S EXISTING LEGAL FRAMEWORK

One way to tackle the rise of HDC would be to adopt a 'broad spectrum' approach, relying on a combination of criminal prohibition, civil penalties, and regulatory bodies tasked with responding to the problem. However, relevant law reform in Hong Kong has thus far not adopted such a comprehensive and integrated approach. Instead, there have been piecemeal changes that have focused on criminal prohibition of particular activities after they reach a certain level of public salience.

After many years of discussion,<sup>18</sup> in 2021 the Crimes Ordinance was amended to create four new offences related in part to HDC, each with a maximum penalty of five years' imprisonment.<sup>19</sup> The new offences are voyeurism, unlawful recording/observation of intimate body parts, publication of matters arising from those two offences, and publication or threatened publication of intimate images without the subject's consent.<sup>20</sup> The amendments also allow magistrates to issue 'disposal orders' at any time during the proceedings, ordering any person in Hong Kong or elsewhere to take steps to remove, delete, or destroy an image that is the subject of a proceeding relating to one of the four offences.<sup>21</sup>

The Personal Data (Privacy) Ordinance (PDPO)<sup>22</sup> was also amended in 2021 to create two new offences<sup>23</sup> in response to the dramatic increase in doxing incidents referred to above. A summary offence proscribes the disclosure of personal data without consent and with intent or being reckless as to whether a specified harm will occur to either the data subject or their family;<sup>24</sup> the second, indictable offence is satisfied where a specified harm actually occurs.<sup>25</sup> The specified harms are harassment, molestation, pestering, threat, intimidation, bodily or psychological harm, causing someone to fear for their physical safety, or damage to personal property.<sup>26</sup> The summary offence is

<sup>17</sup> See e.g., Samantha Kopf, "Avenging Revenge Porn" (2014) 9 (2) MODERN AMERICAN 22; Olga Marques, "Intimate Image Dissemination and Consent in a Digital Age: Perspectives from the Front Line" in Bailey, Flynn, & Henry, eds., *supra* note 11.

<sup>18</sup> See e.g., "Report on Voyeurism & Non-Consensual Upskirt Photography", *The Law Reform Commission of Hong Kong*, Apr 2019, online: [https://www.hkreform.gov.hk/en/docs/rvoyeurism\\_e.pdf](https://www.hkreform.gov.hk/en/docs/rvoyeurism_e.pdf); see also Thomas Crofts, "Criminalization of Voyeurism and 'Upskirt Photography' in Hong Kong: The Need for a Coherent Approach to Image-Based Abuse" (2020) 8(3) THE CHINESE JOURNAL OF COMPARATIVE LAW 505.

<sup>19</sup> Crimes (Amendment) Ordinance 2021, Ord. No. 35 of 2021, A3597, online: <https://www.elegislation.gov.hk/hk/2021/35!en>. For discussion of these offences in the context of NCDII, see Thomas Crofts, "Combating Intimate Image Abuse in Hong Kong", (2022) 52 HONG KONG LAW JOURNAL 405.

<sup>20</sup> Crimes Ordinance, Cap. 200, s. 159AA (B – E).

<sup>21</sup> *Ibid.*, s. 159AA (L).

<sup>22</sup> Personal Data (Privacy) Ordinance, Cap. 486 (PDPO).

<sup>23</sup> Personal Data (Privacy) (Amendment) Ordinance 2021, Ord No. 32 of 2021, A3363, online: <https://www.gld.gov.hk/egazette/pdf/20212540/es12021254032.pdf>.

<sup>24</sup> PDPO, s. 64(3A)

<sup>25</sup> PDPO, s. 64(3C)

<sup>26</sup> PDPO, s. 64(6).

subject to a punishment of imprisonment for two years;<sup>27</sup> the maximum punishment for the indictable offence is imprisonment for five years.<sup>28</sup>

But while these new offence provisions may provide deterrence and punishment for particular pernicious behaviours, the interviews in this article suggest the laws still do not adequately respond to the needs of victims. The criminal process is complex, time-consuming and uncertain. The police must become involved. Prosecutors must decide to proceed. Conviction requires proof beyond a reasonable doubt. The process requires victims to engage with the justice system and may require them to relive their experiences.<sup>29</sup> Criminal law primarily focuses on penalties for the perpetrators, rather than mechanisms of restitution for the victims – while this approach may indeed serve to deter some harms, it does little to provide redress for actual victims.

This research project began from the standpoint that civil law and administrative law mechanisms may provide further avenues to combat the pernicious rise of HDC. Some forms of HDC – in particular NCDII – involve an apparent invasion of privacy, yet the civil protection of privacy in Hong Kong remains incomplete. The Law Reform Commission recommended the introduction of a statutory privacy tort two decades ago,<sup>30</sup> but these reforms have not been implemented and courts have yet to adopt a freestanding tort of privacy in Hong Kong.<sup>31</sup> This means private law remedies for HDC are only available via traditional torts such as assault, defamation, and the action for intentional infliction of harm.

The lower Hong Kong courts have in recent years moved towards recognising a new tort of harassment that might prove useful. Under one proposed version, the tort would require a course of conduct “sufficiently repetitive in nature... to cause worry, emotional distress or annoyance.”<sup>32</sup> Though the Court of Final Appeal has yet to rule on the final contours of such a tort, it is at least conceivable that under it some examples of HDC such as repeated cyberbullying or *ongoing* threats to distribute intimate images might fit within it. But since the traditional common law torts did not evolve in an era of widespread abusive online conduct generally speaking they are not a good fit for rendering most forms of HDC actionable. For example, under the current jurisprudence a single threat to publish or even the actual publishing of an intimate image without the subject’s consent likely would not fit into any of the standard actions. Infliction of harm requires personal injury, including psychiatric injury; defamation is subject to the defence of truth; and the tort of assault requires the threat of bodily harm, etc. A subsequent stage of this project will therefore consider the potential creation of

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<sup>27</sup> PDPO, s. 64(3B).

<sup>28</sup> PDPO, s. 64(3D).

<sup>29</sup> Tyrone Kirchengast & Thomas Crofts, “The legal and policy contexts of “revenge porn” criminalisation: the need for multiple approaches” (2019) 19(1) OXFORD UNIVERSITY COMMONWEALTH LAW JOURNAL 1; Michael Salter, Thomas Crofts, & Murray Lee, “Beyond criminalisation and responsabilisation: Sexting, gender and young people” (2013) 24(3) CURRENT ISSUES IN CRIMINAL JUSTICE 301.

