

Protective legislation for older persons in Hong Kong

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ABSTRACT

As society ages, issues relating to older persons are surfacing and gaining public attention. Abuse of the elderly is among those issues causing great concern in Hong Kong. Although Hong Kong is a Chinese community where older persons are supposedly greatly respected, a fair number of cases of abuse of the elderly have been recorded. Like any member of any society, elderly people have the right to be free from mistreatment in their own families or in institutions. Enacting protective legislation is one of the ways used to deal with or prevent abuse of the elderly. Countries like Singapore and China have used different legal approaches. Singapore has adopted an adversary process where disputes between parents and children have to be resolved in courts using evidence. China has adopted a gradual approach where disputes are initially managed using public sanctions (e.g. neighbours can openly condemn those children who do not respect their parents, street-level commune officials can publicly display the names of people who do not support their parents), and ultimately dealt with by the law courts. Legislation aiming to protect elderly people is being proposed in Hong Kong (e.g. to extend the coverage of the Domestic Violence Ordinance to people aged 60 and over). This paper analyses the pros and cons of applying the adversary process when dealing with abuse of the elderly and China's experience with similar abuse. The purposes and contents of Hong Kong's legislative response to abuse of the elderly are discussed.

Key words: Aged; Health policy; Health services for the aged; Legislation; Residential facilities

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INTRODUCTION

Like many other countries and regions in the world, Hong Kong is facing an ageing population. The 2001 Census showed that the population has grown older during the last 10 years and will continue to do so at a more rapid rate over the next 20 years. A Census and Statistics Department projection of the future population of older persons predicted that by the year 2031, people aged 65 years or above will account for 24.3% of the population (FIGURE). To meet the challenges posed by an ageing population, Hong Kong's Chief Executive designated "Care for Elders" as a strategic policy objective in 1997, aiming

to improve the quality of life for elderly people and to provide them with a sense of security, a sense of belonging, and a feeling of health and worthiness.

Underlying these policy initiatives is concern about how older people are currently cared for in Hong Kong. Some are frail, disabled, and vulnerable to mistreatment. The problem of mistreatment or abuse of the elderly is becoming a problem worldwide, irrespective of race, ethnicity, or socio-economic background.¹

Abuse of the elderly is on the increase in Hong Kong according to systematic studies conducted by

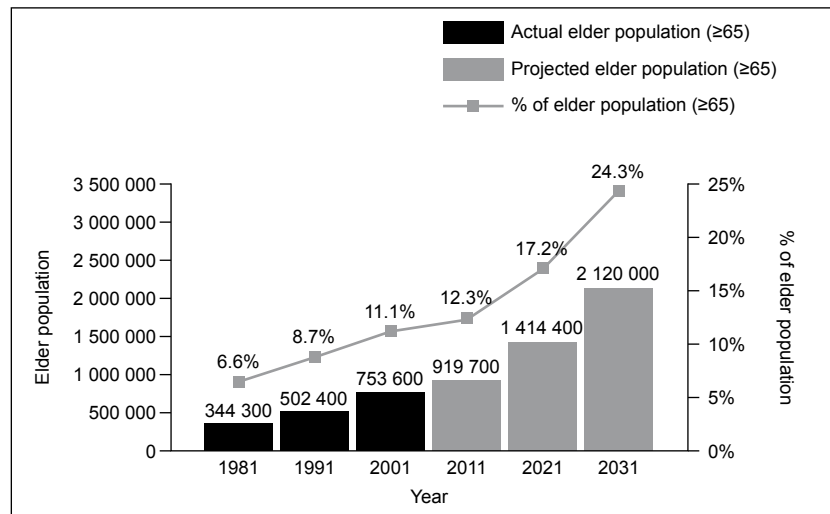


FIGURE. Ageing population of Hong Kong
Source: Social Welfare Department of Hong Kong, 2001 Report

Yan in recent years.^{2,3} The Hong Kong Social Welfare Department (SWD) recorded a total of 528 cases of abuse of elderly people in 2005, an increase of 60% over the previous year (329 cases in 2004).⁴ Most of these cases (65%) involved physical abuse by relatives and close friends caring for the elderly victims. It appears that despite the claim that Chinese people are filial toward their elders, they are now less respectful toward their older relatives and friends. Because Hong Kong has a predominantly Chinese population, the legislative responses to abuse of the elderly, which tend to be related to the cultural tradition demanding that elderly people be respected, have been more complicated.

