

Guidance Note on Use of Victims' Images 2016

**FREEDOM
COLLABORATIVE**
TO END HUMAN TRAFFICKING, TOGETHER.

LIBERTY ASIA
TO PREVENT
HUMAN TRAFFICKING



 **BNP PARIBAS**
The bank for a changing world

Contents

7	INTRODUCTION
8	PRINCIPLE 1: THE CHOICE OF IMAGE AND TEXT SHOULD BE RESPECTFUL OF THE VICTIM
8	1.1 Avoid images that stereotype the victim or sensationalise the issue at stake
9	1.2 Avoid images that include excessive or unnecessary information
9	1.3 Working with the victim in an equal partnership
10	1.4 Additional guidance for children
12	PRINCIPLE 2: THE CHOICE OF IMAGE AND TEXT SHOULD BE REPRESENTATIVE OF THE ISSUE
12	2.1 Diversity
13	2.2 Do no harm
13	2.3 The Voice Behind the Image
14	2.4 Do not retain images for longer than necessary
16	PRINCIPLE 3: RESPECT THE VICTIM'S PRIVACY AND DIGNITY
17	PRINCIPLE 4: OBTAIN PRIOR CONSENT, BE TRANSPARENT AND ACCURATE
17	4.1 Provide a Clear Explanation and Obtain Consent
19	4.2 Use of model
19	4.3 Accuracy
19	4.4 Additional guidance
20	Annex 1 Proposed Form of Consent Letter
21	Annex 2 Checklist of Key Guidelines
22	Annex 3 Legal Background

Preface

A face can tell a million stories and over the years humanitarian campaigns have relied on the use of imagery to raise awareness, raise funds and mobilise support. Over time a very strong link has developed between humanitarian assistance and imagery. In particular, the faces of victims are often used as part of victims' voice to communicate their stories or a means to reinforce a message. This "humanitarian narrative" has been and continues to be used to bridge the distance between the victim and the audience, allowing the stories to be heard and making the stories more accessible. Using victims' images and often, the misuse of such images, raise important ethical questions. Hence, one must evaluate closely whether such use is acceptable and that the victims' best interest should be the primary consideration and their autonomy and rights must be respected at all times.

The initiative to create this Guidance Note came about following a discussion among anti-trafficking stakeholders on Freedom Collaborative, a partnership project between Liberty Asia and Chab Dai. We would like to see this as an opportunity to reflect upon, discuss and provide a point of reference for organisations to develop strong practices to honour the rights of victims whilst also ensuring that their voices are heard. The voices and experiences of victims remain central to the counter-trafficking movement but must always be informed by key principles such as informed consent and respect for individual autonomy and rights.

This Guidance Note is a suggested statement of best practice and principles that can be used to guide organisations through some checks and balances that need to be observed when making the decision whether to use a vulnerable person's image or not. We hope that over time we will be able to add to this document through the collective experiences of partner organisations and the Freedom Collaborative community.

Liberty Asia would like to thank the Hong Kong and Singapore based legal team at BNP Paribas who have dedicated much time, thought and effort in supporting Liberty Asia to put this Guidance Note together.

Archana Sinha Kotecha
Head of Legal
Liberty Asia

For any questions or comments, please contact legal@libertyasia.org



A NOTE FROM OUR PARTNERS

We are delighted to contribute to Liberty Asia's work in providing organisations with reference materials on the rights of victims. The use of victim's images touches on a number of fundamental human rights and is clearly a very important topic both for any organisation which uses images in its activities and for victims themselves. We hope you find this manual useful in providing practical advice on how to ensure that the voice of victims is heard and their rights are respected.

BNP Paribas

There is no doubt that images are powerful and in most cases are more effective than many other tools when creating awareness on an issue like human trafficking. However, when dealing with victims of human trafficking it is extremely important to remember that protecting them while maintaining their integrity is key. There are many times we have failed in doing that even when our intentions are well intended when using images. This handbook is a guideline that will help us all avoid those grey areas while offering service to victims of trafficking.

Sophie Otiende
Awareness Against Human Trafficking (HAART)

The use of victim imagery in media & communications have the ability to be used as a positive tool for advocacy, but can also be used to inflict "secondary victimization" upon victims, survivors or other vulnerable populations by re-enhancing and/or sensationalising their feelings of violation, shame, disorientation, and loss of control. Even with good intentions, NGOs and other advocates have further stigmatised these individuals in communications and especially in fundraising.

