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Pandora's box to sex offenders or gift to the public? Reviewing sex conviction record check in Hong Kong, England and Wales

Tsz Yan Elizabeth YAU

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Lingnan 嶺南大學
University

**Master of Social Sciences in
Comparative Social Policy (International)**

Academic Year 2020-21

SOC 605 Comparative Social Policy Research Project

Pandora's box to sex offenders or gift to the public?

**Reviewing Sex Conviction Record Check in Hong
Kong, England and Wales.**

YAU Tsz Yan Elizabeth

Supervisor: Dr. CHAN Sin-yui, Sharon

1. Introduction

Sexual conviction record check (also known as Sex Offenders Register, SOR, in the UK) is a system which have been established in Hong Kong, England and Wales for 10 years. Hong Kong's legal system was modelled on the England/common law tradition. However, the establishment of the sexual conviction record check somehow reflected the differences between child protection mentality and how related parties perceive sex offenders around the three societies. In this study, literature review and interviews toward two ex-sex offenders in Hong Kong as well as a police officer from England will be done for getting more information to assess the policy implication from Sexual conviction record check in two systems.

2. Background of the study

The idea of this system was found in the US in 1940s. But the registration was only implemented in some states for the police to monitor the ex-offenders, investigation and crime prevention. Sex criminals were required to notify the local police about their personal information after released. (The Law Reform Commission of Hong Kong , 2010) However, two shocking children sex violence and murder cases, named Jacob Wetterling case and Megan case respectively, irritated the society and awakened people in considering the implementation of community notification. In other words, if there was need for protecting the community from sex offenders, local governments could directly make notification to the public about the ex-offenders' information or on the internet for the public to search. Although the sex conviction record check in both Hong Kong , England and Wales is not completely following their counterpart in the US, it did make a significant reference for the world to set up their own system. And some philosophies of the system in the US were adopted in other places.

No matter how the system is set, ex-offenders in general are encountering lots of challenges in daily life. In Hong Kong, people with criminal records encountered discrimination and barriers while seeking jobs. According to a research done by Society for Community Organization in 2009, the identity of ex-offenders could be a bad label in the job market. Nearly 85% of the interviewees who were ex-offenders alleged that

the employers would ask about their criminal backgrounds or records. 86% of them were not hired after revealing it honestly. (Society for Community Organization, 2009) In the same research, it concluded that ex-offender was an identity which was generally discriminated in the job market. The truth was that criminal background was one of the personal information which the employers would often ask, especially the jobs which ex-offenders usually seek such as logistics, food and beverage and cleaning. (Society for Community Organization, 2009) However, the sexual conviction record check is likely to differentiate sex crime offenders, especially those harassing children or disable-bodies, from other offenders who committed murder, burglary, drugs trafficking and so on. Sex offenders are generally facing even more adversities in the society due to the nature of their convictions. Policy makers should include those perceptions when establishing a new policy and predict the possible consequences brought up after implementation.

On the other hand, studies of sexual conviction record check system mostly involve legal profession, police force, social welfare sectors, correctional services and the public. Studies involving the subjective experience in sexual offenders were rarely conducted, especially in Hong Kong, England and Wales. Research conducted in the US, involving sex crime offenders in the related topic, demonstrated unsurprising results. For example, Sex offenders viewed community notification as more unfair and less effective than the public. (Levenson, J. S., Brannon, Y. N., Fortney, T., & Baker, J.,2007)

In this paper, the perceptions of public or other related parties towards Sexual conviction record check system in both Hong Kong, England and Wales is covered at first. Comparison is made for identifying how the systems shape the perceptions toward sex offenders in the public after literature review. Two interviewees who are ex sex-offenders in Hong Kong would be interviewed for understanding their subjective feeling, everyday-life experiences and perceptions toward the sexual conviction record check system in Hong Kong. Besides, a policeman who works in England Police Force gave a clearer view in the system in England and Wales. After reviewing and analyzing the mentioned first-hand and second-hand information, exploration in policy implication and suggestion came up at the end.

3. Literature review and conceptualization of key terms

What is sexual conviction record check?

Sexual conviction record check serves as a system for protecting the public from sex criminals who discharge from the prison, crime prevention, investigating tools for police force or forensic profession, as well as surveillance toward sex ex-offenders originally. As mentioned, the start of the system was from the U.S. in 1940s. It changes along with different countries due to the consideration of human right, public response and legal systems.

The path to the establishment of registration system

Before 1996, there was no organized system in the UK for registering sex offenders. In 1988, the British Association of Social Workers passed a motion and suggested to set up a register for sex offenders. Some local Child Protection Committees began to keep informal records of offenders who had assaulted children. (Thomas T., 2011) These drew the public and governmental officers' attention in improving the notification system especially toward sex offenders. The Home office later launched a consultation paper on this issue, including the proposal of a sex offender registration system held by the police. It turned out that 87% of respondents were keen on the proposal.

The Sex Offender bill was put before parliament on 18th December 1996. The Bill used the example of requiring sex offenders to register every change of address. Failure in this regard would incur sanctions. The Bill was not without controversy though, as it required offenders in receipt of a 'caution' to also register. The rationale was called into question by civil liberties group Liberty, as cautions were for people less likely to reoffend, whereas the register was for those likely to reoffend. The primary purpose of the register is to keep police records up to date, on the location of sex offenders. This is not without flaws though; a sex offender's last place of address is usually their address upon conviction. This implies that a local police force may not know if a sex offender moves into their area. Additions to the Bill were also discussed, such as retrospective registration and community notification, but these ultimately did not come to fruition.

Sex Offenders Act was enacted in 1997. It required sex offenders to have registration if

they committed sex crimes or behind bars, detainment, supervision and guardianship due to sex crimes in or after 1st September 1997. (Herman R., 2017; The Stationery Office Limited, 1997) The offenders would have prescribed criminal sanctions if they did not turn up to registration. There were some other voices in the community. For example, the medical profession hesitated to reveal patients with sex offenders background who were hospitalized or discharged due to the violation over their profession in keeping confidentiality. Also, to what extent the police revealed the information of the sex offenders to the public was questionable. For the medical profession, Department of Health issued a guideline for the frontline staff to make judgment with the patients' consent and assess whether the public interest would be overriding once patients refused. An Appeal Court judgment also regulated the extent of revealing the offenders' information, implying that police should have better assessment with other experienced parties such as probation service. (Thomas T., 2011)

In the summer of 2000, a shocking case that an eight-year-old child, named Sarah Payne, got murder and kidnapped by a known paedophile Roy Whiting. The editor of News of the World(NoW), Rebekah Wade initiated a campaign for "Sarah's Law", and publishing addresses and photographs of 50 convicted sex offenders. (The Guardian, 2007; Cowan, D., Zgoba, K. M., Guerette, R. T., & Levenson, J. S., 2020) Anti-paedophile demonstrations drove 5 families in Portsmouth from home and the movement led to suicidal events of some suspected child sex offenders. (The Guardian, 2007)