Other countries have taken a range of approaches to combating this problem. Typical intervention protocols include a variety of approaches, such as legal, therapeutic, educational, and advocacy elements.^{5,6} As for legal intervention, different practices exist, for example, special and separate legislation like the Older American Act in the United States; or mainstreaming into existing statutes and common law rulings, as in the United Kingdom. In Chinese communities like Singapore, Taiwan and China, legislation governing care of the elderly has been enacted. Singapore and Taiwan have adopted a more western style of adversarial contests in courts where each side has to prove that the other party is wrong. Such laws are punitive toward the losing side, thus diminishing the chances of reconciliation between family members and friends after the case is settled. The latest development in Hong Kong has

been that people of all ages (including aged people) would be covered or protected by the Domestic Violence Ordinance by way of a separation injunction (i.e. upon adequate proof and ruled by the court, the person being complained of abusive behaviour or action could be barred from the premise which the applicant was residing).

If Hong Kong enacts legislation to protect elderly people, several issues should be considered:

1. Should Hong Kong enact separate legislation to protect elderly people from being abused? If so, what particular issues should be considered in the legislation?
2. What are the possible effects of legislation for older persons in Hong Kong?
3. Are there any alternative means of protecting older persons? If so, what are they?

This paper explores some possible answers to the above questions.

ELDER ABUSE

The definition of elder abuse

The concept of 'elder abuse' appears to have developed from the work of Baker in 1975, and has become steadily more important in the fields of health and social welfare as well as in academic social gerontology.⁷

Abuse of the elderly is not easily identified, partly

due to misconceptions about just what constitutes mistreatment.⁸ The American Medical Association defines mistreatment (abuse) of older people as⁹:

1. Physical abuse: this includes acts of violence that may result in pain, injury, impairment, or disease.
2. Physical neglect: this is characterised by a caretaker's failure to provide goods or services necessary for optimal functioning or to avoid harm. This may include not providing eyeglasses or hearing aids.
3. Psychological abuse: psychological abuse involves conduct that causes mental anguish. This includes verbal berating, harassment, or intimidation, threats of punishment or deprivation, treating the older person like an infant, or isolating the older person from family, friends, or activities.
4. Psychological neglect: psychological neglect is the failure to provide a dependent elderly person with social stimulation.
5. Financial or material abuse: this is the misuse of a person's assets or income for the personal gain of another, i.e. the caretaker. This includes stealing money or possessions, either directly or by forcing the older person to sign contracts or assign power of attorney or change a will.
6. Financial or material neglect: this is failure to use available resources needed to sustain or restore the health and well-being of the older person.
7. Violation of personal rights: this occurs when caretakers and providers ignore the older person's capacity and desire to make decisions about his or her life, and to otherwise assert autonomy as a human being. This includes denying privacy, denying participation in health care and other personal decisions, and forcible eviction and/or placement in a nursing home.

In this paper, mistreatment or abuse of the elderly is defined as actions committed or omitted by a person in a relationship of trust, resulting in injury or harm to older persons, whether physical, psychological, sexual, financial, or neglectful. This definition excludes self-neglect and victimisation of older persons by strangers, which are already covered by legislation (e.g. the Offences Against the Person Ordinance). In its recently revised edition of the 'Procedural guidelines for handling elder abuse cases'⁴ the SWD includes the first six types in its definition of elder abuse but not the seventh, largely because personal rights are not clearly defined in Hong Kong.

In real life, abuse does not fall into neat categories; types of abuse combine and overlap.¹⁰ Older people suffer from multi-faceted abuse including, but not limited to, psychological abuse, neglect, and physical abuse. This makes theoretical and practical work more difficult. When abuse happens in families or in the institutions elderly people depend on, the means of punishing the abusers becomes complicated because removing the abusers (the caregivers) may mean taking away the persons the elderly people have been largely dependent on.