The purpose of this document is to ensure that as NGOs and advocates, we respect human dignity and the right to personal privacy when sharing images or media containing information on those whom we work with or endeavour to protect, especially children.

I believe that all individuals have the right to tell their own story and we need to always keep in mind that the stories and images belong to them - not to us.

I hope that these guidelines will help us be more intentional about protecting the dignity and rights of those who we work with.

Helen Sworn
Chab Dai



DISCLAIMER

This Guidance Note offers best practice principles and Liberty Asia does not accept responsibility for the accuracy of foreign laws, or the accuracy of the translations. Users should at all times consult the full text of the relevant laws in the original language. This Guidance Note does not constitute legal advice under any circumstance.

INTRODUCTION

This Guidance Note is provided by Liberty Asia to NGOs across the Asia region as a suggested statement of best practice and guidance in relation to obtaining and using images of victims of human trafficking, slavery and forced labour. In addition to the Guidance Note, Liberty Asia has also provided a suggested form of Consent Letter (Annex 1), and a Checklist of Key Issues (Annex 2) for use by NGOs to supplement and enhance the Guidance Note. This Guidance Note should be consulted by NGOs whenever they are obtaining images of people for use in their publications or other media.

This Guidance Note should be used by NGOs whenever obtaining or using images of victims of human trafficking or forced labour. Consent should always be obtained prior to the use of any image of a person in accordance with the guidance set out in this document.

The guidelines for the appropriate use of victims' images which are set out in this document have a solid foundation in law, both in international treaties and conventions and in the domestic laws of many countries in the Asian region. The relevant laws fall into three main categories:

1. Laws which seek to protect a person's right to privacy – these laws act to limit government and private action which interferes with a person's privacy or makes inappropriate use of a person's personal information, including images of them. The right to privacy is enshrined at an international level in the *Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights* and is reflected in many laws in the region, such as Singapore's *Personal Data Protection Act 2012* and Hong Kong's *Personal Data (Privacy) Ordinance (Cap 486)*.
2. Laws which specifically seek to protect minors – these laws, such as the *Convention on the Rights of the Child*, seek to provide special protection for children, due to their particular vulnerability to exploitation as compared to adults.
3. Laws which set out criminal offences for the publishing of victims' images – these laws impose criminal liability for publishing the images of victims who are particularly vulnerable, such as victims of human trafficking (for example, section 56 of Thailand's *Anti-Trafficking in Persons Act 2008*). These laws are particularly relevant to victims in a court trial but often apply more widely. Breaching many of these laws can result in significant monetary fines or even imprisonment.

For further detail on these laws, please see **Annex 3**.

The following principles aim to reflect these legal concepts within the context of the use of a victim's image by NGOs in Asia in marketing or campaign materials.

PRINCIPLE 1: THE CHOICE OF IMAGE AND TEXT SHOULD BE RESPECTFUL OF THE VICTIM

The choice of the image and the message conveyed with the image are important and should relate to the issue on which awareness is being raised. Media coverage, when too sensational or inaccurate, can have the effect of victimising further the person the NGO is trying to help, which could then impede their recovery process. This is an issue particularly for children, because their perception of themselves is more dependent on how their peers view them.

The image should only be taken and used if there is a valid reason associated with the activity involved and with the best intentions of the person in mind.

1.1 Avoid images that stereotype the victim or sensationalise the issue at stake

Sensationalist images can unintentionally create or reinforce stereotypes or negative prejudices, for example in relation to sex trafficking victims.

Stereotypical photographs may not accurately present the gender diversity of human trafficking. For example, forced labour in agriculture, textiles and construction is often represented as a male victim issue, and trafficking of sex workers is often represented as a female issue, whilst in many cases the victims are both men and women. Reinforcement of such stereotypes can give a very narrow or prejudiced view of the issue to the public and the government, which may then be reflected in government policies and legislation, and in the reaction of the public to these issues.

+ Guidance

- Images of people in vulnerable situations should focus primarily on the reasons for and the context of a situation, rather than on an individual's suffering.
- Consider the dignity of the person who has been captured in the image. Does the image reinforce the trauma? Where appropriate, try to show women in the powerful position they often occupy within families and communities.
- Be careful when framing a photograph. Consider the angle of the photograph. Try not to take images from above, which look down on a person or group. Try to avoid taking a close-up photograph, especially of someone who is injured, ill, or dying.

