

**THE LEGISLATIVE COUNCIL
PANEL ON WELFARE SERVICES
SPECIAL MEETING ON 29 JUNE 2006**

**Position Paper by HKU Student Interns at
*Against Child Abuse***

Introduction

In April, 2006, four small children were found being neglected by their parents when the only caretaker was their 83-year-old grandmother (“The Pak Tin Estate incident”). The incident has aroused much media attention, which reminded us of the serious and unresolved problem of child neglect in Hong Kong. The purpose of this paper is to address the problem of child neglect in Hong Kong in light of the recent “Pak Tin Estate incident”, and the limitation of measures adopted by the government to address the problem.

The Scope of the problem in Hong Kong

Over the past few years, there has been much attention and resources devoted towards addressing the problems posed by the physical and sexual abuse of children, because of their seemingly more detrimental effect on the child victim. However, research has shown that in reality, child neglect has the same, or even more deleterious short and long-term effects to the cognitive, socio-emotional, and behavioral development of the child¹. Unfortunately, it has not received comparable attention as compared to other kinds of child abuse.

A survey done by the government in 1997 showed that some 110,000 children aged 12 and below in about 73,900 domestic households had been left unattended at home during the 7 days before enumeration. When comparing the two figures, we can see that only a trace proportion of cases were being revealed and that only extreme cases could reach the attention of authorities. And amongst these 73,900 families, 43.2% of the parents were not worried that the children would have accidents when being left unattended at home. Most of whom are unaware of the severe consequences that might happen when they leave their child unattended at home, have the misperception that their young children were capable of taking care of themselves, or accidents would not have occurred within “such a short period of time”. This is why, throughout these years, incidents of injuries or even deaths as a result of child neglect recur over and over again. However, the public does not seem to be alarmed by the seriousness of the problem. Such unawareness of care takers about the danger to unattended children is worrying.

The Coroner’s Court reported that from the year 1989 to 2002, there have been 165 reported cases of deaths amongst unattended children. Although incidents have dropped to 10 cases

¹ Hildyard KL, Wolfe DA, Child neglect: developmental issues and outcomes, Child Abuse Negligence 2002 Jun; 26(6-7): 679-95

per year since 1999, the problem is still worrying because first, tragedies caused by child neglect is not inevitable; second, nowadays, many parents in Hong Kong are still continuing to leave their young children unattended, and they have remained unidentified, as only extreme cases reach the attention of authorities. Thus, so far in Hong Kong, there are no accurate statistics on children's exposure to violence, since much abuse and neglect remains unreported.

Why do we advocate for prosecuting negligent parents

The UN Convention on Rights of the Child provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (*Article 19*).

This means that the Hong Kong government is obliged and has a positive duty to take actions against child abuse, including neglect. However, aside from some aftermath remedial services provided to the child victim and his/her family, the government rarely takes action before harm has actually been done to the child victim. In light of the aforementioned data demonstrating recurring incidents of injuries and deaths of children caused by parental neglect, such aftermath services which are merely remedial, rather than preventive in nature are undeniably ineffective in addressing the problem of child neglect.

On a general note, a rule recognizing the universal duty on the part of parents to protect minor children would make a desirable statement demonstrating the values of our society. It is a common moral imperative that children have economic and social importance to the society, parents have the universal duty to take care of their child, and that it is right to expect parents to promote the welfare of their children. The moral blame attached to the parents who willfully leave their child unattended, the government's obligation of preventing future harm, the extent of the burden on parents to ensure safety of their child and consequences to the community of imposing a duty to exercise care with resulting liability for breach, all point towards judicial recognition of an affirmative duty on parents to safeguard minor children from harm inflicted by third parties or caused by other sources independent of the parent. By restating the society's value for "zero tolerance to abuse of children" with adequate judicial intervention, such as effective legislative measures which are both preventive and protective in nature, we will be able to shape our society into one whereby children are less likely to be harmed on the aggregate. Moreover, a decision imposing liability on a parent who fails to take proper care of a minor child sends a clear message to other parents that such irresponsibility is inappropriate and will not be tolerated, and the society will intervene in family affairs if the welfare of the child appears to be threatened.

The Present Situation in Hong Kong – A Reluctance of judicial intervention by prosecuting negligent parents

The consequence of child neglect is threefold. The child is either injured, dead or in some fortunate cases, physically unharmed despite potential detrimental psychological impacts. In Hong Kong, the Judiciary rarely intervenes on cases of child neglect. This is so even when injuries or deaths have occurred, let alone cases whereby the child was unharmed, and this is not due to a lack of applicable laws. In fact, section 27(1) of the Offences Against the Persons Ordinance (Cap. 212) provides that:

“If any person over the age of 16 years who has the custody, charge or care of any child or young person under that age willfully assaults, ill-treats, neglects, abandons or exposes such child or young person or causes or procures such child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, or any mental derangement) such person shall be guilty of an offence and shall be liable.”