General characteristics of abuse of the elderly

The number of cases of abuse of the elderly is increasing worldwide. According to a World Health Organization survey,¹¹ 5% of older persons aged 60 years or above all over the world are violently abused at home and in institutional settings.

Such abuse is often underreported. According to the 'Informal Essay of Director of Social Welfare Department',¹² 110 incidents of abuse were reported in the 18 months following the launch of the first Elder Abuse Project in 2002, and 50% of the abusers were their children. In addition, 80 older persons suspected of being abused were refusing services. Thus, what was reported was only the tip of the iceberg. Most elderly people tolerate the abuse rather than bring the incidents out into the open, largely because they do not wish to have the abusers punished, or because the abusers are too close to them, or it is too shameful to admit that relatives, especially children, are the abusers.

Elder mistreatment is more often a socio-psychological issue involving social norms and dysfunction within the family.² More than 80% of abusers are family members though there is an increasing trend for elderly people to be victimised by formal caregivers, neighbours, friends, and delinquents.^{13,14} According to a recent investigation by the Chinese University of Hong Kong, during which more than 300 older persons aged between 60 and 92 years were interviewed, 20.1% were abused in 2002. Of these cases, more than 20% constituted psychological abuse, for example verbal berating, harassment, or intimidation, 4% involved physical negligence, and 2% physical abuse. Most abusers were their children, accounting for 75%, and most of these were living with their older parents. Other

TABLE 1
Hong Kong: living arrangements of the population aged 60 and above, 2001¹⁹

Living arrangement	%
Living alone	11.4
Living with spouse and/or children only	78.5
Living with other persons	10.0

TABLE 2
Hong Kong: elderly people's views on whether family internal affairs are "not to be known by strangers"

Attitude	No. (%)
Absolutely disagree	2 (3.7)
Disagree	2 (3.7)
Less disagree	13 (24.1)
Less agree	7 (13.0)
Agree	2 (3.7)
Absolutely agree	28 (51.9)
Total	54 (100.0)

Source: Questionnaire Investigation by Society for Community Organization Hong Kong: life quality and satisfaction of older persons living with family members, 2002¹⁶

abusers were spouses and grandchildren.¹⁵ In 2005 the number of cases increased by 199 (528 cases in 2005 compared to 329 cases in 2004), and more of these cases were attributed to non-relatives; "friends and neighbours" accounted for more than half of the cases (129 out of 200 non-relatives, more than 10 times the number seen in 2004, i.e. only 10 cases¹⁴). Though the abusers now seem to come from a wider spectrum, the game is still the same: vulnerable older adults always fall victim to someone close.

Dilemmas between the abuser and the abused in Hong Kong

In Hong Kong, older persons may prefer to get support from the informal support network rather than ask for formal support. Social support can be broadly divided into formal support and informal support. In this paper, formal support is defined as that provided by government and non-government organisations, and informal support is that provided by the spouse, adult children, relatives, friends and neighbours, and community. Living arrangements can be a significant indicator of levels of direct family support in Hong Kong. Census data indicate that, in 2001, 78.5% of older persons aged 60 years and above were living with a spouse and/or children, 11.4% lived alone and 10.0% lived with other persons

(**TABLE 1**). Chinese traditions and beliefs naturally exert an influence on how older persons respond to being abused. The victim is often ashamed to admit victimisation by family members, a feeling which is further complicated by guilt as a parent i.e. being a burden to the children. According to a survey done by the Society for Community Organization in Hong Kong,¹⁶ 68.6% of older persons agreed that 'family affairs are not to be known by others' (**TABLE 2**). The dependent status of older persons often leads to the fear of losing care if they openly challenge their relatives over abuse. More older persons (26.9%) live in poverty than any other group (18.5% for all ages¹⁶). Added to these are apprehension about unknown alternatives, such as being removed to an institutional setting away from family and friends. Older people may feel that 'the devil you know is better than the devil you don't know'.⁸ All these scenarios explain why elderly victims would rather keep quiet than report abuse.