1.2 Avoid images that include excessive or unnecessary information

Laws in the region restrict excessive collecting of personal information. Avoid taking and using a photograph which includes excessive or unnecessary information about a person. Consider whether the photograph includes further details about the person and whether those details are necessary to be included.

For example taking a picture which includes a person's identifiable accommodation or showing the person's identity documents would be an excessive collection of information in most circumstances. The additional information could put the person at risk because their actual identity or location could become known.

+ Guidance

- When necessary, consider masking or cropping the content of the photograph to protect subjects.
- Although it is desirable to provide some information on the context of the photograph, the image should not reveal too many details about victims as it may endanger them.

1.3 Working with the victim in an equal partnership

Any text connected with the photograph should focus on promoting working together with people and communities, and showing the victims as capable of changing their lives. Article 1 of the *Universal Declaration of Human Rights* poses this principle clearly: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

+ Guidance

Any text connected with the photograph and, where appropriate, the image itself should:

- Highlight the role of the NGO facilitating a project with the help of the people or community at stake.
- Encourage a call for action to address the cause of human trafficking or forced labour in a way that empowers both the victim and the person providing the assistance.
- Try to highlight the complexity of the situation and how people can work together to address the issue.

1.4 Additional guidance for children

When working with children, the highest standards must be adhered to in relation to human rights and child protection and the NGO must act in accordance with any relevant child protection policies. Article 3 of the Convention of the Rights of the Child states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The United Nations Resolution on Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime refers specifically to children’s right to privacy and states that measures should be taken to protect children from undue exposure to the public.

The best interests of each child are to be protected over any other consideration, including over advocacy for children’s issues and the promotion of children’s rights.



+ Guidance

- It is best if images focus on an activity and, where possible, feature groups of children rather than individuals so that no single child stands out.
- Only use images of children in suitable dress to avoid potential misuse by others.
- Be careful when revealing too many details about individual children as it may endanger them, although it is desirable to provide some information on the context of a photograph. Focusing on a group or family rather than individual children can provide more protection.
- Photographs and stories must not use real names of children or real locations when communicating sensitive information e.g. sexual abuse.

Tips for selecting images:

- Consider whether you would be comfortable or happy sharing the image if it contained a member of your family or yourself.



PRINCIPLE 2: THE CHOICE OF IMAGE AND TEXT SHOULD BE REPRESENTATIVE OF THE ISSUE

The image and the accompanying text must reflect the issue, both in its immediate context and as part of a broader problem and the same image should not be used for an extended period of time. In any accompanying text, include precise and accurate information about the situation, and the background to the issue, the role of the NGO and any institutions involved. If appropriate, highlight the cause and effect of the situation to explain the complexity of the issue.

2.1 Diversity

To ensure that the full story is heard or seen, care should be taken to include as diverse a population as possible. It is not just women and children who are trafficked or used for sexual exploitation and it is not an issue which is unique to a specific country in Asia. Campaigns and messages should reflect the depth of the problem.

+ Guidance

- Think about the use of the image for the project in hand. If the campaign is to raise awareness for forced labour, use an image which depicts a diversity of subjects: men, women, young, old and from a variety of countries.
- Think whether people included in the image or affected by the issue being represented would feel that it is an accurate representation of the issue.
- Involve local staff where possible to obtain more information on the issue and ensure that the facts are correct. Soliciting the help of local staff can also facilitate better understanding of victim's culture and background, thus appropriate action can be taken.

2.2 Do no harm

You have an obligation to ensure the safety and well-being of victims and any person with whom you have any contact in gathering images and information. Remember that victims might still be at risk if the trafficker and/or his/her accomplices have not yet been apprehended.

+ Guidance

- If there is a risk of harm, retribution or distress to the victim, do not use their image.
- If there is a risk of harm, retribution or distress to the victim due to the use of their name, consider using a false name.
- Do not contact a person if you cannot be certain that you can ensure their safety or if you do not have enough information to make an informed determination on the level of risk.
- Where a false name is used, or no name is provided, it is important to explain why, for example by saying that it is to protect the identity and privacy of the individual.