However, in terms of “child neglect”, despite incidents of tragic injuries or deaths of children due to parental neglect, until now we can hardly find any case of child neglect being sent to prosecution under this Ordinance. Very often this is because if the children at issue are still alive, the so-called “interest of the child” against “family separation” argument would be put forward, as prosecution puts the defendant parent in the position that they may face incarceration as a result of their negligence towards their child. In cases where death or serious injuries have occurred, perhaps the most common objection raised to prosecuting parents whose negligence results in the death of a child revolves around the grievance of the responsible parent: surely the parent has already suffered enough. It is unquestionably true that for most individuals there can be no greater pain than the loss of a child, and that the grievance endured by parents in this position is almost unimaginable. However, should the grievance already endured by a potential defendant be the most determinant factor when deciding whether or not to initiate a criminal prosecution, particularly when the suffering is the direct result of his/her own actions? Although it is fair that the defendant parent’s grievance should be considered in the context of conviction and sentencing, we firmly believe that it should never be the determining factor with respect to the initial charging decision.

This can be done so by setting a wider range of sentencing options in punishing negligent parents under s 27 of the OAPO. Aside from incarceration, there can be a wider range of sentencing options, such as probation, community services or even mandatory counseling. Such flexibility in sentencing option is manifested by the Scottish case of *M v Orr*, the court ordered 100 hours’ community service for the negligent parent – considered not excessive for “what a serious offence as it was necessary to bring home to the negligent parent the gravity of what he had done”.

A call to reform the law on prosecution – comparison with other countries

As pointed out above, despite a prevalence of child neglect cases, so far every understands there has not been a single case of prosecuting parents in Hong Kong for child neglect. Such selective non-application of the laws against negligent parents is a problem worth noting, as

the criminal justice system should be used to redress that wrong. However, it has come to our attention that child neglect has been actively prosecuted in many overseas jurisdictions, even in cases where there has been neither death nor injury of the child. For example, in Scotland, there was a case by the High Court of Justiciary (Appeal)² whereby two parents were prosecuted as a result of child neglect. The Court stated that finding the presence of risk suffices, and it is unnecessary to prove actual harm caused to the child as a result of parental neglect. The question had to be considered by reference to what the parents did, not to the effects of the intervention of the police when they did.

It should also be noted that section 27(1) of the OAPO was a direct adoption from its English counterpart – section 12(1) of the Children and Young Persons Act 1937. Although other jurisdictions also share the same problem and difficulty of putting cases on court as we do, the existence of successfully prosecuted cases serve as evidence that they are at least, willing to give effect to existing legal provisions in protecting the child. Thus, in comparison, Hong Kong remains handicapped in its legal position in preserving children's rights, falling far behind the international standard.

Suggestions

The government's strategy in addressing child abuse, neglect and exploitation should be done so in a holistic and integrated manner. This requires multi-disciplinary co-operation, as well as the government's willingness to give due regard to give children the greatest protection. As suggested by Parton (1983), decisions made for child care and protection should emphasize on children's best interests, which is a compromise between a family's right to parent their child and a child's need for protection.

The Legal Perspective

To manifest the government's value in giving children the greatest protection, we suggest passing a new ordinance harmonizing all relevant childcare and protection legislation in Hong Kong, taking into account international obligations towards children. There should be provisions for a system which focuses not only on supporting children who are already "in need of care" but also on preventing abuse and neglect and actively supporting caregivers to care for their children. Also, emphasis should be put on developing a comprehensive national strategy to identify, assist and promote the best interests of children in need of protection.

The Social Policy Perspective

1. *Adequate and Accurate Record of Child Abused cases*

It has come to our attention that data representing the local circumstance of child abuse has long been incomprehensively recorded, and under-reporting of child abuse continues to be an obstacle to ensure timely and appropriate interventions for child survivors.

Hong Kong lacked a centralized mechanism to accurately record cases which have arisen. We urge the government to make use of a centralized computer programme to register cases

² *W v Clark*, (1999) G.W.D. 30-1403

of ill-treatment of, or injury, or death of children with the help of the Census and Statistics Department.

2. Public Education - Inform the public that child neglect is a crime

Traditionally, taking care of children has been regarded as a “family matter”. In this belief, parents have the “right” to decide how much care to give to their children. Many parents are not aware that neglecting child is a crime in Hong Kong.

It is advisable that the public be informed the existence and the consequence of contravening s 27(1) of the OAPO, so that the awareness of child neglect would be increased. A clear message should be instilled to parents - neglecting child is no longer a “family matter”, but a social evil, a crime.