ABUSE WITHIN THE FAMILY

Family care has so many complicated situations that applying legal remedies needs careful consideration. When legal intervention is being considered, the key question must be 'what is the purpose?' and 'what will the consequences be?'. Sometimes a person

may be more at risk if action is taken e.g. when an elderly person is highly dependent on the children for psychological or emotional support, an injunction for separation may mean no care for the older person. Ways of balancing the interests between older persons and the public, and the interests between abusers and victims must be considered. Another important issue is determining what resources provided by government are appropriate for both the victim and the abuser.

The primary focus must be on balancing the need to protect the victims against their desire to maintain family unity. Generally speaking, in order to keep victims safe, the government usually separates the victim and the abuser, but this destroys the family unit and may violate an older person's right of choice. Then the question is, do we do something or leave things as they are?

Two cases will be discussed with reference to these dilemmas.

Case 1 (this is a re-construction by the author as described by informants)

An elderly man who suffered chronic bronchitis for almost 20 years lived with a son who had looked after him well. But when the son was in his fifties, he had to work late into the night and had a heavy workload. He was kept awake at night by his father's continuous coughing. Eventually, unable to control his rage, he hit his father and unintentionally fractured the elderly man's leg.

In this case, the son's abusive behaviour means certain punishment. Under the current legislation he could be arrested for causing grievous bodily harm under the Criminal Ordinance. Yet the consequences of applying for a legal intervention may be negative for all parties. The son could be put in prison, leaving the frail father with no appropriate care. The old man is likely to be sent to an institution. The government will have to pay for the father's care. His son will have been publicly blamed for his offence and the elderly parent will not be happy, either. But if things are left as they were, the father may be at risk of suffering from the impulsive actions of his son. So an intervention able to ensure the son's continual care and at the same time prevent his abusive actions is the ideal resolution.

Case 2

During the Christmas holidays an old woman aged more than 80 was forced by her son to beg on the street. She had been begging for almost a whole day on a day when the temperature was six degrees Celsius because her son wanted to spend the money.^{17,18}

In this case, applying legislation to sanction the son's behaviour is essential, but how? Opinions vary on this matter. One scholar has suggested that the police use Article 26 of the Simple Accusation Ordinance, which stipulates that begging is an offence. But the elderly beggar then becomes the offender rather than her son, the abuser. At the same time, if the victim does not cooperate with the tribunal or the law court by providing proof, the abuser will avoid punishment. Thus, in this case, the SWD has no choice but to gently persuade the son not to force his old mother to beg again, and assist the mother to apply for social security if necessary. In the worst case, the SWD would have to take care of the mother by putting her in a place of safety, which is usually a residential care home. So what could legislation do to manage similar cases? Singapore's experience with punitive law forcing children to care for their elder parents shows that (a) not many parents were willing to become prosecution witnesses against their children; and (b) after the court cases, children will pay their dues but refuse to have any dealings with their parents, even though, in most cases, the parents still wanted to carry on living with their children.

ABUSE IN INSTITUTIONAL CARE

In the institutional environment, as in the family setting, few abuses are reported, for almost the same reasons. Elderly people living in institutions (i.e. hospital infirmaries, old people's homes) have health problems that make them rely heavily on care workers in these institutions. They need care but do not know how to protect themselves. Because they fear being abandoned without proper care, abuse tends to be tolerated. At the same time, long-term care aggravates the caregivers' stresses and the burdens, which in turn intensifies the psychological conflict between the caregivers and the elderly people, leading to an escalation of abuse if left unattended. As time goes by, abuse may become an institutional norm.

In 2001, more than 5% of older Hong Kong people were living in institutional setting.¹⁹ The government enacted the Residential Care Homes (Elderly Persons) Ordinance in 1995, but this only regulates the infrastructure of residential homes. The reporting mechanism for abuse has not been properly worked out. Abuse, when it does get reported, depends on the person making the report providing the proof.