2.3 The Voice Behind the Image

There is nothing more powerful than hearing of an event or a situation first hand; the people who have experience of human trafficking are those best placed to explain or depict what it means. This should be done without further exploiting a victim through the use of their image.

This ties in with obtaining consent and avoiding stereotyping - if an interview/campaign has the person telling the story, this can have a greater impact on the overall issue and how it is understood. An opportunity should be given to victims whose situation is being represented to communicate their stories themselves.

2.4 Do not retain images for longer than necessary

Laws in the region state that information about people should not be kept for longer than necessary for the purpose it was collected for. Additionally, when a person gives consent for use of their image, in most circumstances, there is a reasonable expectation from them that it won't be used in perpetuity and this expectation should be respected.

To meet these requirements, expiry dates should be assigned to images (for example two to three years) or, if the image was taken for a specific campaign, it should not be used after the end of the campaign. Where images are retained for future use, relevant names, dates, and other contextual information should be stored with them, as well as the signed consent for their usage.

When the image is no longer needed, where practicable, it should be deleted. Although this does not mean deleting archives of published campaign materials the image was used in, if such materials need to be retained for archive purposes.

If a person did not give their consent for the use of the image, there is no reason to retain the image. Consequently, the image should be erased from the NGO's image database. This is to avoid any future use on a misguided assumption that the image can be freely used.

Tips for selecting images:

- Consider whether the image reflects the issue you want to raise awareness of.



PRINCIPLE 3: RESPECT THE VICTIM'S PRIVACY AND DIGNITY

The right to privacy is enshrined in Article 12 of the Universal Declaration of Human Rights, and should be respected at all times. In some cultures, the trafficking of a victim may bring shame to the victim's family within its own cultural community and thus individuals and families may not want any of their extended family, neighbours or community to learn about it. Women in some cultures may be blamed if they are sexually assaulted and the act of reporting on children can place them or other children at risk of retribution or stigmatisation.

+ Guidance

- Exercise good judgment at all times and in all circumstances. This concept is enshrined in the Basic Principles of Human Rights Monitoring published by the United Nations.
- Be careful when revealing too many details about victims as it may endanger them, although it is desirable to provide some information on the context of a photograph.
- Details attached to images and included in stories must not allow the victim to be traced to his or her home or community. Distinctive buildings, street signs or landmarks should not be included in an image if they identify where the victim lives or works.



PRINCIPLE 4: OBTAIN PRIOR CONSENT, BE TRANSPARENT AND ACCURATE

Only take and use photographs of a person if (a) it has been clearly explained what the image will be used for; and (b) the person has given their consent to use of the photograph.

These principles are reflected in laws in the region and are also about respecting people's interest to control how their images are used. Some people may not want their image to be made public especially if it is used in a manner which identifies them, expressly or implicitly, as trafficking victims – whether or not their name is included with the photograph.

4.1 Provide a Clear Explanation and Obtain Consent

Before taking a photograph of a person, always ask their consent and explain the proposed use of the image. If permission is not granted, the image should not be used.

Consent must be provided by the person on an “informed” basis. It is important for people to know the implications of consenting to the use of their image. This means that when seeking consent, it must be explained fully to the person what their image will be used for and for what purposes. Risks and benefits should also be communicated in order to provide a wholesome picture to the person. One must be mindful that the patronage of an individual by an organisation in a shelter (or otherwise) may make an individual feel obliged to give consent out of gratitude. The checks and balances put forward in this Guidance Note must be applied to such situations to ensure that consent is truly free and informed.

If the NGO wants to collect and use a person's name, consent must also be obtained. Record whether the person wishes to be named and always act accordingly. **A suggested form of consent letter is included as Annex 1 to this Guidance Note.**

+ Guidance

- As well as a verbal explanation, a written explanation of the intended use of the image should also be given. Consent should be obtained from the subject or their parent / guardian in writing. This practice gives the person a better opportunity to digest what they have been told and creates a record of their consent.
- Permission must be obtained in circumstances that the person or their parent/guardian are not coerced or feel obliged to give consent. Rewards should not be offered as an incentive to consent particularly where the consent could be compromising the child.
- The explanation and request for consent should be made in the person's language. A reliable translator should be used and they should be aware of the purpose for which the images will be used and the spirit of this Guidance Note.
- Always act in accordance with the original explanation and the person's consent. If consent is given to use the image, only use the image in accordance with the scope of the explanation provided to the person.
- Generally, when a person gives consent for use of their image or name, the expectation is that the consent was only for that organisation's use. The images or names should not be shared with other organisations for their own use, unless the person has consented to such sharing between organisations. However, the explanation on the risk that online images can be accessed and illegally shared and copied should be made to the person.
- The ability to revoke consent at a later date should be communicated to the person from the beginning and must be respected.