The state turned down "Sarah's Law". Rather, they replaced it by establishing "Multi-Agency Public Protection Arrangements" (MAPPA) in 2001. The Arrangements encouraged multiagency cooperation in supervising specific offenders in the community. (College of Policing, 2020) The orientation of MAPPA was for the public interest as claimed. In MAPPA Guideline, it mentioned that the purpose of this arrangement is for reducing the reoffending behavior of sexual and violent offenders. Agencies such as the police, the probation officers, and some local organizations would provide information about the sex offenders so as to having a comprehensive risk assessment toward them. (National Offender Management Service Public Protection Unit, 2009)

However, the murder of Holly Wells and Jessica Chapman in 2003 as well as Craig Sweeney case in 2006 awakened the public, especially NoW to promote disclosure of sex offenders. The victims of both cases were assaulted and killed by the known people who befriended to them. In 2007, MAPPA panels considered to disclose the information of the people who would have close contact with children in terms of their sex criminal records to the guardians or parents. (The Guardian, 14 Jun 2007)

In 2003, a new Sexual Offences Act replaced the one in 1997. After reviewing the old Sexual Offences Act, the register system was suggested to be strengthened. There were 5 conditions which required the registrants to follow. For example, the registrants should notify all changes of circumstances within three days. Changes in address for more than 7 days should be notified. (Thomas T., 2011)

The Violent and Sex Offender Register (ViSOR), which is a central system of a database which collects sex offenders' files was implemented in 2005 across police force (Thomas T., 2011). This is a web-based system which can be used for searches on convicted offenders by their personal characteristics and features. It was extended to the Probation Service and Prison Service in 2007 and 2008 respectively, to help serve the MAPPA.

In 2011, the Child Sex Offenders Disclosure Scheme was established to enable parents, guardians and third parties to check if a subject who keeps in touch with a child has sex crime background or poses a threat to that child. (Dorset Police, 2021) The mentioned parties could make application in the police station for getting the sex criminal information of the suspected people. (Dorset Police, 2021; Parents Protect, 2018) However, public disclosure of sex offenders' information such as Megan's Law in the US is not a practice in the UK. The disclosure to the parties is limited and the need of disclosure is still held on the police's hand for ensuring the confidentiality. On the other words, the police force must do discretionary disclosure to the applicants. (Thomas T., 2011)

With a brief introduction to the registration system in the UK, we could see that the

system development was sparked by tragedies and incrementally balanced between human rights and public safety.

The establishment of registration of sex offenders in Hong Kong was from a process of study and consultation. With an awareness toward a spate of children sex crimes and no compulsory registration requirement toward the ex-sex offenders, Secretary of Justice and Chief Justice of the Court of Final Appeal suggested a study on the sex and related crimes in Hong Kong to The Law Reform Commission of Hong Kong in 2006. A group of subcommittees, combining legal professions, social welfare professions, police force and academia was formed to discuss the modification in law. (The Law Reform Commission of Hong Kong, 2008; The Law Reform Commission of Hong Kong, 2010) Unlike the case in the UK, there were a lot of precedent cases for Hong Kong to refer.

Subcommittees, in the Sexual offences records checks for child-related works: interim proposals consultation document, agreed that the registration system should become a part of ex-offenders' rehabilitation and treatment plan as well as protection to children and the public from the harm of sex offenders. The concern was to balance between "protection to Children or Vulnerable Adult", "the rehabilitation, treatment, risk assessment and management to sex offenders" as well as "the non-violation toward the confidentiality and rights of the offenders and their family". (The Law Reform Commission of Hong Kong, 2008) The goals were clear which set a good basis in the later discussion and consultation in the public. After studying the systems in the US, UK, Australia, Canada and South Africa, the Subcommittees came up with nine suggestions, including non-mandatory vetting, the way of disclosure, type of employees who could be checked and the ban of using Megan's Law in the US. After public and related parties' consultation, the interim proposal was established in 2010 with a confirmed 9 solid suggestions.

In December 2011, the Security Bureau rolled out the Sexual Conviction Record Check which mainly aimed at protecting children and mentally incapacitated persons(MIPs). The check should be initiated by the employees but requested by the employers who provided jobs covering children and MIPs. The employers would receive a password-

protected auto-telephone answering device for knowing whether the potential applicants had convictions. (Cheung, 2017)

Hong Kong, England and Wales

Comparing with similar systems in other countries, the purpose and philosophies behind Hong Kong, England and Wales would be closer. In Canada, register system is mainly assisting police force for investigation. The public or even governmental officials are difficult to withdraw data of the sex offenders. In Australia, various implementation of the systems has been throughout the states. The federal government is trying hard to make an alignment to integrate the implementation in different states. General speaking, sex offenders who register in the system are prohibited to be employed in jobs related to children. In some areas, people committed serious crimes such as violence, sexual violence and drugs related crimes, but want to work with children should be gone through the Working with Children Check (WWC). That might be out of the discussion of the paper. (The Law Reform Commission of Hong Kong, 2010; Thomas T., 2011)

The systems in Hong Kong, England and Wales were established in the same year and reached their 10 years implementation. It is worth to have policy review over two systems and their influence. The establishment in Hong Kong mainly took reference from the one in England and Wales so they share similarities at some points. For example, the vetting would only review limited information about the ex-offenders and most of the time would not reveal their information publicly. However, the policy in England and Wales seems to be more developed in the past ten years. For example, the coverage of vetting extended to volunteers. And the ex-offenders who fail to report themselves on time to the police will be revealed in the Child Exploitation and Online Protection (CEOP). These differences could bring up some policy implications and guide Hong Kong to better the systems in the future.

Child sex crime

Sex crimes are perceived to be more unacceptable and unarguable than other crimes, especially those against children. Culturally and legally speaking, children, as one of the vulnerable social groups, should receive more protection in the society. Moreover,

unlike crimes such as murder and stolen, the nature between child sex crimes and other crimes is that the convicted people are always known by the victims and their families. It is undeniable that victims and their families will need to bear heavy psychological traumas, so systems are to protect the similar tragedies happen again. Therefore, policies in Sexual conviction record check can be perceived as child well-being policy as well.

In Hong Kong, the outstanding policy for this purpose will be “The Sexual Conviction Record Check (SCRC) Scheme”. However, after ten years implementation of the interim suggestion, there were very few reviews over the scheme. Thus, it is believed that studying related policy could help with policy making in child well-being, safeguarding the public as well as offenders’ rehabilitation.