Four informants working in both private and subvented nursing homes from July to August 2005 were interviewed for this paper about abuse in those institutions and described the following conditions: There is always a shortage of care workers, especially nurses, in residential care settings. Even when numbers reach the levels set down by the Code of Practice, these workers are always too overtaxed and only able to provide a minimal or even below standard level of care. It is not uncommon to see staff being angry and neglectful towards the elderly residents e.g. shouting at elderly people's slowness, even throwing things at them. Personal privacy is not a priority when tens of elderly residents are queuing for baths. Examples are given below.

Case 3

The Hong Kong Chinese language newspaper, *Apple Daily*, was contacted by a reader who said her 68-year-old mother who was mentally sound but physically disabled (by stroke) had been beaten by a caregiver in a nursing home and was now hospitalised. The police and the Social Welfare Department investigated the incident but had reached no conclusions. The mother did not tell her daughter about being physically abused, but the daughter noticed that her mother was reluctant to move so took her to see a doctor. Only then were several swellings on the mother's legs and feet found to be possibly inflicted by sticks. When the reporter asked the mother why she would not discuss this publicly, she said she was afraid of being attacked again. But the institution did not record any incidents or accidents leading to injuries to the residents. In all, there were no records of any kind revealing any possibility of mistreatment by care workers.²⁰

When considering ways to protect residents in these homes, one immediately turns to legislation. Whether family or residential institution, no harm should be done to those living within it. But do we

really need special legislation to regulate elder abuse, especially when there are criminal and civil laws in Hong Kong that can be applied to these cases?

The use of lawsuits presents a number of obvious drawbacks. To start the process it is normally necessary for the victim to make a complaint and to press charges. This is particularly difficult for frail residents in nursing homes. Many elderly residents are in poor health and may be confused, thus unable to launch a legal case. Proxy prosecution using inspectors or any lay people willing to testify in the case is a possible alternative means. For example, when the inspector or any visitor visiting the nursing home notices the abuse, he or she assumes the burden of prosecution and representation of the victim. Hong Kong law does not provide for such a proxy at the moment. Laws in the Mainland encourage the commune ('residents' committees' at street or small district levels in cities) to deal with such matters. The cases can be brought to the commune by any known informant and will be publicly heard in their meetings. These practices are effective in institutions dependent on word-of-mouth promotion, and in families fearful of neighbourhood sanctions. Step-up measures, e.g. criminal prosecution or court injunctions, may be necessary if the situation does not improve. A good feature of this approach is that the abusers are now under public surveillance.

There are obvious gains and losses when enacting protective legislation for frail elderly people in family or institutional care. On the one hand, legislation, by stipulating normal procedure, can deter the abuser's actions, and thus, to a certain degree prevent elder abuse. The older person's rights are also defined and protected. But this does not resolve the conflict older persons may feel over exposing their close relatives or caregivers for abusing them and thus harming a good relationship and family unity and risking loss of continuing care. There is no doubt they want to be freed from the abuse, but they are reluctant to report it for the many reasons discussed above.

Furthermore, there are difficulties with law enforcement. Will the victims be ready to testify? How is evidence established or recognised, especially that proving neglect? Legal proceedings may also result in a road of no return for family relationships. One would expect that relatives, once found guilty, would refuse to take care of their older relatives afterwards.

Thus, institutional care is almost inevitable for these older people. Is this a desirable outcome for all involved in the dispute? If not, why choose law first? Are there any other ways to resolve elder abuse?

To answer these questions, alternative conflict resolutions for legal disputes are considered with reference to experience in the Mainland. It is clear that there are other options, such as mediation, that can be tried before adversarial intervention, which should be a last resort when managing elder abuse.

WHAT DIRECTION SHOULD LEGISLATION TAKE IN HONG KONG? CHINA'S EXPERIENCE

Although China has no single law governing care of the elderly, laws covering aspects of it include the Law of Protection of the Rights and Interests of older persons, Constitutional Law, General Principles of the Civil Law, Criminal Law, Marriage Law and the Adoption Law. Although law covering older people in China per se is imperfect and needs more modification and supplementation, it provides a guide to possible directions for enacting legislation against abuse of older people in Hong Kong.