<sup>30</sup> “Report on Civil Liability for Invasion of Privacy”, *The Law Reform Commission of Hong Kong*, Dec. 2004, online: <https://www.hkreform.gov.hk/en/docs/rprivacy-e.pdf>.

<sup>31</sup> See also Jojo YC Mo & AKC Koo, “A Bolder Step towards Privacy Protection in Hong Kong: A Statutory Cause of Action” (2014) 9(1) ASIAN JOURNAL OF COMPARATIVE LAW 345.

<sup>32</sup> *Lau Tat Wai v Yip Lai Kuen Joey* [2013] HKCFI 369, 62, citing for the boundaries of the tort directly from the Singaporean case of *Malcomson Bertram & Anor v Naresh Mehta* [2001] 4 SLR 454, 464F.

*statutory* torts that might be more closely aligned with the harms suffered by victims of HDC.

The primary legislative approach to protecting privacy in Hong Kong is the PDPO. However, the PDPO is aimed at *informational* privacy only. That is, the privacy of individuals as it pertains to their personal data rather than privacy more broadly. Beyond the aforementioned creation of offences related to doxing, the PDPO therefore has a relatively limited role to play in regulating or controlling HDC. The PDPO's six 'data protection principles' are concerned with matters such as the collection, accuracy, use and retention of personal information. While in theory the law might be engaged by HDC that involves the handling of personal information, thanks to an early decision the PDPO offers less protection in such a situation than one might first expect. In *Eastweek*, the Hong Kong Court of Appeal ruled that a bare photograph – *even if* it shows an identifiable face – does not meet the definition of 'personal data' within the meaning of the PDPO (that the information is "about an identified person or about a person whom the data user intends or seeks to identify."<sup>33</sup> On this basis, a majority of the Court denied that it amounted to a collection of personal data for a photographer to take photos of unknown individuals in a public place and for a news magazine to publish these photographs. It appeared not to make a difference to the majority that the publication of the photograph allowed third parties, such as readers of the magazine, to identify the subject of the photograph.<sup>34</sup> Unfortunately, it appears that the PCPD continues to rely on *Eastweek* to turn away victims of NCDII requesting assistance on the ground that the publication of photographs showing individuals is not a breach of the PDPO unless the material is accompanied by other personal information.<sup>35</sup> Moreover, even if the courts revisited this position, breach of the data protection principles within the PDPO is not an offence in and of itself.<sup>36</sup>

These brief observations are sufficient to demonstrate some of the weaknesses in the current legal regime and regulatory response to HDC. Our project sought to bolster this initial analysis with stakeholder accounts. In its first stage, we identified and interviewed various stakeholders in the community with an interest or expertise in the area of hurtful digital communications in an attempt to understand the state of HDC 'on the ground' in Hong Kong. The next part of the paper collates and documents the results of these interviews.

### III. STAKEHOLDER INTERVIEWS

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<sup>33</sup> *Eastweek v Privacy Commissioner for Personal Data*, [2000] HKCA 442. Writing for the majority, Ribeiro JA argued 'What is crucial here is the complainant's anonymity and the irrelevance of her identity so far as the photographer, the reporter and Eastweek [the magazine] were concerned. Indeed, they remained completely indifferent to and ignorant of her identity right up to and after publication of the offending issue of the magazine' (at para. 14).

<sup>34</sup> In contrast, Wong JA's dissent in *Eastweek* acknowledged that it is quite easy for someone to emerge from anonymity when a photograph of them is widely published even without accompanying information, once one person recognizes them (at para. 46).

<sup>35</sup> See "Privacy Commissioner urged to tackle revenge porn", *RTHK*, 8 Aug. 2023, online: <https://news.rthk.hk/rthk/en/component/k2/1712588-20230808.htm>.

<sup>36</sup> See Jojo YC Mo, "Are data protection laws sufficient for privacy intrusions? The case in Hong Kong", (2014) 30(4) *COMPUTER LAW & SECURITY REVIEW* 429.

Stakeholders we interviewed included NGOs working with victims of HDC and two legal representatives who had performed pro bono services for victims.<sup>37</sup> We decided at the outset of the project to not interview victims directly, for several reasons. First, we considered that given the frequently sexualized nature of the material at issue, victims might be uncomfortable discussing their experiences with us. We were keen to avoid anything that might cause a ‘re-victimisation’ experience, and so decided speaking instead with representative stakeholders was the more appropriate route. Second, by focusing our limited time and resources on stakeholder organizations and bodies, we were able to gather a wider range of experiences than we would have had we focused primarily on individual victim accounts.

We conducted interviews with each of these stakeholders in person, and recorded them (audio only) after obtaining participants’ written consent; we also obtained ethics approval for the interviews as part of the grant-seeking process.<sup>38</sup> With two exceptions, the interviews were conducted in English. A transcript of each interview was made by our research assistant, who was also responsible for translating two interviews in which we asked questions in English but the interviewees responded in Cantonese. When obtaining the written consent of the interviewees to record and transcribe the conversations, we agreed to not include their names or those of their organizations in our research outputs since they are often dependent at least in part on public funding. Thus, the summaries below refer in general terms to the kind of organization the interviewee represented.

#### **A. Interview 1<sup>39</sup>**

This was an interview with a representative of an NGO that offers a range of services to sex workers in Hong Kong, including outreach and counselling provided online (via Twitter/X, Instagram, and Heymandi) and by 24-hour telephone hotline. Clients who reach out are offered health checks and the face-to-face interaction stemming from that is often the springboard for discovering whether they are in crisis. Initially the organization primarily dealt with issues arising from compensated dating<sup>40</sup> amongst under 18s, unwanted pregnancies, and providing advice to clients on what to do in cases of undercover police operations. The interviewee relayed however that in recent years an increasing number of their clients had fallen victim to secret photography or video recording leading to threats and blackmail. Without being able to provide formal statistics, they estimated that roughly 30% of their clients complained about experiencing behaviour that we classed as a hurtful digital communication.

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<sup>37</sup> We also conducted one ‘off the record’ interview with a Government representative who provided background information on the application of the relevant criminal laws.

<sup>38</sup> Approval given by the Survey & Behavioural Research Ethics Committee of the Chinese University of Hong Kong, application SBRE-21-100, 29 Dec. 2021.

<sup>39</sup> Interview conducted 9 May 2013. Questions asked in English, answers provided in Cantonese and then translated and transcribed by the research assistant. Transcription on file with the authors.