Tips for clear explanations:

- The explanation of the use of the image should explain that the person's image or name might be seen locally and globally, and that the publication would identify the person as a victim of trafficking or at least be used in material relating to human trafficking.
- If possible, when obtaining consent show some examples of the kinds of uses that the image could be used for, and the sort of materials it might be published in. This will assist the person to further understand how their image will be used.

4.2 Use of model

Consider whether a model could be used for the photograph, rather than an actual victim. This would minimise the collection of excessive information and reduce the risks of using an image of a real victim. If a model is used, ensure the model is provided with the same respect and protections set out in this guidance, including notifying them what the image will be used for and obtaining their written consent. Depending on local advertising rules, it may be necessary to state in the published materials that the person is a model.

4.3 Accuracy

It is important to ensure images are used accurately. If consent is given for the use of the image, ensure the use of the image does not describe or imply facts about the person which are incorrect. For example, do not describe the person as a victim of sex-trafficking if in fact the person is a victim of forced labour.

4.4 Additional guidance

- The best interest and safety of the person must be placed over any other consideration, including advocacy and promotion of the NGO's cause. Even if the person has given their consent to use their image and/or name, it should be considered whether the use could result in a risk or suffer harm, retribution or loss to the person or their family.
- If the person is the subject to an inquiry or court hearing which expects the identity of the victims to be kept anonymous, do not publish or disseminate information (pictures, written reports, or recordings) about the person which could reveal directly or indirectly their identity.
- This Guidance Note recognises that it is not always possible to seek consent of individuals in all circumstances, such as images of a large crowd of people. However, the principle of respecting people's interests should always be taken into account. Consideration should always be given to whether anyone in the photograph could be identified and as a result risk or suffer, harm, retribution, loss, or social ostracisation as a result of the photograph's publication.

Annex 1

Proposed Form of Consent Letter

Note to NGO: insert details as specified in square brackets [], and consider whether the additional information in square brackets is necessary or not. Remove the square brackets before printing the letter.

Dear Sir/Madam

We, [INSERT name of NGO], are an organisation [INSERT short description of the organisation and what it does].

We [have recently taken][would like to take] some photographs of you [and/ or the children of whom you are the parent, or guardian, and whose names are set out below]. We would like to ask for your permission to keep and use the photographs and the names of the persons in the photograph and any information you have provided us in this letter for the purposes described below.

Purposes of the photographs: If you sign this letter, these photographs [and names] may be used by us in any media, including in our printed publications, presentations, promotional materials, advertisements, internet website, social media or on television. These photographs [and the names of the people in these photographs] may be seen by people throughout the world. We may use these photographs for a period of up to [3] years.

We will not share the photographs or your name or information with any other organisation or person for their own use. We will always act in accordance with all applicable laws in the use of the photographs and information.

Your Consent: If you agree that we can keep and use the photographs is described above, please write your name and sign below. [If you want, you can write your contact details for us to keep them for information purposes and to contact you.]

Please feel free to ask us any questions you may have before you decide whether or not to give us permission to use these photographs. You do not need to give us permission if, for any reason, you do not wish to. Not granting us permission will not negatively affect you, or our relationship with you, in any way. If you have any questions or would like to contact us about the use of your image or name, you may contact us here: [INSERT NGO's contact details including a point of contact]

Thank you very much.

Yours faithfully,

Signed on behalf of [Name of NGO]

Name:

I agree to [name of NGO] keeping and using the photographs and the information that I have provided to you in the manner described above.