In Hong Kong, parents are obliged to care for their children. Refusal to care for, neglect of, or mistreatment of elderly parents is condemned by the public via the media and contravenes government policy to promote family care. Nonetheless, adult children have no legal obligation to care for their parents. In China, Article 49 of the 1982 Constitution of the People's Republic of China states that parents have the duty to rear and educate their children and children who have come of age have the duty to support and assist their parents in return.

The Law on the Protection of the Rights and Interests of older persons of the People's Republic of China, enacted in 1996, defines the rights of older persons in family life, social life and participation in social activities, thereby ensuring that older people are respected by the community.

In order to illustrate the legal or pre-legal practices on abuse of older people in Mainland China, several articles will be introduced from the Law on the Protection of the Rights and Interests of

older persons of the People's Republic of China that relate to the above family cases.

Chapter 5 (Legal Responsibility), Article 45 states: "When older persons have disputes with their family members over their support, or over housing or property, they may ask the organisations where their family members are employed, the neighbourhood committees or the villagers' committees to mediate. They may also bring a lawsuit directly to the People's Court. If the family members are found to be in the wrong through mediation of the disputes mentioned in the preceding paragraph, they shall be educated through criticism and ordered to correct their mistakes."

Article 46 states: "Whoever insults the elderly in public by violence or other means, slanders them or maltreats them, if the case is not serious, shall be punished in accordance with the relevant provisions of the Regulations on Administrative Penalties for Public Security; if the case constitutes a crime, his criminal responsibility shall be pursued according to law".

Article 47 states: "Whoever interferes with the freedom of marriage of the elderly by violence or refuses to provide for or support the elderly whom he has the duty to provide for or support, if the case is serious and thus constitutes a crime, shall be investigated for criminal responsibility according to law."

In cases 1 and 2, neighbourhood committees have the right to mediate in cases of elder abuses, but older persons can also choose between mediation by the neighbourhood committee or a lawsuit brought to the People's Court. If the family members are found to be in the wrong during mediation of the disputes, they will be 'educated through criticism' and ordered to correct their mistakes. If the older person is not satisfied with the result of the mediation, he or she can bring the case to the court, too. The court may investigate the facts to decide if the abuses are serious enough to warrant criminal judgement or otherwise. If the case is not serious, the abuser shall be punished in accordance with the relevant provisions of the Regulations on Administrative Penalties for Public Security. If the case constitutes a crime, the abuser will be pursued according to law.

Overall, many of the cases of elder abuse are settled by the neighbourhood or community committees. Most older persons are very accepting of the neighbourhood practice in which children's wrong deeds are discussed and the children cautioned early enough to allow for reconciliation and maintenance of a good relationship. Persistent abusers are watched and brought to the court if they do not improve.

This type of law is based on the premise that older persons require special statutory protection—in addition to other laws—because of the association between age and increased vulnerability to abuse.¹⁰ The philosophy behind the law is to achieve minimum interruption to the caring relationship and to maximise the autonomy of older persons when reaching the desired resolution.²¹

Measures can be used to ensure that abuse is detected as early as possible and abusers are directly or indirectly put under surveillance. One of the common legislated measures is mandatory reporting of signs of possible abuses. In the United States, the mandatory reporting rules apply to members of 50 different professional groups including doctors and other health care providers, social care professionals, and paraprofessionals. All states grant some legal immunity for making a complaint or report,⁸ to protect these individuals from being counter-sued by wealthy establishments or being penalised by employers such as hospitals.

There are nonetheless ethical issues surrounding such law, involving decisions to balance intervention goals with facts, balancing the needs and desires of the victim with the defendant's interests, and seeking the achievement of justice for all parties. These are evident in the following legal principles used to establish the goals of the legal response to elder mistreatment recorded in known cases²²:

1. to stop the unlawful, improper, or exploitative conduct that is being inflicted on the victim;
2. to protect the victim and society from the perpetrator and further inappropriate or illegal acts;
3. to hold the perpetrator accountable for the conduct and communicate a message that the behaviour is unacceptable and exceeds societal norms;

4. to rehabilitate the offender, if possible;
5. to make the victim whole by ordering restitution and/or the return of property as well as the payment of expenses incurred by the victim as a result of the perpetrator's conduct.