<sup>40</sup> The phrase refers to the practice where youth (primarily but not exclusively female) enter into relationships that may contain both sexual and non-sexual components in exchange for a range of economic benefits. The frequent non-sexual aspects of the relationships tend to distinguish the practice from more conventional prostitution, though compensated dating can often lead to prostitution over time. For discussion of the practice in Hong Kong, see e.g., Tak Yan Lee & D.T.L. Shek, “Compensated dating in Hong Kong: prevalence, psychosocial correlates, and relationships with other risky behaviors” (2013) 26(3) JOURNAL OF PEDIATRIC AND ADOLESCENT GYNECOLOGY S42-S48.



The interviewee (again anecdotally) reported that the majority of their clients they dealt with were teenagers, but they had clients up to age 25 and as young as 12. They also felt that their clients were getting younger, in part because during COVID19 more young students spent time online rather than attending school. When schools in Hong Kong closed during the pandemic, said the interviewee, many students lost access to social workers provided through those institutions. Students had more free time, a need for money, and in the interviewee's view this had led to a spike in young girls entering into 'compensated dating' relationships. The interviewee reported that while their clients were typically careful to not post images of their face or information about their real identities when seeking clients, sometimes the men interested in procuring their services would request they verify their identity during online conversations. This increased the risk of identification since they would feel pressured to agree to the request. The interviewee also reported that their clients found that during conversations or when meeting in real life, men would often try to obtain personal information (such as which school they went to) that was then often later used for blackmail.

The interviewee had on one occasion assisted a client in making take down requests to a website to which sexually explicit material in which they were visible had been posted. In that instance an (unnamed) website hosted outside Hong Kong had responded promptly and helpfully and removed the material when requested, however at that point the video had already spread within the client's school. The client ended up leaving both the school and Hong Kong. While this was their only experience requesting take-down of a sexual video or image, the interviewee expressed the view that there were many unreported cases.

The interviewee had more often accompanied a client to make a formal complaint to the police, however they reported that in practice less than 1 in 10 wanted to pursue charges. They believed this hesitation was for a variety of reasons. First, the interviewee reported that clients were generally unfamiliar with the law (in particular the recent changes that made it an offence to threaten to distribute images), and so were often not even sure if the perpetrators had done anything illegal. The interviewee also reported that perpetrators (especially those seeking sexual favours rather than money) appeared to be adjusting their behaviours in light of changes to the law – rather than making direct threats to spread an image, instead they might send a picture and just remark "this is a good photo, isn't it?" or make a relatively vague suggestion such as "you know what I want". Second, the interviewee's clients were dubious as to the probability of a successful prosecution, given there was often no clear evidence in the video of the identity of the perpetrator. Third, their clients expected that as sex workers they would receive unsatisfactory treatment and attitudes from the police. Those under 18 were particularly afraid the police would inform their families, who often would be unaware that they were working in the sex industry. As a result, in cases that did not involve physical violence the victims were rarely inclined to involve the police.

The interviewee was of the view that cultural changes were necessary in combating many of these issues – for instance, a young girl filmed without her consent should not be so afraid that the police or others would judge her for being a sex worker that she would avoid reporting the crime. Until such a larger cultural change could occur, they argued that procedural changes might assist – for example, that making sure the victims' identity was not revealed to any unnecessary individuals as part of the process of making a complaint. In terms of education, they believed that 'one-off' training

sessions in schools about cyberbullying or related issues were insufficient. Instead, continuous public education was required. In terms of regulatory bodies, the interviewee was of the view that a centralized take-down service for intimate images would be helpful. Though lacking personal experience, they also held the view that it would be easier to obtain removal from a large foreign website than a smaller local forum.

## **B. Interview 2<sup>41</sup>**

This was an interview of a representative of an NGO that worked largely on behalf of the ‘men who have sex with men’ (MSM)<sup>42</sup> community in Hong Kong. The interviewee reported that sometimes in their work their organization came across clients who were being blackmailed with threats to post sexually oriented images and videos of them on the internet. They described two common and one less common scenarios. In the first group of cases, nude images or sexual videos were spread online by ex-partners of their clients after a relationship had ended. The second group involved situations in which a client had sent a nude photo to someone they met on an online dating website, and then the recipient of that photo used it to try to blackmail them into having sex or paying money by threatening to send the images to the victim’s friends or family. In many cases the victims were not publicly ‘out’, and so victims often feared consequences beyond embarrassment. A less frequent occurrence involved convincing victims to install an app on their phone (usually under the pretence that it would give them access to sexual content) which would allow the perpetrator to take control of the device. The list of the victim’s contacts on the phone would then be used for further blackmail. Victims of these three scenarios ranged from age 14 to 50.

The interviewee’s NGO runs a 24-hour helpline and offers information through its Instagram account on how gay men and sex workers can protect themselves online, and what to do if they are being threatened. The NGO had some experience with NCDII, and had created guides for clients seeking to obtain removal of material. In their experience, while in the past Twitter/X had been relatively responsive to requests they made on behalf of clients, since a change in ownership<sup>43</sup> that was no longer the case. Meta (owner of both Facebook and Instagram) and Google were more responsive to requests, but this NGO found it was still challenging for people to prove that the images were of them, since often their faces would be obscured. The interviewee had comparatively little experience dealing with local websites, which was in their view because they were “less friendly” places from the perspective of Hong Kong’s gay community than were Twitter/X and Instagram. In any event, this interviewee said the NGO’s approach in cases of NCDII was usually to tell clients that if an image was already being circulated online the chances of being able to completely remove it were very low, and that giving in to blackmail would likely not succeed and the demands would just increase. They instead recommended an approach based on “risk management” – for example, suggesting that the victim should consider getting in

<sup>41</sup> Interview conducted 9 May 2023. Transcript on file with authors.

<sup>42</sup> MSM includes all men who engage in sexual activity with other men, regardless of their sexual orientation. See e.g., “Cisgender men who have sex with men (MSM)”, International Association of Providers of AIDS care, undated, online: <https://www.iapac.org/fact-sheet/cisgender-men-who-have-sex-with-men-msm/>.

<sup>43</sup> Kate Conger & Lauren Hirsch, “Elon Musk Completes \$44 Billion Deal to Own Twitter”, 27 Oct. 2022, *The New York Times*, online: <https://www.nytimes.com/2022/10/27/technology/elon-musk-twitter-deal-complete.html>.

contact with family or their workplace proactively and describe in general terms what has happened and they should not open or view files they have been sent.

The interviewee reported that despite the aforementioned changes to the Crimes Ordinance related to NCDII, in their experience the police were often not very helpful unless there were threats involving physical harm or demands for money. They believed that most of their clients wished to avoid the police due to embarrassment, or because they were afraid that the police would blame them for having sent someone a sexual image or video in the first place. They recommended more training for the police, arguing that the frontline officers who received HDC-related complaints needed to be more sensitive to the context and avoid slipping into victim blaming. They also noted that while they would try to meet with the Crime Prevention Bureau once every few months to discuss strategies, sometimes they would receive no response.

