

# Making a Case for an Anti-Bullying Law in Hong Kong

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## Executive summary

Bullying cannot be ignored. This study examines the current situation of bullying and cyberbullying in Hong Kong, analyses the existing laws and policy measures of the Government and makes references to overseas experience. It aims to provide policy recommendations from short- to long- term on how to deal with bullying and cyberbullying among young people.

### Issues

There are three issues in anti-bullying laws and policies in Hong Kong: (1) regulatory inadequacy; (2) insufficient awareness; and (3) weak enforcement.

#### Regulatory inadequacy

In Hong Kong, the lack of a specific legislation on bullying and cyberbullying has contributed to two issues. Firstly, there is no statutory definition of the two terms, leading to low or poor awareness of what constitutes bullying or cyberbullying, and importantly, an awareness to report these matters when they happen. Secondly, there is no legal requirement for schools to report these incidents and set up a prevention programme. Together, these regulatory gaps severely undermine the effectiveness of our current anti-bullying work, despite extensive guidelines and resource packages provided by the Government. Without the support of legislation, those resources are not adequate to act as a comprehensive anti-bullying strategy.

The lack of legislation is especially problematic as far as cyberbullying is concerned. The Personal Data (Privacy) Ordinance (PDPO) is sometimes applied to govern cyberbullying. However, the intention of the PDPO is to govern the collection and use of personal data. For the PDPO to apply, a complaint must be filed by the victim who must successfully identify the perpetrator. Given the mostly anonymous nature of cyberbullying, victims have to overcome an extra hurdle in seeking redress.

#### Insufficient awareness

The Hong Kong general public does not understand what constitutes bullying and cyberbullying, and their harmful effects, especially on the mental welling and long-term development of young people. Many adults, including parents and teachers, sometimes consider bullying behaviours as casual and may overlook the serious consequences until it is too late.



The lack of awareness can be attributed to the absence of a statutory definition. Bullying and cyberbullying behaviours are not clearly defined by law in Hong Kong. This will lead to a failure to detect and deal with bullying cases, especially those that do not involve a criminal offense, such as verbal bullying, exclusive bullying or some types of cyberbullying.

### **Weak enforcement**

The absence of a reporting obligation might lead to under-reporting by schools. Some schools might refuse to inform the public or even parents. Thus, it remains questionable to what extent a self-reporting mechanism allows the HK Government and the public to have a comprehensive understanding about the actual occurrence of bullying.

It is also worth noting that schools are not required to set up a prevention programme and a standard handling procedure for bullying or cyberbullying. The Government has provided various guidelines and suggestions regarding the establishment of prevention programmes and handling procedure at the school level. However, there is no obligation for schools to implement such programmes, which weakens the effectiveness of those guidelines and suggestions.

Currently, different Government departments and bureaux tackle bullying from different angles based on their designated functions, such as education, social welfare, and law enforcement and prosecution. A “silo” mentality and the lack of coordination has led to a rather ineffective and fragmented approach that is not victim-friendly. The overlapping roles of different authorities require high-level coordination for them to work together effectively and efficiently.

### **Recommendations**

Overseas policies have demonstrated that both legislation and policy (in the form of suggestions and guidelines) are necessary for a comprehensive anti-bullying strategy. Although there are a few existing policies in Hong Kong, it is essential to explore the feasibility of a new legislation to specifically address bullying.

The process of introducing a new law will be lengthy and it is also important to seek public consensus. Therefore, in the short-term, the Government should set up a working group to review the status quo, identify issues and provide policy recommendations.



In the medium- and long-term, the Government should hold public consultations and consider establishing a new “Anti-Bullying Law”. The law can include at least three key components, namely a statutory definition of bullying and cyberbullying, obligations of educational institutions, and a redress mechanism that provides for remedies.