Thus, according to these principles, justice is achieved only if the abusers are made to repay, whether in kind or in material, upon a judgement against their favour. One way or the other, the legal proceeding becomes a win-or-lose game between the abused and the abuser. Evidence may clearly establish the wrongs of the children, but what the elderly parent wants is to return to family care without the abuse (or in the case of an institution the elderly resident may wish to go back to the same place) but the law eventually drives the abused to go against the abuser until dues are paid back in full. It is difficult to practise these principles, especially within the family, where the elder person being abused may wish to return to a better relationship with the family caregiver, despite the risk of returning to an even more abusive situation. Should the law direct removal of the abused to an institution (or another institution)? Is this a punishment rather than justice for the abused? So in whose interest is the law making a decision?

The purpose of elder care legislation is to protect older people from all kinds of abuse and to promote respect for their autonomy. The UN Principles for Older Persons (December 1991 – Resolution No.46/91) set a clear framework for working with, and for, older persons, listing independence, participation, care, dignity, and self-fulfillment as important principles, but they are not legally binding, and have not led to any systematic monitoring of government or other bodies' policy and practice in relation to older people. Measures to support autonomy should come first, followed by limited legal intervention. Full legal-punitive remedies should be merely supplementary.

Using these guiding principles, the contents of elder care or anti-abuse law should be two-pronged: to make protective services available to older persons being, or at risk of being, abused and to punish or rehabilitate the abusers. These should also include promotion of respect for elderly people, abuse prevention, early abuse identification, support and surveillance for known cases including reconciliation,

prosecution, and rehabilitation services.

Thus, the government should enact comprehensive protective legislation to not only address elder mistreatment but also safeguard outcomes that are in the interests of and meet the wishes of the abused. Legislation should be used to provide protective services able to facilitate identification of elder abuse, mandatory reporting and mandatory counselling services, public education concerning respect of older persons and training of caregivers to understand abuse. The overall aim is to achieve both ends: to maintain justice and to enable the abused person to live happily, according to his or her own choice.

CONCLUSIONS

Considering the gains and losses incurred by legislating on care for the elderly in Hong Kong, we may draw the following conclusions.

In obvious, severe types of abuse e.g. grievous bodily harm, existing ordinances already cover these general and individual situations. Less obvious types of abuse e.g. psychological neglect, a two-pronged approach should be adopted: to make available protective services for older persons being, or at risk of being, abused; and to punish or rehabilitate the abusers. Thus, whatever legislation is considered, the new law (modifications or amendments to existing ordinances such as the Domestic Violence Ordinance, or a new set of laws) should have these two-pronged functions as well as legal supplements to coordinate with criminal law and the Residential Care Homes Ordinance in Hong Kong (for residential institutions).

Legislation on family care for older persons is essential. But the Hong Kong government should draft comprehensive elder protective legislation to not only address elder mistreatment but also protect other older persons' rights. Using the opportunity that elder abuse has provided, all the rights elder persons' should enjoy should be clearly stipulated by law. Moreover, during the period of law formulation, the Legislative Council should consider the complicated situation that differentiates this from other law, and make the dividing line between minimal intervention and preserving maximum autonomy for older persons clear.

The government is obliged to protect vulnerable adults. In order to respect older persons' choices, interventions must be family-oriented and focus on the roles of the carer and the victim. Only when an emergency situation exists or the older person is declared incompetent, should legal intervention be considered.

Most importantly, legal options should be left for older persons. Legislation is not the purpose, but older person should be acquainted with orders of protection and guardianship and have access to legal counsel. Knowledge of the available legal options enables the older person to seek appropriate and timely use of such legal interventions.

In Hong Kong, the family is depicted as the key source of care for older persons in the community but there is little evidence of concrete services supporting families to fulfil such functions.²³ Therefore, the government should establish a fully functioning protective services programme to make family care the foundation, while the community and government step in to support the family, furnish the infrastructure for financial, health and social care, and provide institutional care for the poor and destitute elderly.