Under the literature review over these two policies in Hong Kong as well as England and Wales, the similar history background of establishment and philosophy demonstrated the public and legislative departments’ perception toward ex-sex offenders. Therefore, Hong Kong, England and Wales’ systems are more comparable. Besides, the public responses could be a main reviewing area of assessing the differences between them two and come up with contributive policy implications. However, there were little research or academic paper writing on behalf of ex-sex offenders’ perspectives towards the policies. To what extent the lives of ex-offenders be affected under the schemes could not be assessed. Thus, this paper will reveal the picture from sex ex-offenders and try to look at the policies in other unexplored direction.

4. Research objectives, research questions and significance of the study

The study objective is to explore the possible influence on the public and sex ex-offenders, both goods and bads, of SCRC scheme as part of the child safeguarding policy, but with the social reintegration of ex-offenders from an ex-offender perspective. This study will firstly involve a desk research in form of a comparative policy study of the SCRC scheme (or an equivalent scheme) in Hong Kong, England, and Wales, and an informal interview with a police officer in England. Data collected in the desk

research and informal interview will be analyzed to answer the following research question (RQ):

RQ1: Reviewing the development of the SCRC scheme in the two societies. How and why is the SCRC scheme implemented, and how is it socially perceived?

Then, semi-structured face-to-face interviews with two ex-offenders was adopted. Interviewees' responses were collected and analyzed to answer the following RQs:

RQ2: What have the interviewees been experiencing and encountering after discharge and registering for the SCRS scheme?

RQ3: To what extent did the interviewees, before imprisonment, know about the SCRC scheme and the influence of this scheme on them after discharge?

RQ4: What do they think or feel about the similarities and differences in the SCRS scheme between Hong Kong, England, and Wales?

The first significance of this research is to assess the policies in sex ex-offenders' perspectives. The lack of review over the policy blurred how it influenced their rehabilitation after discharge. It is worthwhile to explore this gap.

The second significance of this pioneer study aims at arousing attention in related academic profession and brings a more comprehensive criminal justice system and social policy in both ensuring the safety of the public as well as bettering the rehabilitation of the sex offenders. even we understand the scheme might hinder the work life of ex-offenders, what about those who were still studying or trying to change their professions after discharge? Academic study in such area is worth more attention and might bring more insight to nowadays policy makers.

During the interview, interviewees were askee about their work and study experiences after discharge and what barriers they encountered under the SCRC. Moreover, exploration in their knowledge of influence over the SCRC before being put in jail or

discharge will be covered. In order to get their opinions in policies, interviewers revealed the comparison of policies between Hong Kong and England and Wales to the interviewees. They were welcomed to make comments on it.

5. Methodology

This paper went through literature review on the development in sex crime register in Hong Kong, England and Wales. As there is little research about the perceptions toward sex offenders through this register system, the influence and effects from the development from different documents such as policy consultation, journal articles, governmental and non-governmental organizations (NGOs) websites, official data and newspaper were under assessment.

For fulfilling the gap in academic research, two male sex ex-offenders in Hong Kong were invited for interviews. One of them was met in an NGO which serves offenders and ex-offenders in Hong Kong. Another one was met through researcher's personal network referral who was willing to reveal his conviction background. Both convicted child sex offense and was put behind jailed for 7 months to 5 years. For the sake of exploring the effect toward sex ex-offenders in different backgrounds, two invited interviewees are studying at the university and working respectively. As a matter of fact, sex offenders who are willing to join an interview for disclosing their identity are difficult to found. Meanwhile, female sex offenders are generally hard to search or being caught due to their image of care givers and motherly model. Therefore, even though two interviewees might not represent majority of the ex-offenders in terms of perceptions and experiences, their perceptions are still worth for the discussion.

Two interviews were conducted in a face-to-face interview room individually and privately. The room was soundproof and without camera recording. Interviewees must be asked for their consent before any recordings. Consent form was ready for letting them know the rights as being interviewees and potential harm such as recalling their traumas of being arrested and in jail during the interview. Also, they understood clearly how and where their information and opinions would be processed and used. During the whole interview process, audio recording was used, and the true names will be

replaced by a pseudonym in the dialogue to protect the interviewees' identities. For secure them psychologically, related non-governmental organizations for counselling had been networked and welcome referrals. Besides, interviewer has social work and counselling background which could help reduce the influence of recalling their traumatic memories or pro-interviews counselling could be rendered if it is necessary.

Apart from two ex-offenders' interview, a consultation meeting to a police officer from the UK will be conducted for understanding more about the system and implementation of the sexual conviction record check. The consultation was conducted through online platform due to distance and COVID-19 pandemic under the consent of the interviewee. Due to the sensitive identity of the officer and confidentiality concerns, the name of the officer will not be revealed. Though the experience of one officer might not represent the whole system and other officers, it is still worth to take note from the frontline executive staff of the system in England for more comparison and discussion in this paper.

6. Qualitative research findings

Two interviews were conducted in the first week of June 2021. As mentioned, both of them signed the consent forms before having the interviews and agreed to be audio recorded.

Interview questions were separated into three parts: background information, the knowledge toward sex crime record system (the system) in Hong Kong and the system in England, Wales and Hong Kong.

In the first part, interviewees were asked briefly about their background. For example, what jobs or subjects they did or studied before the conviction. The second part was going through their subjective experience and opinions to the system and the influence on their daily life under the system. Interviewees gave their comments and responses in the comparison in England, Wales and Hong Kong's criminal recording systems in the third part.

1st interviewee: Philip

Name:	Philip (pseudo-name)
Job before conviction:	Secondary school teacher
Conviction:	<ul style="list-style-type: none">● Indecent assault● Intercourse with girls under 16
Imprisonment:	60 months

Philip was a secondary school teacher for 4 years and had worked for two schools before his conviction. This was his first-time conviction, and the victims of his case were his students. Due to the severity of these cases, he was charged for imprisonment for 60 months and discharged from the prison in 2019.

Philip alleged that he knew the system before imprisonment due to his previous job. Teacher is one of the jobs which requires to pass sex crime records in Hong Kong. He experienced the application of the system at least once during his teaching career. He could clearly state the steps of getting the check result, but he did not know the history of the system.

Philip said that no professions including legal profession, counsellors, Correctional Institution staff, social workers and law enforcement staff had told him about the influence under the sex crime registration system. He even told a clinical psychologist in the prison that he preferred a future career development which involved direct interaction and communication with people (social welfare, teaching, etc.). However, no reminder from the clinical psychologist or any counsellor was made about the possible impact of his sex crime recording on the career-related reintegration. Instead, the psychologists encouraged him to study counselling as if he felt interested. Until he got a notification from Educational Bureau about the cancellation of his teacher registration, he started to consciously notice the influence toward him.

The actual effect could be found in seeking jobs. Philip found it difficult to hide his criminal background even he searched for jobs which were not related to children. Employers offering jobs targeting elders and males might require sexual conviction record check.