### **Short-term recommendation: the establishment of an Anti-Bullying Working Group**

The Hong Kong Government adopts the approach of evidence-based policy making. Thus, it is important for the government, policy makers and other stakeholders to have a better understanding of the current situation. It should designate an authorised body to gather evidence and properly analyse bullying based on data.

An Anti-Bullying Working Group can perform four main functions: (1) to raise public awareness on bullying; (2) to coordinate data collection and consult stakeholders on bullying and cyberbullying; (3) to review current legislations and policy measures; and (4) to encourage anti-bullying research. It can then submit a report to the Government, to provide recommendations on the need for and feasibility of an Anti-Bullying Law, and on other supporting policies.

To improve the data collection process, the Anti-Bullying Working Group can adopt a bottom-up approach in addition to the existing top-down approach. The working group can initiate student surveys directly, which can provide insights on the bullying / cyberbullying situation from youth’s perspective. Furthermore, the Government can provide research grants to encourage and facilitate local anti-bullying research.

The working group can also review how the existing legislative and policy framework tackles bullying and cyberbullying, and identify challenges and gaps in the current approach.

### **Medium- to long-term recommendation: public consultation and the establishment of an “Anti-Bullying Law”**

The working group should invite stakeholders and the general public to give feedback on its report.

Based on our review of anti-bullying laws in overseas countries, there are three essential elements for consideration:

1. Definition of bullying and cyberbullying behaviours
2. Obligations/responsibilities of educational institutions
3. Redress mechanisms with remedies for victims



### 1. Definition of bullying and cyberbullying behaviours

A statutory law should first include an accurate definition of bullying and cyberbullying. It is recommended that the definition should be aligned with the one widely agreed among researchers and scholars in Hong Kong. Instead of only a conceptual definition, some countries also include an operational definition which permits related parties to enforce the law more effectively.

### 2. Obligations/responsibilities of educational institutions

Some countries clarify the roles and responsibilities of educational institutions in tackling bullying, both in terms of setting up prevention programmes and following standard handling procedures. However, adequate support and funding should be made available to educational institutions for undertaking this new responsibility.

On the prevention end, the law can also require schools to take appropriate actions on anti-bullying. It should call for the development of a standard set of tools for regular assessment purposes to facilitate the formulation of an evidence-based and updated anti-bullying policy. On the intervention end, the law can state clearly that it is the responsibility of a school to report and track any bullying incidents, and impose administrative punishment on schools for any improper handling of bullying cases.

### 3. Independent redress mechanisms with remedies for victims

In some countries, either perpetrators or victims and their parents or guardians are given powers to file an administrative review regarding the handling measures taken by the relevant personnel of the educational institutions. A statutory body/agency will be empowered to hear such cases, mediate and follow up appropriately.

For remedies, the statutory body can protect the victim through administrative measures, for example, separating the victim from the perpetrator, or requesting involved electronic communication service providers to remove the contents of cyberbullying. If these service providers refuse to remove the said materials, legal assistance will be provided for the victim.

## 行政摘要

欺凌不容忽視。本研究檢視香港的欺凌現況（包括校園和網絡欺凌），剖析現有的法例及政策指施，結合海外的經驗，並就如何應對青少年的欺凌問題分別提供短期及中長期的政策建議。

### 研究發現

本港有關欺凌的法例和政策存在三大問題：（一）監管不足；（二）意識薄弱；以及（三）執行不力。

#### 監管不足

香港現時未有特定應對校園欺凌及網絡欺凌的法例，引致上述的另外兩個問題：意識薄弱（包括對構成欺凌行為的理解，以及舉報相關行為的意識）可歸咎於沒有法定定義；執行不力或因未有釐清教育機構的責任，包括需匯報事件和推行預防計劃。雖然現時政府有為學校提供各種指引和資源，協助學校推行防治欺凌的措施，但由於沒有法例上的支持，這些工作只會事倍功半，並不足以構成全面的防治欺凌策略。

