



關注家庭暴力受害人法權會
Association for Concern for Legal Rights of Victims of Domestic Violence

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3 October 2017

Clerk to
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Sir or Madam:

Re: Submission to the proposed legislation to implement the recommendations of the Law Reform Commission on Child Custody and Access

“Discussions of child contact and court systems without mentioning domestic abuse are, I believe, akin to climate change policies that ignore human influence: ill-informed and reckless,” [says](#) Dr Marsha Scott of Scottish Women’s Aid. This is sadly to be the case in the discussion of the Child Custody and Access Bill in Hong Kong. Instead of being at the forefront and centre, the issue of domestic violence is an afterthought and pretty much neglected.

The presumption of joint parental custody and involvement in children’s life following divorce is widespread in many judiciaries, including in the UK, the US, Australia and New Zealand. In all those countries, for decades, abused mothers and children have been crying for help: the family court force mothers to co-parent with their abusive ex-partner, force children to maintain contact with their abusive father. In some cases, children are taken away from their mother to the hands of their abusive father, because, mothers who raise her concerns about domestic violence are seen as an uncooperative and manipulative parent. Anecdotal evidence from abused mothers and children show all of these are happening in Hong Kong as well.

While Hong Kong’s family court keeps refusing to share information, worldwide data shows that domestic violence allegations appear in majority of divorce and family court cases. In one court in Beijing, domestic violence is the No. 1 reason for divorce, with [85% of women](#) said they suffered from domestic violence. According to His/Her Majesty’s Inspectorate Court Administration/HMICA in the UK, domestic violence features in [70%-90% of cases going to family court](#). According to academic Peter Jaffe, cited by US-based DV Leap, domestic violence is raised in [75% of contested custody cases](#)



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in family court. However, despite the big proportion of domestic abuse cases, only a small share of court cases result in children given no contact, indirect contact or supervised contact with abusive parents. Data from the US shows [abusive fathers won 73% of their custody cases](#). This has resulted in children and their mothers being killed by abusive fathers. And even if they are not dead or physically harmed, it is very likely they are emotionally abused and controlled.

Fortunately, more and more countries are paying attention to this problem. Two days ago, on 2 October 2017, a [new guideline for family court](#) in England and Wales came into effect, which would give children protection from abusive parents during custody disputes. It put an end to the presumption that there should be “contact at all costs” with both parents, especially when involvement of a parent in a child’s life would place the child or other parent at risk of physical and emotional harm.

The changes followed a Women’s Aid campaign in the past one year, sparked by cases of children being harmed, or even killed, by their abusive fathers during custodial visits. In Australia, family court has long been criticized for failing to protect abused mothers and children, and the government is now looking to revise their family law and family court system. Appearing at a parliamentary inquiry in July, Rosie Batty, a former Australia of the Year, whose son was killed by her abusive ex-partner during parental contact, [said](#) that the family court forced children to spend time with abusive parents, putting them at risk and causing some to become suicidal. Scotland’s parliament is debating a [domestic abuse bill](#) that will also include a provision that witnessing abusive acts amounts to child abuse, and thus is an offence.

Those who support a joint custody arrangement often cites studies that show joint custody is a better arrangement for children, but such research is biased because it tends to look at families with no history of violence. Meanwhile, there is an extensive body of research from the [UK](#), [Australia](#), [US](#), [New Zealand](#) and [Canada](#), showing how abusive parents, the majority of which are fathers, use family court and child contact to continue abusing their family. This is also going on in Hong Kong.

Even without the legislation, the Hong Kong family court has already operated under the automatic presumption of parental contact and rights – an arrangement that has taken a high toll on abused mothers and children. Abuse victims who have gone through family court proceedings tell stories how there is systemic failure to protect the vulnerable, starting from police, lawyers, social workers, psychologists to judges, as their plight is being ignored and not heard. The Government and legal professionals who support the bill have suggested Band-Aid solutions to help the so-called high conflict (but in reality, they are families with history of domestic abuse): mandating parenting classes and mediations, employing parenting coordinators (which are few in numbers and can be prohibitively



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expensive), running campaigns on how parenting continues after divorce. Such wishful thinking shows the lack of understanding on abuse dynamics, and in fact such suggestions have been precisely criticized by survivor groups overseas.

The push for the Child Custody and Access bill raises some questions: Why is Hong Kong pushing a bill that the countries, whose child custody laws Hong Kong wishes to emulate, are revising and looking to review? Would you employ an alcoholic to be a bartender? A bank robber to work in a bank? Would you trust an abusive father to parent a child? As Clare Humphreys, professor of social work at the University of Melbourne [says](#): “The notion that you can be a good father but a bad partner is an oxymoron.”

We therefore call on the Government, the Legislative Council and the judiciary to:

- Do a comprehensive review child protection in family court, which should include physical, sexual and psychological abuse
- Do a study on how prevalent domestic violence and abuse allegations are in family court
- Increase protection for domestic violence victims in family court, including prohibiting victims from being cross-examined by abusive ex-partners
- Offer up-to-date training on domestic violence that is gender sensitive to judges, lawyers, social workers, psychologists and other professionals working in the family court system
- Update Hong Kong's domestic violence ordinance and protection, which should make psychological abuse and controlling behaviour a criminal offence, in line with the latest development in England and Wales, and also Scotland
- Increase protection of children from abuse, including making reporting of child abuse compulsory and for a child witnessing domestic violence amounts to abuse.