### **C. Interview 3<sup>44</sup>**

This was an interview with a representative of an NGO working on sexual violence issues faced by women, including NCDII. They reported that despite the recent changes in the law, their clients remained reluctant to approach the police for at least three reasons. First, from the interviewee's perspective their clients' primary interest was in having the material removed from the internet, and the clients did not believe the police were in a position to help them accomplish this. Second, the interviewee thought it relevant that while in-person 'physical' forms of sexual violence were usually perpetrated by an intimate partner, in cases of NCDII they estimated that roughly 1/3 of their clients had no idea who the perpetrator was. If the perpetrator was not a known individual based in Hong Kong, then the chances of successful prosecution would be very low, and in such cases the whole process would be seen as a waste of time by both the victim and the police. The third reason the interviewee believed their clients were reluctant to approach the police was that they were often worried about the handling of their complaint. The interviewee shared an example in which a victim complained about the non-consensual spread of her intimate images and videos, and then those materials spread within the police force itself. The interviewee said that, to its knowledge, there were no clear guidelines for frontline officers to follow when receiving NCDII-related or similar complaints.

The interviewee reported that they were successful in having material removed from online platforms on behalf of their clients in about 85% of cases. In the remaining 15% material remained online either because it was deemed not to violate the websites' policies or because the requests were simply ignored. In the interviewee's experience major commercial/mainstream social media websites hosted overseas (eg Meta, Twitter/X – the latter at least historically) were usually very responsive because they already had specific terms of use in place regarding nudity and non-consensually shared images. In contrast, pornographic website owners or messaging apps like Telegram were far less likely to respond positively to their take-down requests. In the case of the former requests were often simply ignored, while in the latter the encrypted nature of the messaging channels often meant the host itself could not access what those channels were sharing. However, the interviewee reported that in cases where the website owners itself did not reply, sometimes they were able to contact that commercial webhost

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<sup>44</sup> Interview conducted 17 May 2023, via zoom. Transcript on file with authors.

provider directly (for instance, Cloudflare) and have the *entire website* removed as being in violation of the host's own terms of service.

The interviewee considered that the new anti-doxxing provisions in Hong Kong's law had limited utility for their clients. As explained above, the new PDPO amendments were only relevant if the images at issue were shared alongside information about the victim like their name, address, or HKID number and the interviewee said this typically was not the case in situations of NCDII. However, they said that sometimes the PCPD would send a take-down request to a local website on their behalf even where the strict conditions was not met, hoping that the website would remove the material even absent legal compulsion. Overall the interviewee was generally dissatisfied with the current legal framework, noting that even with the changes to the Crimes Ordinance NCDII is not classed as a sexual offence. This means that any proceedings are held in open court, and victims are not able to deliver testimony via CCTV etc. The interviewee was of the view that classing NCDII as a sexual offence would provide victims with more protection and increase the likelihood of them being willing to pursue legal resolution. The interviewee said, however, that there were divided views within their organization about whether a government body like the PCPD should have the power to directly order take-down of material absent a court order, in part because of the political implications that would surround any such power.

This interviewee's organization also ran a variety of education campaigns and believed them to be an important component of the fight against HDC, and the interviewee noted that discussions about behaviour online and its connection to sexual violence was generally absent from most sex education programmes in Hong Kong schools. Their organization sought to fill this gap by providing workshops both online and in person. However, the interviewee reported that though their organization had been invited into some schools, generally they were only given a single two-hour timeslot and in their view this was inadequate.

Overall the interviewee felt that their organization had sufficient resources to deal with the numbers of take-down requests of NCDII they were receiving from their clients. At the same time they felt that the numbers of complaints were limited in part due to local cultural pressures that dissuaded people from seeking help regarding matters related to sex and sexuality in the first place; they believed there were many unreported cases.

#### **D. Interview 4<sup>45</sup>**

This was an interview with a representative of an NGO that provides social work services for children and youth. The interviewee described three services their NGO offered that centred around a health digital lifestyle – direct counselling of students suffering from internet addiction or HDC issues; collaborating with student groups in both schools and universities to increase awareness about the risks of certain behaviour online; and running campaigns online that focused on the same. HDC issues they had come across included cyberbullying, doxing, NCDII, and using the images of the NGO's clients to create fake accounts on apps or websites used for finding casual sex partners. The interviewee reported their clients were both male and female, and usually were in their teens – although they had one client who was only nine years old. They

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<sup>45</sup> Interview conducted 22 May 2023. Transcript on file with authors.

reported that young boys were typically threatened with blackmail by men they met online and to whom they had sent nude images. Often times the victims were so ashamed of this they would initially pay the blackmail, only to discover that the amount demanded would simply keep rising. Only then might they confide in a social worker or teacher.

While sometimes victims would approach them directly, this NGO also was sometimes brought in by schools to offer counselling in the event of an incident. Interestingly, they reported provided counselling not only to victims, but also the perpetrators and third parties as well. For instance, in one case a student had been suspended for a hurtful digital communication involving sexual imagery of one of his classmates. That student was then given counselling to help them process the punishment they had received, but the other students *also* received training or information about how to appropriately react and deal with that perpetrator once their suspension was completed. So there was an aim at reintegration of the perpetrator into the classroom, as well as the more conventional efforts to provide for the needs of the victim.

While sometimes they were also contacted by parents worried about their children being bullied online or suffering from internet addiction, this interviewee reported they found it challenging to get some parents to voluntarily come to talks about cyberbullying. In their view, parents who were disengaged from their child's life would benefit most from such a talk and yet those were the parents who were least likely to attend. They also reported on occasion there would be conflict between school administration and parents about how to resolve an incident and they found it challenging to operate in such cases an environment.

This interviewee believed when it came to counselling, their clients who had suffered an HDC-related harm primarily wanted somebody to talk to who was supportive and open-minded. While their NGO would always offer to send a representative accompany a client to make a report to the police if there was a safety concern or if a criminal offence appeared to have been committed, the interviewee said that generally clients were reluctant to go to the police. This was because, in the interviewee's view, their clients did not expect to receive appropriate emotional support or empathy from the police if they chose to report an incident. In the interviewee's experience, victims who *did* choose to make a report to the police received a more responsive outcome when they were accompanied by a representative of their NGO. However, they also reported that there was significant variation in the approach or attitude of the police, even when they accompanied the victim. They gave one example of a client whom they accompanied to make a police report, a 14 year old girl who had voluntarily created sexual imagery with a partner. After the relationship ended that partner threatened to spread the images online if the client did not resume their relationship. The interviewee described the first officer they dealt with as helpful, respectful, and willing to investigate. However, because the alleged perpetrator was living in a different district, the file was transferred to another office in that district. The second officer was, in the view of the interviewee, dismissive and blamed the girl for having taken the photos in the first place. The interviewee believed this difference reflected the fact that not every individual district police station has a member of the cybercrime unit.

