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Protect Hong Kong's children against emotional abuse

Grenville Cross says HK must follow England and update its antiquated child cruelty law

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The UN Convention on the Rights of the Child, which applies to Hong Kong, stresses the need for children to be cared for emotionally as well as physically. Photo: EPA

"If we don't stand up for children," said activist Marian Wright Edelman, "then we don't stand for much".

Although the criminal law seeks to protect the people's rights and to deter offenders, it is not always fit for purpose. The emotional abuse of children, for example, can cause depression, post-traumatic stress disorder and, in extreme cases, suicide, yet is not always investigated, let alone prosecuted.

Although experts agree that emotional abuse or neglect can be as damaging to a child as physical harm, legal deficiencies can hamper joint action by police and social workers, and make it difficult to prosecute.

If a child suffers a physical injury that can be photographed and described, there is tangible evidence to take to court. But since emotional abuse lacks outward signs, many cases are not recognised for the crimes they are. Emotional abuse and neglect may take various forms, from persistent frightening or bullying, to ignoring, isolating or scapegoating the child. It may, moreover, involve the deliberate denial at home of the love and affection necessary for the child's proper development.

Although the Social Welfare Department said that, in the first six months of this year, there were 426 reported child abuse cases, only four concerned psychological abuse alone. Criminal judgments also reveal that almost all prosecutions involve non-psychological abuse cases, which highlights a legal lacuna. After all, severe emotional abuse of a child is no less of a crime than, say, sexual assault, and the child protection agencies fear many cases are simply being unreported or undetected. This means some child abusers are not prosecuted, and some victims never see justice.

Hong Kong's child cruelty law is based on England's law, which stems from 1868. It makes it an offence for a carer over the age of 16 to wilfully assault, ill-treat, neglect, abandon or expose a child in a manner likely to cause unnecessary suffering or injury to health. As the cruelty law is not designed to combat psychological abuse alone, its victims are not being fully protected by the legal system, which is intolerable.

In England, the head of Action for Children, Sir Tony Hawkhead, has said that "emotional abuse is not a grey area". In 2012, the charity, which estimates as many as one in 10 children are neglected, began campaigning for the child cruelty law to be modernised. Within a very short time, its message struck home.

After British Prime Minister David Cameron announced there is "nothing more important than the protection of children", the Queen's Speech in June contained a widely welcomed commitment to updating the law. As a result, the Serious Crime Bill, now before Parliament, includes what has been called a "Cinderella law", although, as Hawkhead has noted, "emotional abuse is no fairy tale". The bill will scrap the present definition

of the effects of child cruelty, including a reference to mental derangement (an undefined term), and update the language. It will be made clear that cruelty likely to cause psychological harm or suffering is also covered.

Given the convergence of the child cruelty laws in the two places, Hong Kong must now adopt the English paradigm, and promptly update its own law. This will also give police officers and social workers greater power to intervene in situations where they feel a child may be suffering psychological abuse.

The UN Convention on the Rights of the Child, which applies to Hong Kong, stresses the need for children to be cared for emotionally as well as physically, and anything that can be done to bring the most vulnerable within the full protection of the criminal law is surely to be welcomed.

Grenville Cross SC is honorary consultant to the Child Protection Institute. This is an abridged version of his address on the child cruelty laws at last week's Sharing Forum on Child Psychological Abuse at the Hong Kong Polytechnic University