“I searched for jobs about elders or males which did not engage children. But the system forced inevitably me to reveal my criminal background.”

Philip searched for 50 to 60 jobs offered by social welfare organizations, but he only got 2 replies, an elderly home and a food bank. Interestingly, two organizations required him to get the sexual conviction record check despite interviewers claimed that they did not care about the check result during the interview. Jobs were not offered to Philip eventually and no reasons were known.

“The interviewers said that they knew my criminal background and they were not worried about it. It was because they had policies to prevent certain issues.”

Philip attributed the failures to not having related working experience but was indeed unsure if the failures were because of his sex criminal records or lack of experience. Nevertheless, he believed his criminal background had led to two issues. First of all, he could not find jobs in social service organizations easily, even the jobs were not about children. Secondly, the salary might be deduced greatly. Philip’s previous job was about doing test in a laboratory. His salary was halved the price of the same position in the field.

“I talked to other inmates in the prison. They would seek jobs after discharged but they did not realize how the system influence them. Even if they knew, they did not show they cared a lot.”

Philip shared his experience of talking to other prisoners during imprisonment and he noticed that some of them did not realize the influence of the system. However, even if Philip told them about the system, they seemed not to care a lot. Philip believed that it might be because the jobs the prisoners would seek after discharge did not require the check. Rather, what make Philip and some prisoners worried more would be their criminal records. He claimed that the rehabilitation services in the prison focused more on prisoners’ psychological development rather than the system introduction.

Philip thought that Hong Kong’s sexual criminal record check was more reasonable

and able to protect privacy of the offenders comparing with its counterpart in England and Wales. He did not think that there should be any improvement in the Hong Kong system, and it should not follow England and Wales' systems in terms of increasing the criminal surveillance. He believed that system in England and Wales would prevent ex-offenders from reintegrating to the society. Moreover, England and Wales were much bigger than Hong Kong so he reckoned that ex-offenders might move to other cities when their criminal records were found by their surroundings. However, Hong Kong was too small to hide or get away.

On the other hand, he did not think that the system could actually fulfill the goal of crimes prevention. It was because people with similar criminal record could still have their ways to approach targets. Philip raised himself as an example that he could still access to the universities and approach students there.

2nd interviewee: Tom

Name:	Tom (pseudo-name)
Job before conviction:	University student
Conviction:	Indecency with children under 16
Imprisonment:	7 months

Tom was studying at university while he was convicted crime and imprisoned. He studied business administration and in his second year. After his conviction, he was sent to rehabilitation centres for 7 months and discharged in 2019. Rehabilitation centres (RCs) are different from correctional institutions (CI) or prisons (P). Though they are all under the monitor of Correctional Service Department, RCs are for offenders aged from 14 to 20 who are called for relatively short custodial sentence, but do not reach the requirements of going to detention centres or training centres. Offenders would detain full time at the first RCs for 2 to 5 months then transfer to another RC. They are allowed to go out for work or study in certain hours under curfew. (Youth CLIC, 2014; Correctional Services Department, 2021)

Tom had to defer his university study for a year due to imprisonment. He claimed that

the university deferral application was smooth, and staff did not ask much about his conviction or imprisonment before he got back to his study. He had no hard feelings in the application procedures. Moreover, there were many students studying in his major, so his deferral was not known by many other fellows. The system did not influence him a lot in terms of studying.

Tom did not remember if he had heard about the system before imprisonment or conviction. He did not go through the procedures. However, Tom got partly correct when it came to the application procedures. For example, he knew that the employees would initiate to get the check result and the employers would give the potential employees letters for starting the check. And jobs like teachers and some social workers would need to have the check as he realized. General speaking, his knowledge in the check was not deep but he had a sense of who are eligible to apply for such check and when they should do so.

Tom did not receive any information from professions such as legal professionals, counsellors, Correctional Institution staff, social workers and law enforcement staff. He knew the system or check because people known by him did that before. Meanwhile, giving information to prisoners about the sexual conviction record check was not part of the Correctional Institution staff's job. Nevertheless, Tom knew how the check system influence him in certain way. For example, His career choices would be limited.

“It depends on which kind of jobs you are looking for. Some jobs might not require the sex conviction record check but criminal record check. Some companies would even have background check.”

“You can search your name online and people can easily find your names in some news. You will not know the rejection of a company is because of the poor performance in the interview or background check.”

Tom also showed his worries in career path planning and seeking jobs more than studying. Rejections for job interviews happened so often but he could not know if the failure came from his sexual criminal background or lack of capability. As he is

studying business-related subject, he realized that companies would have background check before hiring people. Background check could be through simply searching applicants' names in the search engines or scanning his or her social media. Tom's real name was reported through news and his name could be easily searched online.

Tom stated that he did not talk much to other prisoners during imprisonment. They did not share much about their planning after discharge. As a social worker who worked with ex-offenders before, this could be attributed to the culture and psychology of the prisoners. First of all, prisoners in RCs have many different backgrounds which include gangster groups. They did not want to reveal much so as to prevent from their gangster enemies' attacks. Secondly, convictions could be greatly different within centres and some crimes were perceived as "indecent" in the inmates' culture such as sex crimes. Bullying would happen to those people with indecent convictions. Not revealing or deceiving their convictions could be a protection of some prisoners.

"The system can do nothing to help the ex-offenders to reintegrate into the society. It is because even they will not reoffend again, the record(s) will not be erased."

Tom believed that offenders with similar background knew the existence of the system. However, he and other offenders might care more about the criminal records instead of sexual conviction check. He understood that the check system was to protect the public and children from sex crimes, but it did nothing to assist the sex offenders reintegrate into the society. Rather, Tom suggested to erase the sexual conviction records after period of time if the ex-offenders did not commit crime again.

Tom repeated his suggestion in erasing the conviction records when it came to comparing Hong Kong, England and Wales' check system. Apart from that, he did not think any improvement should be made in Hong Kong system. The criminal records would follow the ex-offenders forever which made them difficult to rehabilitate in the society. He disagreed that Hong Kong should follow the system in England and Wales. He demonstrated his worries about the violation in privacy and the harshness toward the sex offenders. Moreover, he mentioned that the government should have other policies to assist them to integrate to the society if authorities allowed the surveillance

toward ex-offenders. Otherwise, the policies might increase recidivism of the sexual ex-offenders because they could not have a normal life after discharge.

Consultation over a Police in England

Name:	Simon (pseudo-name)
Job:	Police officer (England)
Seniority:	16 years

Simon is working in a specialist department of Police Force in London. He alleged that sexual offenders are managed by the "Jigsaw" specialist team. The sexual offenders' identities are protected by law. In police's perspective, people with any convictions were already served their sentence. There should not be any punishment in the community after they discharge. Therefore, protecting their identities is important.