The interviewee reported mixed experiences when attempting ‘take-down’ of NCDII material on behalf of their clients. Their NGO was classed as a “trusted partner” on YouTube, meaning reports made by the NGO’s staff would receive priority consideration and were generally successful.<sup>46</sup> But this was not the case with other services. The interviewee relayed that a client of theirs who had directly approached Meta was unsuccessful with a request for removal of material from Facebook because her face was obscured and she therefore could not prove that she was the person featured in the imagery. The interviewee also reported no success when approaching services like Telegram or local websites to request removal of imagery of their clients.

The interviewee was of the view that it would be helpful to have stricter laws on HDC, if only for the deterrent effect. At the same time, they believed that law reform alone was insufficient and that continued preventative education campaigns were necessary, since digital anonymity meant that many activities might remain largely out of reach of the authorities.

#### **E. Interview 5<sup>47</sup>**

This interview was with representatives of a large Hong Kong-based organization offering a wide range of services, including social work, education, community outreach, and medical care. The representatives we spoke with worked for two specialized departments within this organization that related to our project theme. The first department worked closely with the perpetrators and victims of sexual offences, while the second worked primarily online but with a focus on education.

The interviewee from the first department noted the department’s focus had changed since it was initially setup approximately 15 years ago. While this team had originally been set up to help re-habilitate perpetrators of sexual offences, it was found that many of the perpetrators of online sexual offences (including hurtful digital communications) had themselves been victims at an earlier stage. The department had thus increased its efforts to break the cycle of violence by offering services to the victims as well. Perpetrators were generally referred to the interviewee’s department by probation officers, while victims were usually referred by school workers, parents, or family centres. This department does not provide direct legal assistance to either group, but does offer basic information to individuals who have been charged with an offence about the criminal process. Where probation orders required ongoing counselling with the organization, this involved combinations of education and therapy, as well as group sessions with other youth sex offenders.

The interviewee of this department reported that the perpetrators they worked with ranged in age from 8 to 24, with a 70-30% split male and female; the victims were in the same age range, but split 50-50% along gender lines. The interviewee reported that the nature of the offences they came across had changed over the years. Initially they dealt with offences such sexual assault or unlawful intercourse, while increasingly they were confronted with activities that had some kind of digital or online component. These new issues included NCDII, sexual humiliation online, ‘up-skirting’, bullying

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<sup>46</sup> “YouTube Partner Programme Overview and Eligibility”, *YouTube*, undated, online: <https://support.google.com/youtube/answer/7285>; “Get in Touch with the YouTube Creator Support Team”, *YouTube*, undated, online: <https://support.google.com/youtube/answer/3545535>.

<sup>47</sup> Interview conducted 23 May 2023. Transcript on file with the authors.

within an online game, etc. The interviewee said a particularly common problem they dealt with was minors who were being blackmailed after having been convinced to send nude photos to someone they met online.

While the second interviewee's department had originally conducted in-person district level outreach work for youth with mental health problems, in recent years it had pivoted to primarily online work, focusing largely on offering support to youth exposed to some kind of HDC. Their approach to 'digital outreach' was quite innovative, including attempts to connect with youth through popular online games. The interviewee reported that the cyberbullying they dealt with was sometimes an extension of real-world bullying, but sometimes it was a response to it. In other words, sometimes a victim of physical bullying (at school, for example) becomes the perpetrator of cyberbullying as a kind of revenge.

School campaigns conducted include 'empathy training' for students to try and help them understand the consequences of their actions online, with the idea that hurtful digital communications were not 'just jokes'. Emotional regulation is another focus, teaching students how to deal with inter-personal problems in constructive rather destructive ways. The interviewee reported they their department was happy to run education campaigns in any school that was interested, and that they believed it was most effective if done proactively, beginning at the elementary school level. They adopt a 'train the trainers' approach, educating not just children but also school staff on how to spot the signs of cyberbullying.

However, the interviewee reported that in practice their department tended to only be called in *after* a serious incident had occurred. They suggested that this reactive approach was less effective than a proactive one, as students and staff needed to be prepared *before* incidents actually happened. While not having access to numbers to prove it, this interviewee considered that the reactive posture might in part be a financial issue – they believed schools tended to have a lump sum in their budget set aside for social work programmes generally, and bringing in an outside provider (or bringing on in on a regular basis) for a specific programme might be a cost that not all could afford. The interviewee acknowledged that there were many kinds of social work programmes that a school might want to bring in, and campaigns related to HDC would be only one option among many.

The interviewee believed that a second obstacle they faced in conducting pre-emptive education campaigns was that schools might be worried that bringing them in might be interpreted by parents as a sign that there 'was a problem' – the interviewee described being asked by a school to refer to their campaign as being about 'interpersonal relationship problems' rather than 'bullying'. A final potential obstacle to effectively dealing with HDC in schools was that, in the view of this interviewee, sometimes the problem was not seen as 'serious' by school leadership. This was especially the case if the events lacked a connection to a 'real world' confrontation between students, although the interviewee also noted that a younger generation of teachers who had grown up as digital natives themselves tended to have a more nuanced perspective.

In addition to running educational campaigns regarding cyberbullying and doxing, this department also partnered with Meta<sup>48</sup> to allow it to quickly report posts they found appeared to be cyberbullying or that encouraged suicide. However, the interviewee perceived a lack of transparency in how Meta made the final decisions about removal of material. Even more problematic was, they said, dealing with local websites such as LiHKG. The interviewee felt that while LiHKG is a hotbed of cyberbullying and doxing in Cantonese, its administrators rarely reply to their requests to remove harmful content. The interviewee also believed that the rise of encrypted communications services (eg WhatsApp) were creating new avenues for bullying, as the service provider could not automatically scan for certain kinds of material.

In such cases, the primary remedy was to report the activities to the police if it crossed a line into threatening the victims' safety. However, the interviewee reported that often the police were reluctant to assist unless the victim provided detailed evidence (such as a printout of threats). The interviewee also believed that in most cases of HDC the police were more inclined to respond positively complaints made by their NGO *on behalf of* the victim, rather than by the victim directly. Exceptions to this pattern was where the HDC was accompanied by physical abuse or had a clear 'real-world' component such as 'up-skirting'; in the view of the interviewee, most forms of HDC were a 'grey area' that the police were generally reluctant to investigate.