在網絡欺凌的個案中，特別容易顯出法例不足帶來的問題。以《個人資料（私隱）條例》為例，該法例有時會被用來處理網絡欺凌個案，但條例的原意是監管個人資料的收集和使用，因此實際執法時會要求作出投訴的受害者指證施害者的真實身份。而網絡欺凌的其中一個特點，正正是難以辨認欺凌者的身份，要以《個人資料（私隱）條例》保障網絡欺凌的受害者，難度可想而知。

#### 意識薄弱

在香港，社會大眾一般都不太了解構成校園及網絡欺凌行為的條件及惡果，特別是對青少年精神健康及長遠發展的影響。很多成年人，包括家長與教師，有時會認為欺凌行為只是學生之間普遍的嬉戲，不會引致嚴重的後果，到發生意外時才知道太遲。

社會意識不足的其中一個原因，是因為香港對欺凌行為未有一個法定的定義，未能清晰界定有關行為，令某些欺凌行為，特別是不具刑事成份的欺凌事件，例如言語欺凌、排斥，及某些網絡欺凌，相對更難識別及處理。

#### 執行不力

由於學校現時沒有法律上的責任去上報校園欺凌事件，學校未必會自發性知會公眾甚至有關的家長。在現時的通報機制下，對於政府及大眾是否全面了解實際欺凌情況，值得商榷。

同樣值得留意的是，即使教育局有就如何預防及處理欺凌行為向學校提供指引及建議，現時學校並沒有責任去設立預防與處理校園欺凌的措施及機制，減低了那些指引的效果及影響力。

現時，各個相關的政府部門及政策局分別對校園欺凌及網絡欺凌有各自的措施，出發點亦有所不同，當中包括教育、社會福利、執法及檢控等範疇。由於各自為政及缺乏統籌機制，這些應對欺凌的工作，難免顯得不奏效及零散，亦令受害者無所適從。欺凌事件可以牽涉到很多不同的政府部門，要有效將各部門的工作整合，以提升工作效率，將需要一個高層次的統籌機制。

## 研究建議

從海外的經驗可見，要制訂全面的防治欺凌策略，立法與公共政策（包括建議和指引）兩者缺一不可。香港現時雖有一些相關政策，但仍有必要探討應否就欺凌問題立法。

當然，立法需要長遠的準備工作，亦須先尋求社會共識。因此在短期，政府應成立關注學生欺凌的工作小組，了解現況、識別問題，為政府下一步的工作提供建議。至於在中長期方面，則應展開公眾諮詢，考慮就欺凌問題立法。立法主要可先循三方面思考，包括：為校園及網絡欺凌確立法定的定義、釐清教育機構的責任，以及設立申訴及補救機制。

### 短期建議：成立關注學生欺凌的工作小組

香港政府以實證為本制訂政策，故此政府、政策制訂者及其他持份者須更了解現況，方法是授權特定組織收集證據並按數據分析欺凌情況。關注學生欺凌工作小組的主要工作包括：（一）提高公眾對欺凌的關注及意識；（二）協調欺凌數據收集，了解持份者的意見；（三）檢討現行的法例及政策措施的需要和可行性；以及（四）促進有關欺凌的研究。其後，工作小組將向政府提交報告，就長遠立法向政府提出有關的建議，以及其他支援措施。

在現有的做法之外，工作小組應透過由下至上的方法，加強數據收集的工作。工作小組可透過學生問卷調查，直接了解欺凌的真實情況。另外，政府可設立資助基金鼓勵及促進本地的欺凌研究。工作小組亦應檢視現有的法例及政策框架，以識別現時欺凌工作的潛在挑戰與不足。