"The public cannot just wish to find out if their neighbours are criminals. If however the person who has a sexual offences conviction in the past wishes to apply a job in a safeguarding environment, their conviction will be disclosed."

Under certain conditions, the ex-offenders' identities or even his criminal backgrounds would be disclosed to related parties. According to the Gov.UK, only when you suspect someone who contacts with a child closely with valid evidence can initiate the check. "Contact" has clear definitions. It means people who live or work in in a household with the child, talk to the child through online platform or by phone, meet the child in the shared common areas while the child is not under supervision, or via the child's family. (GOV.UK, 2010) System in England and Wales is not bounded in employment function. Moreover, Simon told that anyone could ask the Police Force to initiate the check or investigation, but the results will be disclosed to the child's guidance, parents or monitors.

To what extent does the police disclose the ex-offenders' background would be based on the closeness or contact frequency between the suspected person and the child as

well as the severity of the crimes the ex-offenders committed. Simon said there are 43 police Forces in the UK. Each force has their own rule and guidance in disclosure and the system. He could not represent all of them. According to the Home office, the system in England and Wales was set up in a structural and systematic way. With the support of ViSOR and other records in the Police Force, if the police assess the situation is risky, they could access to those systems and check whether the suspected person holds criminal records. (GOV.UK, 2010)

7. Analysis

There are some similarities and differences point of views between two interviewees. In similarities, they both agreed on the greater concern in conviction records rather than sexual conviction record check system. In other words, having criminal records would be a bigger barrier in seeking jobs rather than the sexual conviction record check.

Secondly, there were no professionals telling two interviewees about the actual influence of the system. The knowledge about the check system of two interviewees was by their own experience or friends' experience. More interestingly, even one interviewee told some staff in the institution about his career plan which might relate to approaching people, no reminder was given to him about the system. Correctional institutions staff seems to care more about the psychological growth of the inmates. According to Tom, he believed that CSD staff might not think giving information about the system was part of their jobs. In fact, there are different units in the prisons to cooperate to give services to the inmates. Rehabilitation Units, which are responsible for the prisoners' pre-sentence assessment, supervision, welfares and counselling, mostly adopt inmate-centred approach in their work. In other words, their services provision is based on the needs of the inmates. As Tom and Philip mentioned, most sex offenders did not care about the system. This might be a reason why there are no resources putting into this item.

Thirdly, other prisoners with sex crimes background did not put much concern over the sexual conviction record check. Some of them might not even hear about the system.

However, it seemed that even they knew, they did not care so much. It might be due to two situations. First, the jobs the offenders will choose might not need to go through the record check. As mentioned, Philip and Tom were from different prisons. Most inmates whom Tom met might be more grassroots or not have high educational background due to their ages and social experience. Jobs they would pick are mostly blue-collar such as chefs and waiters. Those jobs do not require potential applicants to go through the criminal record check. Second, some sex offenders, according to interviewer's working experience and some literature reviews, have higher educational background or better social networking. (Chan & Yam., 2012) It means that they could have social support after discharge. For example, Philip joined Pre-release Employment Scheme in the prison under the assistance of his relatives. Pre-release Employment Scheme, named Plan B, is a scheme which allowed eligible inmates to serve their sentence under a relatively open environment and supervision of the CSD officers. Prisoners under Plan B could work outside the prisoners in the last 6-month sentence but need to go back to the institution at night. (News.gov.hk., 2010) However, it is not easy to apply successfully. From 2016 to 2018, the successful rate of applying Plan B was 43.7%. (Society for Community Organization., 2019) The applications will be gone through the Release Under Supervision Board. The board will not only examine his background and performance during imprisonment, but also the networks he has outside the prison. (Society for Community Organization., 2019) From Philip's case, networking is one of the important elements for ex-offenders to reintegrate into the society. Even sexual conviction record check does narrow down their career choices, with better educational background and networking, sex ex-offenders are less deprived in terms of employment. It is not surprising that some of them might not care about the check system under this circumstance.

Fourth, both of them agreed that the check system would narrow down their career choices. But the influences were more than that. Some jobs which were not targeting children require the employees to do the check. This led the sexual crimes ex-offenders compulsorily revealing their criminal background. In reality, unlike some other minor convictions, sexual crimes ex-offenders' real names could be easily found by online search engines. Companies which will go through their own background check system can search that information online. Moreover, suspected rejection to offer them jobs or

deduction in salary might probably be an influence according to their experience. Fifth, they disagreed that Hong Kong's system should follow England and Wales' system because it would not assist the ex-offenders to rehabilitate in the society.

Different opinions came out in terms of improvement in the Hong Kong's check system, as well as the influence toward their career path. Philip could not work as a teacher or some jobs which are related to children and youngsters again. Moreover, he found difficult even in searching jobs which are not related to children. Rather, Tom did not think the system will cause a lot of trouble if he works in business sector. But he was worried about the background check rather than the official check system. This revealed that sex conviction check system has greater impact on some fields such as social welfare and education.

On the other hand, Philip believed that Hong Kong's system was fair enough to protect the privacy of the offenders. But Tom believed that if sexual crimes record could be erased after 5 or 10 years, it would do a great help to offenders' rehabilitation.

From the ex-offenders' perspectives, the system seems not to cooperate with their rehabilitation after discharge. Two interviewees held positive attitudes in reintegrating into the society, and they experienced barriers in different dimension in terms of employment. Failure in jobs offer, deduction of salary and laying off might or might not be attributed to their criminal records. This uncertainty makes ex-offenders feel insecure.

8. Discussion

The first research question was answered. The systems in Hong Kong, England and Wales were established due to the tragedies happened. The case in England involved a sex ex-offender which triggered people to uphold the system. The situation was similar in Hong Kong but in a peaceful manner. Consultation over the public, NGOs or other professions was made and the system was set under the support of most of the people. Besides, as we mentioned in the literature review, the system is, on the one hand, protecting children and vulnerability adults, on the other hand, assist the ex-offenders

in their rehabilitation. The goals were surely not being fulfilled. Labelling the ex-offenders was a predictable effect but interviewees brought us a bloodier reality from their experience. This is related to the second, third and fourth research question and would be discussed in the following.

8.1 Labelling effect

Differences between Hong Kong, England and Wales' sexual conviction record check are (1)the eligibility to take initiatives to seek access to the system, (2)the mode of results' announcements and (3)the coverage of the criminal items. In England and Wales, the one who will be checked is usually under suspicion and is more likely to engage children. According to the interview with the police in the UK, employment relationship is not one of the considerations in starting a check. Rather, if a person assess that a child is posing a threat to a suspicious sex ex-offender, he or she can go to the police and initiate the check. In Hong Kong, the coverage of the check is not as wide as its counterpart in England and Wales. The check is bounded only in employment. Though employees could not take a job offer related to children without a check result, they could choose not to initiate the check. In other words, the right of initiation is still on the hand of the applicants.