Name:

[Address: _____ Telephone: _____ Email: _____]

Name(s) of children of whom I am a parent/ guardian:

Annex 2

Checklist of Key Guidelines

This checklist is a summary of the key guidelines set out in the *Liberty Asia – Guidance Note on Use of Victims’ Images*, which should be referred to for more comprehensive guidance and commentary:

- The best interest and safety of the person must be placed over any other consideration, including advocacy and promotion of the NGO’s cause.
- Do not use an image or name without consent from the victim or their parent/guardian. Clearly explain to the victim what the image will be used for so they can give informed consent.
- Consent must be obtained in circumstances that the person or their parent/guardian are not coerced or feel obliged to give consent. Where necessary, obtain a translation of the consent letter.
- Be cautious about using names. Consider whether it is necessary to include the name of the person in the image. If there is a risk of harm, retribution or distress to the victim, do not use their image. Consider using a false name if this is appropriate and protects the victim.
- Avoid images that stereotype the victim or sensationalise the issue at stake.
- Avoid images which contain excessive or unnecessary information about a person, such as information showing their identity or location.
- Take particular care when photographing children. The best interests of the child are to be protected over any other consideration. Only use images of children in suitable dress to avoid potential misuse by others. Do not use real names of children in images or accompanying text.
- When choosing what images to use, consider whether you would be comfortable or happy sharing the image if it contained a member of your family or yourself.
- Avoid using the same image for an extended period of time. Instead, ensure that the image reflects the current situation.
- Think whether people included in the image or affected by the issue being represented would feel that it is an accurate representation of the issue.

Annex 3

Legal Background

1. Introduction

This document is intended to detail the legal basis for the guidelines set out in the *Liberty Asia – Guidance Note on Use of Victims’ Images*. It highlights both international and domestic laws and regulations in respect of the use of victims’ images, which exist in order to preserve the safety, security and dignity of victims and their families with regards to photography and personal information. It is important for NGOs to be mindful that it is not only ethical considerations which should guide the use or distribution of such images, but there are real legal restrictions and even offences which apply.

2. Relevant legal principles

The international and domestic laws which regulate or restrict the use and/or distribution of victims’ images fall into three main categories:

- (a) laws which seek to protection a person’s right to privacy;
- (b) laws which specifically seek to protect minors; and
- (c) laws which set out other restrictions on the publishing of victims’ images.

2.1. Right to privacy

2.1.1. The proposition that every person has a right to privacy is reflected in a range of international and domestic laws. These limit government and private action which might otherwise breach a person’s privacy.

2.1.2. International laws and treaties: The right to privacy is articulated in a number of international treaties, conventions, protocols and United Nations resolutions including the following:

- (a) Article 12 of the Universal Declaration of Human Rights:¹
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- (b) Article 17 of the International Covenant on Civil and Political Rights:²
 1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
 2. *Everyone has the right to the protection of the law against such interference or attacks.*
- (c) Article 6 of the Palermo Protocol:³
Assistance to and protection of victims of trafficking in persons

1. *In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.*

1 United Nations, Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>.

2 United Nations, International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

3 United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

- 2.1.3. Constitutional rights: The right to privacy is also reflected explicitly or by implication in the constitutions of many jurisdictions.⁴ For example, Article 30 of the Hong Kong Basic Law provides that:

The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.

- 2.1.4. Local laws and regulations: In addition to the right of privacy being provided for in the constitutional framework of many jurisdictions, they frequently have laws which address more specific privacy-related concerns. Personal data privacy laws, in particular, will often apply to the unauthorised production and publication of a person's image. These laws regulate the publication of personal information that conveys the identity of a person or allows their identity to be determined. In the Asia Pacific region, related statutes regulating privacy include Singapore's Personal Data Protection Act 2012, Malaysia's Personal Data Protection Act 2010 and China's Computer Processed Personal Information Protection Act 1995. These provide helpful guidance on how personal information should be gathered. For instance, Hong Kong's Personal Data (Privacy) Ordinance (Cap 486) provides that users of data shall collect personal data ("data" includes photographs) in a legal and fair manner, and that the use, purpose and collection of such information should be informed (in a practical manner) to the parties from whom data is collected.

Obtaining consent from the victim is particularly important, albeit that consent alone will not necessarily guarantee that you escape liability under these personal data privacy laws. The nature of the victim's consent and the circumstances in which it is given are very important. You need to explain clearly to the victim, and ensure that the victim fully understands the purpose of the NGO's proposed use and potential distribution of their image.