### 中長期建議：就校園欺凌立法展開公眾諮詢及進行立法

工作小組應邀請持份者及社會大眾就報告發表意見。

根據海外經驗，有關欺凌的法例，一般會包含以下三項要素：（一）校園欺凌和網絡欺凌行為的法定定義；（二）教育機構的責任；（三）申訴及補救機制。



## 一、校園欺凌和網絡欺凌行為的法定定義

該法例要先涵蓋校園欺凌和網絡欺凌的定義。該定義應盡量與本地研究人員和學者通用的定義一致。而除了概念上的定義之外，某些國家的法例亦包含可操作的定義（operational definition），讓相關人士更有效應用該法例。

## 二、教育機構的責任

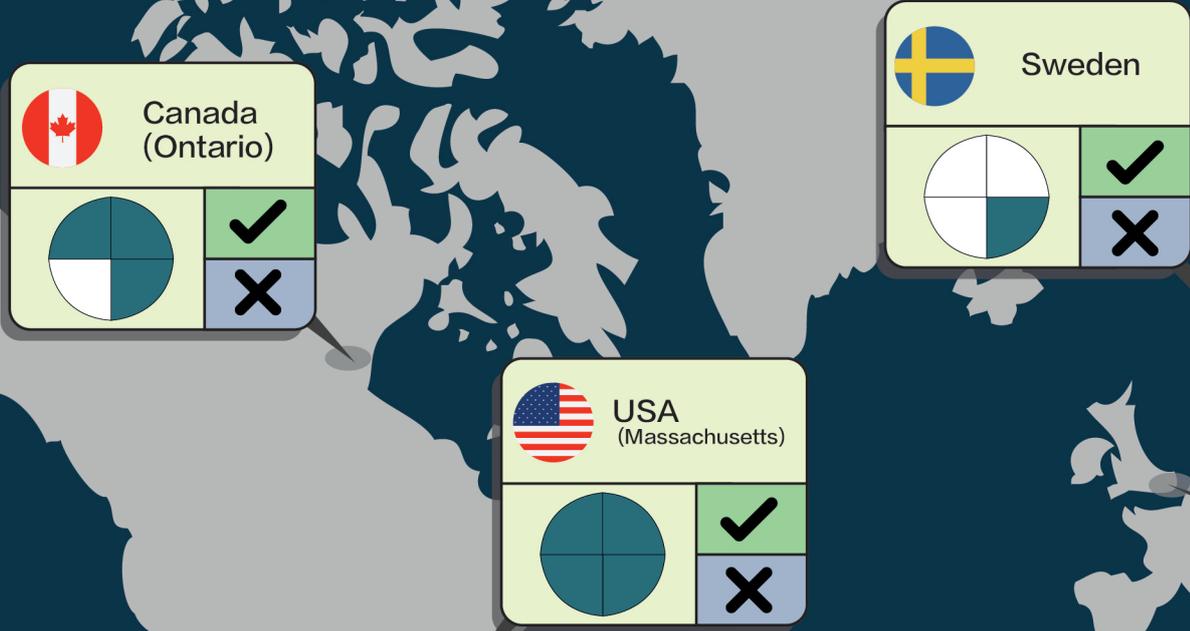
部分地區會清楚列明教育機構在應對欺凌時的角色及責任，特別在預防與處理方面。當然，在進一步加重教育機構的責任之前，有必要確保政府在政策與財政上有為它們提供足夠的支援。

在預防方面，有關法例應要求所有學校採取適當行動，包括設立有助定期檢視欺凌狀況的工具，以全面推行以實證為本、與時並進的防治欺凌計劃；在處理方面，則應明確要求學校按既定程序匯報及跟進欺凌事件，並以行政手段，懲罰處理不當的事件。