Having rights in identity disclosure to an ex-offender is important when it comes to reintegration to the society which is a goal for all professions who render help for them. Ex-offender is one of the deprived groups and empowerment cannot be ignored in the process. Empowerment can be defined as the capacity of one to take control of his life, exercise power and goal achievement. (Adam, 2008) However, according to Philip and Tom's experience, the system, and their ex-offenders' identities constructed a lot of barriers to their rehabilitation roads. Especially when they were applying some jobs which were not related to children but require to have the record check, this requirement forced them to inevitably reveal their ex-offenders' identity in an unnecessary condition. Similar situation might happen to those ex-offenders in England and Wales, and it might be even worse due to a wider access to the system. Literally, everybody can initiate the check with their subjective perspectives. Though the police force has their evaluation criteria whether they should start the examination process, this might give the ex-offenders stress after discharge. Fortunately, this stress is not always bad. The threat

which is led by the system could have a deterrence effect on those sex ex-offenders who have strong drive to commit similar crimes again. After all, not all sexual offenders are as positive in developing their new lives as Philip and Tom. Some of them might still feel struggled by their psychological drives in sex crimes. We cannot deny the positivity in the effect of putting stress on them and drive them away from committing crimes again.

Besides, it is related to the role of a person in the community. According to Symbolic Interactionism, the effect which is brought out by the system falls into secondary deviance. It means that a person accepts the deviant identity as others label him as criminal and he continue to act as a deviant. (Griffiths et al., 2012,) Some scholars also dedicated their time in studying how self-identity alter the self-change of ex-offenders. For example, Sampson and Laub (2017) found that the strength of the commitment and attachment of their social roles could keep them on track in the community. In 2016, Correctional Services Department cooperated with the Chinese University of Hong Kong, doing a research in studying the recidivism factors of sex offenders. They interviewed 309 sex offenders and analyzed 814 sex ex-offenders. The result showed that 40% adult sex offenders would commit crimes again if they lacked accommodation, money and jobs. (Cheng, 2016) However, the check in unnecessary conditions or ex-offenders' identity seems to drive them away from the normal track. For example, Philip and Tom were worried about the reason of deduction of salary or not giving an offer, even laying off. Though the real reasons from the employers are less likely to be disclosed to the job applicants who are ex-offenders, it does bring pressure on them when they try to live a normal life in the community.

Second, police force adopts different announcement approaches in Hong Kong, England and Wales. However, both of them insist on keeping confidentiality. England and Wales' police force will only reveal their check result to the most related parties such as guidance and parents. Information of the ex-offenders will not be disclosed to the one who is not related to the children, even he or she asks for the initiation or investigation. In Hong Kong, there will only be a letter with a code and method of checking the result for the employees to give to the employers.

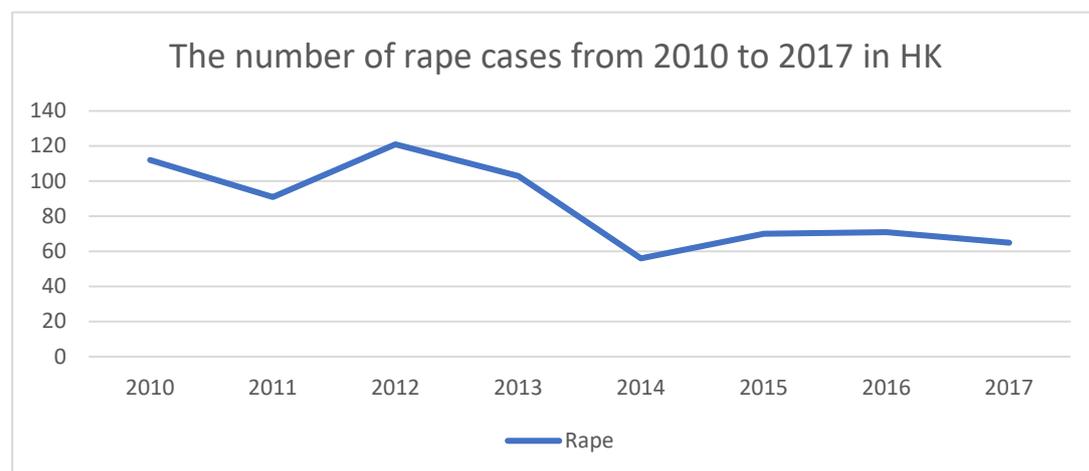
Third, the coverage of the criminal items could be quite different in those places. Though they both aimed at protecting children, the system in Hong Kong only focuses on sex conviction. However, England and Wales' check is beyond sex crimes. If the police force found out any criminal record a person, who makes contact to the children, have, they might reveal it to the related parties. For example, if a person who had a criminal record of drug trafficking, the police force might reveal it to the children's parents under certain circumstances. The difference brings out a question, "what makes sex crimes different from other crimes?" Data Access Request for Criminal Conviction Data (CCD) is another check for the public to access whether they themselves have criminal records in Hong Kong. Different from SCRC, CCD will list out all the criminal records a person has. Rather, SCRC will only reveal whether a person has or has not sexual conviction. As a children protection system, SCRC seems not as strong as the system in England and Wales. It only focuses on sex crimes but possibly, people with other criminal records or even still being active in criminal acts could do harm to kids, or even other adults. From this point of view, the system in England and Wales is more comprehensive.

Whatsoever, Hong Kong separated SCRC from CCD and narrowed down the result to has or has not sexual conviction records in SCRC, might implied that sex crimes are different from other crimes. Without revealing the conviction(s) in SCRC might imply that the police force, or even the public, sees every sex conviction is similarly serious. In a dialectic view, if there are differences between sexual crimes, listing out all of them might be necessary. In Philip's case, his convictions were nothing to do with male social services. Listing out his criminal record might not hinder his job seeking in male services. Of course, it would be a conceptual idea. Listing out criminal records is believed to be more detrimental than beneficial. As Philip and Tom said, embarrassment would be the criminal records rather than the system. It demonstrated that the record itself made more obstacles in terms of seeking jobs. It might not be a good idea to show clearly what crimes they committed before in ex-offenders' perspective.