This interviewee said that while their department did not directly provide victims with legal advice, they believed that it might be helpful. On the other hand, they also found that in their experience victims were not often interested in talking to lawyers – what they wanted was mental support, or information on how to change schools, etc. Only those with particularly strong social networks considered legal action, the interviewee said – but the majority just hoped the problem would 'go away' on its own.

## **F. Interview 6<sup>49</sup>**

This interviewee worked for an organization that offers an online counselling service 5 days a week, and is intended to be a place where teens can anonymously receive emotional support via text messaging. The organization also uses online platforms (including Instagram, Facebook, and LiHKG) to connect with teens believed to be at high risk, providing them with information about risks associated with hurtful digital communications (both as a victim and as a perpetrator). While the target group is primarily Cantonese-speaking teens, clients can be as young as 6 and as old as 24. The interviewee reported that (anecdotally) the numbers of clients had continually increased over the last few years. In addition to those who suffered from general online harassment and cyberbullying, this interviewee had also worked with a number of clients who had been blackmailed regarding threatened spread of their intimate images or videos.

In the interviewee's experience, cyberbullying is closely related to 'in-person' bullying in schools, and they believed the latter was becoming an increasing problem

<sup>48</sup> Antigone Davis, "Strengthening Our Efforts Against the Spread of Non-Consensual Intimate Images", 2 Dec. 2021, *Meta*, online: <https://about.fb.com/news/2021/12/strengthening-efforts-against-spread-of-non-consensual-intimate-images/>.

<sup>49</sup> Interview conducted 13 Jun 2023. Questions asked in English, responses given in Cantonese. The Chinese transcript was then later translated by the research assistant. Both transcripts on file with author.



in Hong Kong due in part to an outflux of experienced educators and social workers from the city. While their organization does offer outreach campaigns in schools, the interviewee believed that generally speaking there was inadequate training for teachers on the specific issue of HDC, and as a result schools were often poor at both identifying and solving HDC-related problems. They reported that student victims are often reluctant to speak with their school social workers because they are worried about secondary harms like developing a reputation in school for complaining. The interviewee reported that this is in part why the online counselling programme is so popular with students, because it is entirely anonymous and is unconnected with anyone in their schools. This interviewee reflected that online counselling was quite different from face-to-face counselling in their experience. It had both advantages (for example, the text-based format meant counsellors had more time to think and reflect before responding) and disadvantages (for example, the text-based format also made it harder for counsellors to read the emotions of their clients and they also sometimes found it hard to gauge the authenticity of the complaints).

In contrast to some other NGOs operating in this space, this organization saw its role primarily as advisory. The interviewee found that many of the users of the service did not seek direct intervention, but instead just wanted a place to receive emotional support or advice. Therefore, they did not have much experience seeking to have material removed from online platforms on behalf of their clients. The interviewee said that while in two or three rare instances they had approached a social media platform and asked for something to be removed, this was unusual and clients understood that this was not their role.<sup>50</sup>

The interviewee explained that while victims of blackmail tended to not want to go to the police, they were advised that sometimes it was necessary if the threats continued to escalate. The interviewee reported that in their experience the police were often unwilling to take on a case unless they were provided with very clear evidence of threats to someone's physical safety. In their view, the police were likely to be receptive to a complaint about cyberbullying or online harassment only if it had such a 'real-world' component. The interviewee was of the view that legal reform leading to a clear offence of 'cyberbullying' would be helpful if it encouraged the police to take it more seriously. They also reflected that smaller NGOs like theirs were somewhat hamstrung by a lack of resources in this area – for instance, they could not hire legal staff to assist clients or even to provide general advice as to their legal rights and options.

## **G. Interview 7<sup>51</sup>**

This was an interview with a representative of a large charitable group in Hong Kong that is involved with a variety of social campaigns, outreach efforts, and provision of medical services. The interviewee worked for a department within this group that had historically focused upon addiction prevention and treatment. In recent years, however, this department had begun to focus more of its resources on 'digital' issues. The focus of the department was primarily on educational campaigns, though in rare cases they offered victims of HDC a limited form of one-on-one counselling. For example, where students were in clear distress about NCDII and associated blackmail, they might be provided with general emotional support alongside advice about what

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<sup>50</sup> An explanation as to why these instances were treated differently was not offered.

<sup>51</sup> Interview conducted 19 June 2023. Transcript on file with authors.

could be achieved and how to respond to threats. The department might advise clients when it was necessary to involve the police but would not accompany the students to make reports directly. Similarly, while the department might provide general advice on how to try and obtain removal of images, they did not directly assist victims in that process.

In recent years the department's focus was running an internet addiction campaign and a series of anti-cyberbullying initiatives. The department created educational resources for primary and secondary school students about healthy online behaviours, and also for teachers to help them recognize when cyberbullying might be occurring in their classrooms. The interviewee said that their department was sometimes invited into a school proactively, but more often than not they were engaged only after something had happened and this was – in their view – unfortunate. The interviewee explained that while schools often recruited them in the hope of helping to rebuild relationships between perpetrator and victim, this tended to not solve any underlying issues that led to the incident in the first place.

The interviewee also expressed concern that students were becoming numbed to the issue of HDC, with many just accepting it as an inevitable facet of their lives. In the course of developing the resources for their educational campaigns, the interviewee explained that their department had conducted a survey of students. This survey found that cyberbullying was most common amongst students aged 13-15, and the most common kinds of HDC experienced were the malicious spreading of rumours online and doxing, both of which students described as forms of 'cyberbullying'. Twenty percent of students reported being cyberbullied in the survey, and 30% of those students said that they had experienced some level of suicidal ideation as a result. The survey also revealed that 43% of students who had witnessed cyberbullying of a peer did not intervene (either directly or by reporting the incident to a teacher, parent, or social worker for instance). It also found that the perpetrators of the cyberbullying themselves were often victims previously, showing that there was essentially a cycle of digital violence. The interviewee reported that perpetrators they had spoken with often believed that cyberbullying was a form of enacting justice against a wrongdoer; that it was the right thing to do.

## **H. Interview 8<sup>52</sup>**

The interviewee was a barrister who had provided pro bono services to women who had experienced sexual violence, including HDC. The barrister held the view that victims of image-based / online sexual offences were less open to going to the police than victims of physical abuse and those who were willing faced challenges. The barrister shared examples of their clients experiencing difficulties with pursuing charges, even under the new laws. For instance, one client who was a victim of NCDII but who did not know the identity of the perpetrator went to the police. The client reported that the first officer she spoke to was helpful, and agreed to transfer the case to the Cybercrime Bureau because they might have better resources to identify the perpetrator. But the client claimed that the Cybercrime Bureau then refused to take on her case because she was an adult rather than a minor (although obviously the law draws no distinction here).