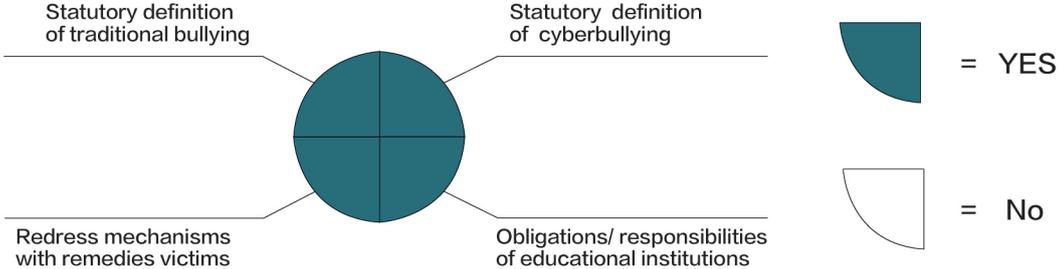
## 三、申訴及補救機制

在申訴機制方面，某些國家規定，任何牽涉於欺凌事件的人士，將可就校方的處理手法進行申訴，包括欺凌者與受害者（以及受害者的家長或監護人）。收到投訴後，獲政府授權的特定組織將會就着申訴的內容展開調查，並有權決定是否對學校施以行政處罰。部分海外法例賦予受害人可透過民事訴訟，要求互聯網服務供應商將涉及網絡欺凌的資料移除；若該供應商拒絕移除相關的資料，特定組織可協助受害人尋求法律上的幫助。

# Anti-bullying laws around the world

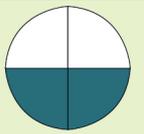


## Common components of an Anti-Bullying Law

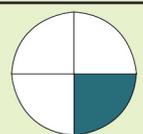




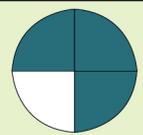
 Finland

 South Korea

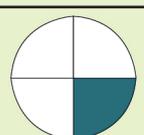
 Japan

 UK

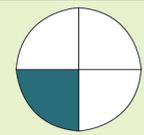
 Singapore

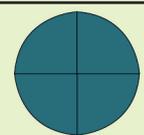
 Hong Kong

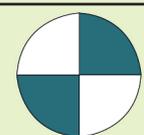
 South Africa

 Australia

 New Zealand



Specific law

Specific authorised body

 = YES

 = No



# 1. Introduction

## Background

Bullying has become a worldwide concern.<sup>1</sup> A large number of international conferences and publications were launched on the subject in recent years.<sup>2</sup> According to the 2015 report on Programme for International Student Assessment (PISA) results on students' wellbeing from the Organisation for Economic Co-operation and Development (OECD), Hong Kong has the highest percentage of students who reported being bullied frequently among OECD countries.<sup>3</sup> Local studies also indicated a prevalence rate from 20% to 62% of self-reported school bullying victimisation.<sup>4</sup>

This notwithstanding, most people in Hong Kong have treated bullying as casual, daily and minor conflicts between peers. Teachers and parents believe that their students and children can solve bullying problems by themselves; the media and the general public simply overlook the issue, paying attention only when severe incidents occur.

To exacerbate the issue, the modern digital era has given rise to cyberbullying. Since there is no physical abuse involved, cyberbullying is even more challenging to detect and handle.<sup>5</sup> Moreover, cyberbullying may actually bring more harm to victims than traditional bullying.<sup>6</sup> Taking into consideration the rising prevalence as well as the negative outcomes of cyberbullying, this paper will also include cyberbullying as one of the main study areas.

Hong Kong does not lack individual schemes and school policies on bullying and cyberbullying, as have been extensively discussed in existing local literature.<sup>7</sup> This prevailing discourse also goes to show that the burden of establishing anti-bullying schemes and measures have mostly been placed on school management and even parents, while less focus has been put on laws and government policies. Given the prevalence of bullying and cyberbullying, and its harms on individuals and the society, the government has a prominent role in ensuring that there are effective laws and public policies to address the problem.<sup>8</sup> This paper will review the current status of laws and policies addressing bullying and cyberbullying in Hong Kong, with a view to providing recommendations to the government from a public policy perspective and filling the gap in local studies in Hong Kong.