Failing to obtain informed consent from the victim in this way will comprise an offence under personal data privacy laws in many jurisdictions, such as:

- (a) under section 64 of Hong Kong's Personal Data (Privacy) Ordinance (Cap 486), which provides a maximum penalty of a fine of HKD\$1,000,000 and imprisonment for five years; and
- (b) under section 5 of Malaysia's Personal Data Protection Act 2010, which provides a maximum penalty of a fine of MYR300,000 and imprisonment for two years.

2.2. Protection of Minors

- 2.2.1. Due to the particular vulnerability of minors to exploitation as compared to adults, there is a range of specific laws and regulations at both an international and domestic level which seek to provide special protection to minors.

- 2.2.2. International laws and treaties: These include the following:

Article 16 of the Convention on the Rights of the Child:⁵

4 These include the Philippines, the Netherlands, India, the United States of America and Hungary: Constitutional Court Decision No. 15-AB of 13 April 1991. <http://www.privacy.org/pi/countries/hungary/hungarian_id_decision_1991.html>.

5 United Nations, Convention on the Rights of the Child, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

- (a) The United Nations Economic and Social Council's Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime:⁶

X. The right to privacy

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

2.2.3. Local laws and regulations: These include the following:

- (a) In Malaysia, children are protected under the Child Act 2001 and there are restrictions on reporting and publication of pictures of children as victims in a criminal case (section 15). An offender can be subject to a maximum penalty of a fine of MYR10,000 and imprisonment for five years.
- (b) Other countries also have child protection laws: For example, the Child Protection Act (2003) in Thailand; and the Law on Suppression of the Kidnapping, Trafficking, and Exploitation of Human Persons (1996) in Cambodia.

2.3. **Other restrictions on the publishing of victims' images**

2.3.1. Anti-human trafficking laws: Many domestic anti-human trafficking laws include specific restrictions or actual offences for the use of images of victims of human trafficking, such as:

- (a) section 58 of Malaysia's Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007, which prohibits the publishing of information or pictures of any trafficked person or smuggled migrant or which may lead to the identification of a trafficked person or smuggled migrant, with a maximum penalty of a fine of MYR150,000 and imprisonment for three years (the fine can be much higher for a body corporate);
- (b) article 49 of Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation 2008, which prohibits newspapers and other mass media from publishing or broadcasting or disseminating any information which can lead to public knowledge of the identities of the victims of human trafficking;
- (c) article 25(7) of Laos' Law on Development and Protection of Women 2004, which specifies that a female or child victim of trafficking has the right not to be photographed where this would affect their personal honour; and
- (d) section 56 of Thailand's Anti-Trafficking in Persons Act 2008, which prohibits the taking or distribution of a picture which may lead to the identification of a trafficked person, with a maximum penalty of a fine of THB60,000 or six months imprisonment.

6 United Nations Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, <http://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

- 2.3.2. Laws seeking to prevent obstruction of justice / contempt of court: Victim identification in the context of a court trial remains an important component of the transitional justice and accountability process, but it must proceed in a manner that does not provoke vigilante justice or harm the potential for future criminal prosecutions. Obstruction of justice is a broad concept that extends to effort to prevent the execution of lawful process or the administration of justice in either a criminal or civil matter.

The purpose of laws seeking to prevent the obstruction of justice is to protect the individuals who participate in such proceedings. Obstructive conduct may include publication of victim's images during court processes. In many jurisdictions there are laws to restrict publication of prejudicial material when a case is tried (e.g. Hong Kong – s.87A of the Magistrates Ordinance where it provides that “*no person shall publish in Hong Kong a written report, or broadcast in Hong Kong a report, of any committal proceedings in Hong Kong containing any matter other than that permitted by subsection (7)*”). That which can be reported pursuant to s.87A(7) is very limited – the identity of the Court, the name of the magistrate, the names, or addresses, occupations and ages of the parties and witnesses, the offence, or a summary thereof, the names of counsel and solicitors engaged, the decision of the magistrate to commit the accused for trial, the date and places to which committal proceedings are adjourned (if they are) and whether legal aid was granted to the accused. Publication in contravention of s.87A is an offence for which an offender is liable on conviction to a fine of HK\$10,000 and to imprisonment for six months.

LIBERTY ASIA

libertyasia.org
contact@libertyasia.org

facebook.com/libertyasiahk
twitter.com/libertyasia
justgiving.com/libertyasia