8.2 Reducing recidivism?

Preventing recidivism is one of the goals of this system. However, to what extent does

the system fulfill this goal? According to the Hong Kong Police force statistic, cases in rapes and indecent assault had a rise from 2011 to 2012 but dropped continuously from 2012. (see Figure 1 & Figure 2) Especially from 2012 to 2014, both of them had dramatical reduction. Even though the number of rapes slightly increased in 2015 and 2016, but it was still less than those in 2011. Due to lack of data in the cases of unlawful sexual intercourse from 2010 to 2012, we could only see the trend from 2013 to 2017. And the number of cases kept dropping throughout those years. (Liu, 2018) (see Figure 3) In England and Wales, the percentage of sexual offences was decreased from 13% to 6% in 2016-2018. (Elkin, 2018) We could not identify if the dropping number was because of the systems. Nevertheless, the number was literally dropped after the system was established.



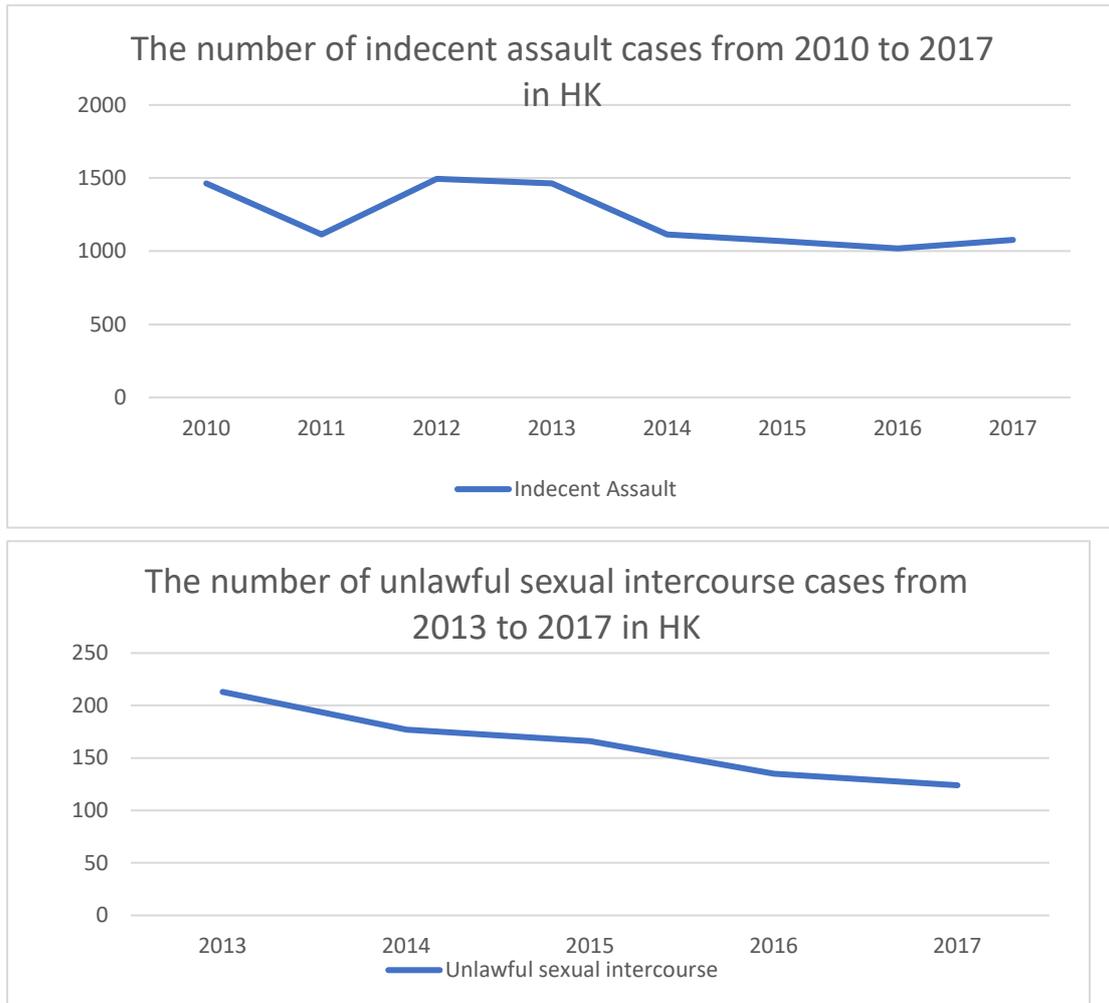


Figure 3. Source: Liu, 2018

But the number could not reflect the reality. Recidivism in sex offenders is difficult to measure. First, the nature of sex crime is surreptitious. (Przybylski, 2015) Victims might feel embarrassed to report to the police. According to a research in England and Wales, fewer than 17% victims reported their experience in being raped or assaulted to the police. (Elkin, 2018) Most of the victims who did not report to the police were because of embarrassment. (Elkin, 2018) This indicates that most of these offences do not ever enter the criminal justice system. Second, ex-offenders might learn to commit crime smartly. In other words, they might act criminally without being caught. The observed recidivism rates could not reflect the actual re-offense rate. However, some research studies the recidivism in sex ex-offenders. Besides, the number dropped could be due to the operation of the system. In England and Wales, official report reckoned that the drop might be attributed to some reported cases could not reach the standard of

charge or summons. In fact, the number of reported cases from 2016 to 2018 has increased outstandingly from 106,383 to 150,847. (Elkin, 2018) It was contradicted to the decreased percentage in charge and summon we mentioned before. Though cases reported might not go through criminal justice system due to absence of victims' evidence, police force will keep record. Meanwhile, sexual conviction cases would need more time to investigate and gather evidence before an outcome can be assigned.

If the conviction rate would not accurately demonstrate the fulfillment of its goal, let us look at the recidivism rate. According to CSD in Hong Kong, senior clinical psychologist Hui Shuk Han claimed that the recidivism in all crimes of sex offenders in 2012 was 10.7%, whereas only 5.5% in sex crimes. (Cheng, 2016) The recidivism of sex offenders was not announced in Hong Kong so there is no further data for following up. In England and Wales, there is no data collection related to sex crimes re-offending as well. We could not make any judgement for policy evaluation due to the lack of transparency of data though, some research in studying recidivism of sexual offenders might help and give us some ideas.

Bureau of Justice Statistics in the US did a follow-up research and studied the recidivism of sex offenders since 2005. They followed up 67,966 ex-offenders discharged in 2005 until 2014. The result demonstrated that less than 50% of the targets got arrested for any crime within the first 3 years. Other researchers noted that the ex-offenders in other categories who committed their previous crimes was higher than sex ex-offenders committed sex crime. For example, ex-offenders in homicide and robbery were more than twice as likely to get rearrested in similar crimes. People with other crimes such as property crimes or drug offenses were 1.3 to 1.4 times more to be rearrested for similar crimes. (Sawyer, 2019) Nevertheless, sex ex-offenders were the least in terms of being rearrested among them. While overall rate of all crimes return-to-prison rate was 55%, people with rape or sexual assault had only 40%, which was lower than general rate. (Sawyer, 2019; Alper & Durose, 2019) No matter the research in the US or CSD, sex ex-offenders seemed to have low recidivism rate. The system seemed to assume the re-offense of sex ex-offenders. My point was agreed with Mr Kong Po Cheung, a social worker and sex therapist in Caritas' project which rendered counselling to sex ex-offenders. Mr Kong claimed that the record check put an equal

sign between sex crimes and sex ex-offenders. (Liu, 2018) This led to a serious labelling problem which hinder the rehabilitation of sex ex-offenders.