## Objective and structure

1. To summarise and review anti-bullying laws and policies in Hong Kong;
2. To give recommendations on how the government can tackle school bullying and cyberbullying more effectively, with reference to overseas experiences; and
3. To raise public awareness of school bullying and cyberbullying.

This paper will first examine the definition of bullying, including both traditional bullying and cyberbullying, and their harmful effects. It will also provide an overview on the prevalence of bullying and cyberbullying incidents among Hong Kong youth, and the most common features of such incidents.

It will then look into the current anti-bullying laws and policies in Hong Kong. The paper will analyse the challenges and problems under the present network of policy responses.

Lastly, based on the challenges and problems found, the paper will take examples from overseas experiences, including common law countries such as Australia and New Zealand, to propose feasible recommendations to policymakers in Hong Kong.

## Methodology

This paper is mainly based on desktop research and interviews with multi-disciplinary experts and stakeholders. The team studied various academics papers and journals, government documents, legislative documents, and research reports from scholars, research institutions and NGOs. Suggestions in this paper reflect the views and recommendations of academic experts on bullying and cyberbullying, teachers, youth workers, and specialists in policy research.

## Limitations

This paper mainly focuses on legislation and government policy measures. The team has consulted a wide range of sources and materials, but there are still limitations in terms of the policies as well as countries reviewed.

During the study, there is no aligned and well known definition of bullying behaviours among the general public, which makes it difficult to identify bullying cases.

Furthermore, this research paper focuses on school bullying. While other delinquent behaviours, such as anti-social behaviours, are prohibited by criminal law, these behaviours will not be examined in this paper.

## 2. What is Bullying and Cyberbullying?

### Definition

Stakeholders in many countries have found it hard to agree on a definition of traditional bullying and cyberbullying. Over the years, scholars and researchers in Hong Kong have yet to achieve a consensus on the definition of bullying. However, it is important to keep in mind that victims' wellbeing, both physically and mentally, should always be put in the first place, which means the definition should always have a victim's perspective in it.

### Traditional bullying (a.k.a. school bullying)

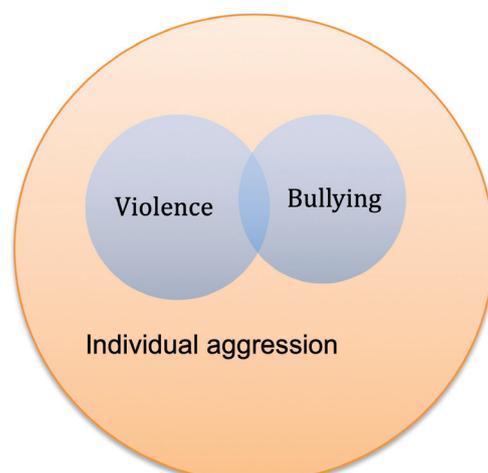
It was widely agreed that bullying research started in Scandinavia, where scholar Dan Olweus had one of the earliest publications on bullying issues among adolescents in early 1970s. Being the "pioneer in bullying research" and the creator of the *Olweus Bullying Prevention Programme*, Dan Olweus's definition on bullying has dominated the field for a long time, and the Olweus definition has been adopted by governments, schools and other stakeholders in Scandinavia and beyond.

Olweus defines bullying as such:

**"A person is bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other persons, and he or she has difficulty defending himself or herself".<sup>9</sup>**

He sees bullying as well as violence as a subset of individual aggression, so bullying behaviours that involve physical acts are counted as an overlap of these two subsets.<sup>10</sup>

Figure 1: Violence and bullying both as a subset of individual aggression





There are some elements that distinguish cyberbullying from traditional bullying. Firstly, cyberbullying will always include the use of electronic devices. Secondly, perpetrators can stay anonymous and indeed do in most cyberbullying cases.<sup>17</sup> It does not only make it challenging to identify the perpetrators, but also gives perpetrators a sense that they are free to say whatever they want, hence indirectly making cyberbullying involving verbal abuses potentially more abusive and dangerous. Thirdly, cyberbullying can grow to a massive scale rapidly and cannot be easily “shut down”. Information can easily be widely spread on the internet, making it almost impossible to remove or delete. Fourthly, the element of “power imbalance” takes on a different meaning in cyberbullying. Given the potentially limitless nature of witnesses of cyberbullying, Dooley, Pyzalski & Cross<sup>18</sup> raised that the power imbalance in cyberbullying might actually refer to the inability to get away from those behaviours, instead of the actual power imbalance between perpetrators and victims.