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<sup>52</sup> Interview conducted 5 September 2023. Transcript on file with authors.

The barrister had only been engaged in relation to criminal matters and so did not have a particular view on civil remedies. However, they indicated that social workers with whom they had spoken reported that the primary interest of their clients who were victims of NCDII was having the relevant material removed from the internet. In terms of legal changes the barrister advocated for practical measures at the police level, such as better training for frontline officers dealing with all kinds of sexual offences. They shared examples of clients who reported victim-blaming or shaming, for instance, where they had taken drugs or voluntarily provided sexual images to another person.

## **I. Interview 9<sup>53</sup>**

The interviewee was a solicitor who in the past had offered pro bono services victims of forms of sexual violence including HDC. A typical example of their work was providing advice to clients on how to pursue conciliation<sup>54</sup> with the perpetrator through the offices of the Equal Opportunities Commission. The solicitor reported that their direct involvement was more likely if the case was particularly strong and the client did not wish to go through the conciliation process, but instead wanted to press for pre-action settlement.

While in the case of ‘conventional’ sexual harassment in the workplace victims could rely on laws like the Sex Discrimination Ordinance, the solicitor was of the view that the law (in general) was less helpful in the context of newer digital forms of sexual violence. They had no experience with the new disposal orders under the Crimes Ordinance referred to earlier, but were of the view that Hong Kong’s data protection laws were of little use. The solicitor described some recent experience they had with assisting clients in obtaining removal of NCDII material. In their view, requests were generally dependent on the goodwill of the webhosts or service providers to voluntarily remove the material upon request, and that was not always the case. The solicitor reported it was generally easy to obtain removal of most explicit non-consensually shared images from larger, mainstream social networks like Facebook or Instagram because they had generic terms of service policies against the posting of nudity or sexual content. However, services like Telegram (that had encrypted channels dedicated to the sharing of NCDII material) were less likely to respond. Where the host or provider was not predisposed to assist, the solicitor described their legal options as limited and challenging – especially if they were based outside Hong Kong. As explained above, courts required an image make reference to a specific individual for it to be classed as personal data, and rarely would someone upload an intimate image with the persons’ real name attached. Sometimes the images also just showed parts of the body with no clear face, and so no identity inference could be drawn.

The solicitor doubted whether the courts would respond positively to an action in tort. In the case of NCDII, clients typically first wanted the images taken down, second some kind of apology from the perpetrator, and only then might they start thinking about other kinds of remedies. Monetary compensation was rarely a client’s focus, and so the solicitor said in the past they had considered obtaining an injunction as a possible method of preventing the further spread of intimate images. However, this

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<sup>53</sup> Interview conducted 4 Oct 2023. Transcript on file with authors.

<sup>54</sup> See “What is conciliation?”, *Equal Opportunities Commission of Hong Kong*, online: <https://www.eoc.org.hk/en/enquiries-and-complaints/what-is-conciliation>.

proved difficult as a court requires specific details about subject-matter before an injunction will be granted regarding it. In practice the solicitor's clients were often unsure about the number of images that existed or what precisely was contained in each one. It was also challenging to identify the respondent towards whom the injunction should be directed – frequently the images were hosted on servers outside of Hong Kong, and whoever uploaded them did so anonymously. These challenges meant the solicitor would generally advise their clients that this kind of legal approach was not likely to be an effective solution, especially if the image had already spread beyond the larger mainstream services.

The solicitor considered that having some kind of governmental or semi-governmental organization able to assist in matters of takedown, apology, and compensation might be helpful. They also suggested that a clearer division of labour amongst existing government bodies (eg the police, Equal Opportunities Commission, PCPD) about who was responsible for what, or at least it being clear as to which body a victim could approach for assistance, who they could file a complaint with, etc, would be a step in the right direction.

#### IV. ANALYSIS

The above interviews reveal several patterns. First, they suggest that incidents of HDC are on the rise in Hong Kong. While most of the NGOs with which we spoke did not maintain detailed statistics, they were consistent in reporting anecdotal shifts in the kinds of cases that were coming before them. These reports are consistent with the various surveys referred to in the opening section of this paper. Several representatives noted a particular increase noted since the COVID-19 pandemic. While we cannot definitively prove it here, it is at least plausible that the increase may be connected to the long school closures and social distancing rules imposed on students in Hong Kong during the pandemic, which led students to spend increasing amounts of time online.<sup>55</sup>

Second, one can note some commonalities regarding the characteristics of victims who approach the NGOs. Again though they generally do not maintain detailed statistics, the representatives with whom speak consistently reported that the majority of their clients who have experienced HDC are under 25. Of course, there are two important caveats to this – first (and again) this is anecdotal reporting. Second, the age profile of the clients is in a sense self-selecting depending on the focus of the NGO in question. That is, if an NGO sets out to provide services to youth then obviously most of its clients will be young. However, we came across no reports or surveys that suggests there are large numbers of middle-aged or elderly people who are victims of HDC. That does not mean that no such victims exist of course, but simply that surveys, reports, and discussions with stakeholder groups all point towards the problem of HDC in Hong Kong being youth-oriented. We also find that gender does not seem to be a determinative factor, with multiple groups reporting dealing with both male and female victims and perpetrators. However, on balance it does seem that victims are more likely

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<sup>55</sup> See e.g., Min Lan, Qianqian Pan, Cheng Yong Tan, and Nancy Wai Ying Law, "Understanding protective and risk factors affecting adolescents' well-being during the COVID-19 pandemic", (2022) 7(32) NPJ SCIENCE OF LEARNING <https://doi.org/10.1038/s41539-022-00149-4> and Albert Lee, Vera MW Keung, Vincent TC Lau, Calvin KM Cheung, and Amelia SC Lo, "Impact of COVID-19 on Life of Students: Case Study in Hong Kong" (2021) 18(9) INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH 10483 <https://doi.org/10.3390/ijerph181910483>.

to be female. But again, the same caveats apply regarding the lack of clear statistical record-keeping.