In arguably, sex crimes will bring traumas to the victims. But to what extent did the sex conviction record check protect the targets? Two dimensions comes up in this question. First, the protection coverage should be large enough for upholding the child well-being. In England and Wales, the system will not only examine the danger in sex crime toward a child, but also other violence crime and crimes which might do harm to children. According to the research of CSD in 2016, about 70% young sex ex-offenders used internet to commit crimes. Online platform can trigger them to reoffend as they sought targets online easily. (Cheng, 2016) However, the check in Hong Kong does not cover potential online sexual assault. Second, if the sex ex-offenders' reoffending rate is low, the target should be put in the potential offenders. Most sex offenders are not serial offenders. Their recidivism rate is low. (Borneman, 2018) But it seems systems in two places could not cover preventing potential offenders from commit crimes. Honestly, it would be very tough around the world as sex crimes are surreptitious as mentioned. The systems functioned as deterrence to those potential offenders only.

8.3 Treatment programmes vs information provision

Rehabilitation programmes or treatment programmes for sex ex-offenders are important for preparing them to reintegrate into the society. According to John Borneman (2018), the professor of anthropology at Princeton University, who started an ethnographic study over child sex offenders who were granted therapy and preventive programmes in Germany, he found that the recidivism rate was 14% which was 12% lower than those who did not have any treatment programmes. General speaking, treatment programmes can reduce the recidivism rate up to 50%. In Hong Kong, CSD established the inpatient treatment centre for sex offenders in 1998. They provided a systematic programme for aiding the offenders to rehabilitate with psychological assessment and treatment before discharge. (Correctional Services Department, 2021) Counselling and preventive programmes for sex offenders are vital. However, according to Philip and Tom's experience, information about the influence of the sex conviction record check was lacked in any route of legal and imprisoned process. Though not all sex offenders concerned about the check system due to their

social status, networking and financial support, information should be delivered to them as one of the preparations of discharge.

9. Policy suggestion

After revision over the SCRC in three societies, 5 policy suggestions are come up.

Preventing institutional injustice toward sex ex-offenders

Firstly, keeping the sex conviction record check in Hong Kong and England is important due to its deterrence effect to some potential offenders and ex-offenders. But preventing victimization of the ex-offenders under institutional injustice should be focused more for policymakers. As discussed, lack of accommodation, money and jobs would trigger them to reoffend again. In my frontline experience as a social worker, maintaining a regular lifestyle is a key factor in ex-offenders' rehabilitation. This factor can reduce re-offending by ex-offenders. There is no denying that sex ex-offenders' opportunities in jobs seeking are limited under the check systems. In England and Wales, they should also report their address and contact methods to the police after discharge. Their movement is monitored by the institutions. But how the governments prepare and support them to reintegrate into the society? As Tom mentioned, government might need to think more in post-release follow-up services. Though the support is rendered nowadays after they discharge, more policies supporting sex ex-offenders in jobs seeking might be necessary. For example, the government can set up clear guidelines for companies when they hire sex ex-offenders. Some jobs related to children or vulnerable adults should be restricted to the ex-offenders. But, in accordance with Philip and Tom's experience, they will need to struggle a lot psychologically due to the uncertain laying off, deduction in salary or offers turned down. For those ex-offenders with higher educational background and capability, using their resources to contribution to the society in other fields should be encouraged and as a role transition in their rehabilitation.

Clear information provision on SCRC before discharge

Second, information provision on SCRC is recommended to be included in the treatment programmes in the prison for preparing the inmates' discharge. Lack of

information is one kind of deprivation, especially when lot of inmates with sex crimes did not notice the system and its influence.

Right to join the consultation over SCRC

Third, according to the official documents, no ex-offenders were consulted when setting up the SCRC in Hong Kong. As one of the stakeholders in this issue, their voice was neglected in the first place. It might not be wise to ask for their agreement to establish this system. But how the system cooperates with their rehabilitation might be an issue to discuss. The consultation should include their voice in terms of balancing their reintegration and protective functions.

Enhancement in coverage of SCRC

Fourth, the system is a child and vulnerable adults' protection policy in Hong Kong, it seems not to be strong enough to protect the targets. The system in England and Wales could be a reference for Hong Kong. Hong Kong system should cover not only NGOs or educational jobs, but also care givers jobs such as post-natal care workers, private tutors or even volunteers who will serve children and vulnerable adults. Besides, the system can cover violence crimes or other crimes which might do harm to children in order to enhance the protection of the system. However, for protecting the confidentiality of the sex ex-offenders, the initiation of the check should be the guidance or parents rather than anybody. Judgement toward a person could be very subjective and sometimes it may bring detrimental effect to the ex-offenders. It is not necessary for everybody to keep their eyes on the released people. Enlarging the coverage of the system might enhance the deterrence effects to ex-offenders, but also the protection to the targets.

Preventing from nurturing potential offenders

Fifth, though no appropriate policy can prevent potential offenders do harm to children and vulnerable adults, education and can be an early intervention in the society. Governments should prevent nurturing sex offenders or potential offenders. Professor Borneman claimed that sex offenders who seek out youngster or children for sex were found to have history of neglect and abuse. Most of them were not driven by sex desire but the inability to trust adults, low self-esteem or even sense of control. (Borneman, J.,

2018) Although these are not the excuse for them to offend or reoffend, those psychological vulnerabilities demonstrate that offenders might experience traumas when they were young. Traumas could be brought by families, schools or close relationship with important parties. Governments should nurture policies to protect children from early traumas and lead the communities to be more supportive in anti-violence or bullying.

10. Conclusion

SCRC is a system which could not be omitted in Hong Kong, England and Wales. No deny should be made over its importance in protecting children and needy adults. However, it could not balance the protection and rehabilitation of sex ex-offenders. Labelling effect still exist , and the system sometimes hinders the reintegration of ex-offenders. For protection to the child, Hong Kong's system should take reference from England and Wales in terms of the coverage of careers or roles which engage children the most as well as the criminal items. But for their culturally differences, Hong Kong should keep their execution of the system nowadays for protecting the confidentiality of sex ex-offenders. Besides, as one of the stakeholders of the systems, sex ex-offenders should be included in the consultation in the future if any update or review of the system will be made. Besides, government should step forward in family and child well-being policies for preventing nurturing the next potential offenders in the society.

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