3. Promote the use of child care centre and subsidize according to needs

It is understandable that some parents cannot fully look after their children due to other engagements (e.g. work). However, putting children at child care centre is still a better alternative than leaving children alone at home, where children are taken care of by adults.

However, not every parent is aware of the existence of child care centres. Besides, some may not be willing to put their children to these centres in order to avoid the expenses. We suggest that the government subsidize poor family with working parents in using the service of child care centres so that children could be better looked after when their parents are not at home. In addition, there are child care centres in nearly every district. The convenience and advantages of using the services of such centres should be promoted to enhance their popularity.

4. Inform the public the negative consequences of leaving children alone at home

As mentioned earlier, the problems of child neglect were overlooked, leading to the seriousness of the problem. As prevention is better than cure, it would be a good idea to educate the public both on the importance of taking good care of children as well as the negative consequences of leaving children alone at home. This could be carried out by a number of ways such as advertisement and awareness campaign.

5. Maximum working hour law

One of the causes of child neglect is that parents have to work long hours, leaving their children alone at home. To address the problem, a maximum working hour law (accompanied by minimum wage law) could allow parents to spend more time taking care of their children, lowering the possibility of child neglect, as we believe in helping the parents in order to help the child.

Therefore, we believe that child neglect should be taken into account when considering the setting up of maximum working hour law. In other words, the avoidance of child neglect should be viewed as an argument for setting the law.

7. Provide early start support

Early start support is very important for preventing child neglect, which refers to the provision of assistance to future parents and parents of newborn babies. NGOs could organize activities and courses to enlighten those parents on the skills of fostering their children and instill the concept that child neglect is a form of abuse. Besides, the government has leading roles to play including coordinating these activities and providing resources to the NGOs.

Conclusion

Child neglect should no longer be ignored. This paper outlines some suggestions to deal with the problem in the legal and social policy contexts. The experiences of other countries are also worth referring to. Besides, the mindset of the public over the issue should be changed from parent-oriented to children-oriented as the interest of children should be the top priority.

The government's position paper with regard to the recent "Pak Tin Estate case" gives the public an impression that the problem of child neglect is still not effectively addressed, and more concrete and suggestive policies in dealing with the problem remains to be seen. We believe that effective childcare policy, including legislation, policies and programmes should be well-developed, and most importantly, coordinated. It is hoped that childcare policies will be prioritized to expedite with regard to the government's budget spending. There is an urgent need to identify the obstacles preventing effective service delivery and programme implementation in the arena of child protection services. Budgetary constraints on welfare services therefore require careful consideration.

Bibliography

Statutes

Scotland

Children and Young Persons (Scotland) Act 1937 s. 12

United Kingdom

Children and Young Persons Act 1933 s. 39(1)

Hong Kong

Offences Against the Persons Ordinance (Cap. 212), s. 27(1)

Case law

1. R. v Harvey (Jane Muir), (1987) 9 Cr. App. R. (S.) 524
2. R. v McIntyre, (1993) 14 Cr. App. R. (S.) 308
3. R. v Sheppard, (1981) 72 Cr. App. R. 82
4. W v Clark, (1999) G.W.D. 30-1403
5. Watson v Thomas, (1985) WL 544031 (WASC), 22 A Crim R 356
6. R. v. Grace Efionayi and Collins Efionayi, (1995) 16 Cr. App. R.(S.) 380
7. M v Normand, (1995) S.L.T. 1284
8. H v Lees, (1993) S.C.C.R. 900

Books

1. Parton, N. and Thomas, N. (1983), “*Child Abuse & Citizenship*”, in Jordan, B. and Parton, N. (eds), *The Political Dimensions of Social Work*, Basil Blackwell, Oxford.

Journals

1. Huntington, C., (2006), “Rights Myopia In Child Welfare”, *UCLA Law Review*. Los Angeles: Regents of the University of California.
2. Collins, JM., (2006), “Crime and Parenthood”, *Northwestern University Law Review*. Chicago: Northwestern University.
3. Pollet, SL., (2005), “Safe Haven Laws-Do Legal Havens To Abandon Babies Save

Lives?”, *Westchester Bar Journal*. Westchester: the Westchester County Bar Association.

4. Sankaran, V., (2006), “But I Didn’t Do Anything Wrong”, *Michigan Bar Journal*. Michigan: State Bar of Michigan.

Other Materials

1. Census and Statistics Department, (1997), *Leaving Children aged 12 and below unattended at home, General Household Survey, Special Topics Report No.17*.
2. Social Welfare Department, (2003), *Child Protection Registry, Statistical Report*.