The Hong Kong government should establish mandatory elder abuse reporting to protect older persons from elder abuse, despite the controversial impact of such reporting.

The last, but definitely not least, factor is that resources ought to be provided to the abuser. In the case of the carer who abuses it may come as a great relief to be able to talk openly about the stress that he or she has been under. Or, if the abuser has a specific problem, some specialist help may be offered.²⁴ The government should allocate more resources to enhance mandatory counselling services and provide carer support services, including respite services.

References

1. Steuer J, Austin E. Family abuse of the elderly. *J Am Geriatr Soc* 1980;28:372-6.
2. Yan EC. *A community study on proclivity to elder abuse in Hong Kong* [thesis]. Hong Kong: The Chinese University of Hong Kong, Department of Psychology; 2002.
3. Yan EC, Tang SK. Prevalence and psychological impact of Chinese elder abuse. *J Interpers Violence* 2001;16:1158-74.
4. Procedural guidelines for handling elder abuse cases. Hong Kong: Social Welfare Department; 2006.

5. Reis M, Nahmiash D. When seniors are abused: an intervention model. *Gerontologist* 1995;35:666-71.
6. Wolfe DA. Elder abuse intervention: lessons from child abuse and domestic violence initiatives. In: Bonnie RJ, Wallace RB, editors. *Elder mistreatment: abuse, neglect, and exploitation in an aging America*. Washington DC: The National Academies Press; 2003: 505.
7. Hugman R. The value of old age in modern society: social responses to 'elder abuse'. In: Liu WT, Kendig H, editors. *Who should care for the elderly? An East-West value divide*. Singapore: National University of Singapore Press; 2000: 148.
8. Strauss PJ, Lederman NM. *The elder law handbook: a legal and financial survival guide for caregivers and seniors*. New York: Facts On File; 1996: 169-73.
9. *Diagnostic and treatment guidelines on elder abuse and neglect*. American Medical Association; 1992.
10. Hurme SB. *Perspectives on elder abuse*. AARP website: <http://www.aarp.org>. Accessed 5 Oct 2005.
11. *Report of the violence and health (2002)*. WHO website: <http://www.cctv.com>. Accessed 3 Oct 2005.
12. Informal Essay of Director of Social Welfare (2002) "*Focus on family and object to violence*". Available at: <http://www.sc.info.gov.hk>. Accessed 29 Dec 2005.
13. Abuse of mentally incapacitated elders-how the guardianship board can help. In: *Handbook of Guardianship Board*. Hong Kong: Guardianship Board; 2001.
14. *Preventing elder abuse: an agenda for all*. Press Release from the Social Welfare Department on 14 Jun 2006. Hong Kong: Social Welfare Department; 2006.
15. More than 200,000 older persons are being abused. Hong Kong Daily News 2003 January 14.
16. *Issue and settlement in families of low salary in Hong Kong*. Hong Kong: Society for Community Organization in Hong Kong; 2001.
17. *The unfilial son forces mother to beg*. Sun Newspaper of Hong Kong. 29 December 2002.
18. *Son forces mother to beg*. Takung Bao of Hong Kong. 29 December 2002.
19. *Services for older persons in Hong Kong*. Hong Kong Council of Social Service; 2002.
20. *An old woman with hemiplegics abused by residential home care workers*. Apple Daily of Hong Kong. 25 October 2002.
21. Clough R. *Elder abuse and the law*. London: Action on Elder Abuse; 1995.
22. Heisler CJ, Quinn MJ. A legal perspective. *J Elder Abuse Negl* 1995;7:2-3.
23. Chan AC, Phillips DR. Policies on ageing and long-term care in Hong Kong. In: Phillips DR, Chan AC, editors. *Ageing and long-term care: national policies in the Asia-Pacific*. Singapore: Institute of Southeast Asian Studies; 2002: 46.
24. Pritchard J. *The abuse of older people: a training manual for detection and prevention*. London: Jessica Kingsley Publishers; 1995: 49-51.