A third pattern revealed in the interviews regards the *form* of HDC – while this is dependent on both accurate reporting by a victim and recording by an NGO, it appears that cyberbullying and NCDII are the two most common forms of HDC seen by local stakeholder NGOs. This may be because that the phrase ‘cyberbullying’ can function as a kind of blanket descriptor that can include harassing messaging as well as doxing and blackmail. While cyberbullying understood in that broad sense could also include NCDII (especially if it leads to blackmail), it nonetheless appears that the interviewees tended to treat the latter as a separate (if related) problem. For that reason that breakdown is adopted in the section that follows when considering internal patterns within those two categories revealed by the interviews.

The interviews revealed several patterns within the broader ‘cyberbullying’ category. First, cyberbullying is often connected to ‘real world’ bullying in schools rather than something that is an isolated phenomenon. Second, it is often part of a cycle of digital violence – victims frequently go on to become perpetrators themselves. Third, a number of the interviewees who worked for stakeholders that focused on schools suggested that schools are too often taking a reactive rather than proactive approach. They also suggested that training on cyberbullying should be provided to not only students, but also to teachers and staff. Fourth, several stakeholders suggested that the rise of end-to-end encryption in messaging apps poses a new problem that reinforces the need to prevent HDC from occurring in the first place as these apps can make it very hard to detect if students decline to report the problem. Fifth, the primary concern of victims is that the cyberbullying end and the maintenance of their social status rather than legal prosecution or punishment of the perpetrators. Finally, multiple stakeholders reported that the police were relatively unresponsive to complaints about cyberbullying unless it was accompanied by threats to physical safety or demands for money. In other words, the police often appeared to perceive their role as primarily confined to the ‘real world’, at the expense of the digital.

The interviews also reveal clear patterns related to NCDII. First, the interviews suggest that NCDII primarily occurs in three situations – in the context of sex work where a client secretly records a sex worker without consent; the breakdown of an existing intimate relationship where one party threatens to spread images that were initially consensually created; or where someone has been convinced or coerced into sending intimate images to someone they only known online. Second, while sometimes NCDII is done purely for ‘revenge’, it appears from the interviews that more often it is done for the purposes of blackmail. That blackmail can take various forms, including demands for money or sexual favours. The threat preys on the victim’s fear of embarrassment, shame, or personal or professional loss because of what those images would reveal about the victim’s sexual orientation, preferences, or behaviours. Third, multiple stakeholders considered the new criminal provisions specifically targeting NCDII to have limited value. Several interviewees reported that victims did not trust that their complaint would be handled empathetically by the police – they feared being victim-blamed or shamed. It also appeared that the police were more responsive to complaints when they were made on behalf the victims or when the victims were accompanied by the interviewees to make these complaints. But even then, it appears that the reluctance was also driven in part by fear on the part of victims of a long drawn

out legal procedure would make the problem worse, by increasing the notoriety of the images or lengthening the ordeal – what they really wanted was quick and easy removal of the material from the internet. As with cyberbullying above, what victims appear to want most is elimination of something that appears to threaten their social standing or relationships. Punishment of the perpetrator is a secondary concern.

On the matter of attempting to have offensive material removed from the internet, more patterns appear in the interviews. Notably, so-called ‘take-down’ was only treated as an option in the context of sexually explicit images or videos – none of the interviewees reported any attempts to have offensive text-based HDC (such as harassing or defamatory words or threats) removed from websites. In the context of NCDII, interviewees consistently reported that mainstream multinational social media services (with the exception of X – this was noted on several occasions) tended to respond relatively positively and quickly to removal requests relating to NCDII material. Those services tended to already have ‘safety’ teams in place and clear policies regarding not just NCDII but sexually explicit material in general. Some of the NGOs had developed productive working relationships with these teams. In contrast, niche websites devoted to pornography or more local websites were more likely to ignore requests, and lacked clear procedures about how to go about making a request. A number of interviewees also stated that the use of encrypted messaging apps created another challenge that was as yet unresolved.

## CONCLUSION

This paper has described the first stage of an important project aimed at the appropriate regulation and control of hurtful digital communications in Hong Kong. Interviews with representatives of nine local stakeholders suggest that the problem of HDC is on the rise in Hong Kong and the introduction of some related criminal penalties around NCDII and doxing have not solved and do not appear likely to solve this problem. The next stage of the project will engage in a comparative analysis of tools adopted in other jurisdictions including more expansive private law remedies and broader regulatory regimes that seek to create expedited administrative procedures for victims of HDC. Of the former, consideration will be given to the development elsewhere of judicially-developed and statutory torts related to invasions of privacy and harassment. Of the latter, examples might include the powers and approaches of Australia’s E-Safety Commissioner<sup>56</sup> or the online Civil Resolution Tribunal<sup>57</sup> in the Canadian province of British Columbia, both of which attempt to offer easier mechanisms for individuals seeking removal of certain categories of harmful material online. The UK’s Online Safety Act may also prove instructive, as it mandates that all “user to user” online services (such as social media) have processes in place that allow for the quick removal of all kinds of illegal content.<sup>58</sup> Likewise, Canada’s proposed Online Harms Act envisions that all platforms will have to systems in place to remove

<sup>56</sup> *E-Safety Commissioner, Government of Australia*, online: <https://www.esafety.gov.au>.

<sup>57</sup> “Intimate Images”, *Civil Resolution Tribunal, Government of British Columbia*, online: <https://civilresolutionbc.ca/solution-explorer/intimate-images/>.

<sup>58</sup> Online Safety Act, 2023 c. 50, s. 10, online: <https://www.legislation.gov.uk/ukpga/2023/50/contents/enacted>. The precise mechanisms of how this will work in practice are currently being developed by the regulatory authority, *Ofcom*. See “Consultation: Protecting People from Online Harms”, Ofcom, 9 Nov. 2023, online: <https://www.ofcom.org.uk/consultations-and-statements/category-1/protecting-people-from-illegal-content-online>.

certain categories of illegal material within 24 hours after being notified.<sup>59</sup> These examples are by no means exhaustive of the options that exist, but point the direction of research into alternative mechanisms of control.

To reiterate, the first stage of the project as described in this paper has been to begin to better understand patterns of HDC as they occur in Hong Kong. This was necessary a first step because we do not propose that a legislative solution applied elsewhere can simply be imported directly. Any solution must take into account the local context, including not only the specific legal and political environment but also a proper understanding of the nature of HDC practices as they occur locally. The third and final stage of this project will leverage the comparative research gleaned from the second stage in order to inform recommendations for regulatory reform in Hong Kong that take into account this context. In other words, to what extent can overseas experience help develop solutions that effectively redress the specific harms Hong Kongers face as a result of hurtful digital communications? There is unlikely to be a ‘magic bullet’ solution, but it is clear that the present situation is untenable.

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<sup>59</sup> Bill C-63: An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts, s. 67, online: <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-63/first-reading>.