## Types of bullying

### Traditional bullying

In the report of PISA 2015, OECD categorised common traditional bullying behaviours into three types: physical bullying, verbal bullying and relational bullying.<sup>19</sup> The United Nation Educational, Scientific and Cultural Organisation (UNESCO) also grouped typical bullying behaviours into these three types.<sup>20</sup>

Examining bullying behaviours in the local context of Hong Kong through survey studies<sup>21</sup>, Dennis Wong identified four common types of bullying in Hong Kong.<sup>22</sup> Survey studies discovered that “extortion bullying” is also a common type of bullying behaviours in Hong Kong.<sup>23</sup>

Table 1: Common types of bullying behaviours in Hong Kong

Types of bullying	Examples of bullying behaviours
Physical bullying	Pushing, hitting, punching, kicking, destruction of property
Verbal bullying	Name-calling, insulting, teasing, mocking
Exclusive bullying (Relational bullying)	Excluding someone from groups, spreading rumours
Extortion bullying	Threatening, robbing others' property



### Case Study 1: Extortion bullying in Hong Kong

*The case of two secondary three students Chu and Wong<sup>24</sup>*

Wong, a secondary three student, threatened his schoolmate Chu to offer HKD\$680 as a birthday gift. Prior to that, Chu had already offered Wong HKD\$500.

As shown in the WhatsApp chat record between the two, Wong claimed that he threatened to beat Chu with his gang members, if Chu refused to offer the said amount of money.

Chu was afraid to be beaten and thus fulfilled Wong's demand without notifying the school and his parents.

*To be continued on Case Study 4*

### Cyberbullying

Cyberbullying behaviours can happen in many different forms, and different scholars might have different categorisations on the types of cyberbullying. Common types of cyberbullying vary from private threats to cruel public comments or spreading sexually explicit material.<sup>25</sup> According to Dennis Wong, cyberbullying behaviours can be grouped into two types: overt behaviour and relational behaviour.<sup>26</sup> For the purpose of this paper, we will adopt Wong's categorisation of cyberbullying behaviours.

Table 2: Common types of cyberbullying behaviours in Hong Kong

Types of cyberbullying behaviours	Examples of cyberbullying behaviours
Overt behaviours	Harassment, cyberstalking, sexting
Relational behaviours	Impersonation, denigration, outing/trickery, exclusion, "happy slapping"

Below is the detailed description of these behaviours<sup>27</sup>:



Table 2: Common types of cyberbullying behaviours in Hong Kong

Cyberbullying behaviours	Meaning
Harassment	sending multiple offensive messages repeatedly
Cyberstalking	repeatedly sending harmful messages such that the target would start to fear for his/ her safety and well-being
Impersonation	impersonating a target and posting materials that reflect badly on him/ her or interfere his/ her friendships
Denigration	spreading rumours about a target to interfere with his/ her friendships or damage his/ her reputation; posting or sending digitally altered photos about a target
Outing	publicly sharing potentially embarrassing personal communications that contain intimate personal data about a target
Trickery	intentionally tricking a target to communicate something embarrassing that will be disseminated to others or used to threaten the target
Exclusion	pointedly excluding a target from the buddy list of a group of students
Happy slapping	recording physical violence on a target by mobile phones and posting the video in cyberspace
Sexting	sending sexually explicit or suggestive images or videos by mobile phone to a target

### Case Study 2: Denigration and impersonation case in Hong Kong

*The Case of Leung, a winner of Speech Festival 2010<sup>28</sup>*

A video clip was first uploaded on a Facebook fan page and then widely spread on Facebook in January 2014. The video showed Leung's winning performance at the School Speech Festival in 2010. The netizens teased his exuberant speech skills and took screenshots of the video clip to play jokes on Leung (denigration). A few netizens imitated Leung's performance and uploaded these video clips to YouTube.

A fake Facebook fan page was created later in the name of Leung and the bullies uploaded a letter that was purportedly written by Leung describing his feelings in response to cyberbullying to that fan page (impersonation). Through a local newspaper, Leung declared that he did not create the fan page and issue the letter. He pointed out that the letter made him seem aggressive, which damaged his reputation.



For the purposes of this paper, “bullying” refers to repeated, negative and unwanted behaviours from bully(s) towards victim(s), among whom there exists a power imbalance. “Cyberbullying” refers to repeated behaviours on electronic or digital media that are intended to inflict harm or discomfort on others. While “bullying” and “cyberbullying” carry slight differences in meanings, where these differences are not pertinent to policy discussions in this paper, the term “bullying” will be used to cover both bullying and cyberbullying.



### 3. Bullying in Hong Kong and Its Harms

In this section, we will provide an overview of the prevalence of traditional bullying and cyberbullying in Hong Kong, and the harmful effects of these behaviours on individuals and the society. Statistics show that bullying and cyberbullying have been prevalent in Hong Kong, especially among secondary school youth. As will be discussed, bullying and cyberbullying do not only harm victims; they also negatively affect bullies and bystanders, and can contribute to school violence and violence on a wider society level. Given its serious consequences, there is a case for improving Hong Kong's policy response to this matter, and suggestions will be given in later chapters.

#### Prevalence of traditional bullying

In 2017, the OECD published the results of the PISA survey conducted in 2015.<sup>29</sup> Part of the assessment included an investigation of the prevalence of bullying. The survey asked students in Hong Kong how often they experienced three kinds of bullying, namely relational bullying, verbal bullying and physical bullying. Results showed that 32% of Hong Kong students reported being bullied at least "a few times a month", which is the highest figure among surveyed countries. Among different kinds of bullying cases, 26.1% have been mocked and laughed before, 10% have experienced physical harm, and 9.5% have been hit or pushed around by other students. Comparing with other surveyed countries, Hong Kong has an exceptionally high percentage in the 3 items mentioned above.

In 2010, Dennis Wong and Yuen Chi Man compared Hong Kong's statistics on school bullying with Guangzhou and Macau.<sup>30</sup> Research findings showed that there is no significant difference between the bullying situation of Hong Kong in 2010 with the two other cities. However, Hong Kong's school bullying situation has become worse since 2003 when comparing the statistics in 2003 and 2008. It showed that there is an increasing trend in all four types of school bullying, namely physical bullying, verbal bullying, exclusive bullying and extortion bullying.

In the same year, the Department of Social Work in the Chinese University of Hong Kong published a report, commissioned by the Hong Kong Family Welfare Society (HKFWS), on school violence.<sup>31</sup> Over 1,800 students ranged from Secondary 1 to 7 participated in the study. Research findings showed that 70.8% of students have experienced school violence and 52.7% admitted that they have participated in school violence. The most common type of school violence is verbal violence, which 60.0% and 42.7% of respondents have experienced and participated in, respectively.



Another research in 2002 conducted by Dennis Wong examined the situation of school bullying from the teachers' perspective.<sup>32</sup> The survey collected 905 successful samples, of which 2% are social workers and 98% are teachers. Results showed that 77% of respondents had at least once received reports of school bullying from victims. When asked if they have "never witnessed/handled", "witnessed/handled 1-5 cases", or "witnessed/handled at least six cases" the four types of bullying behaviours mentioned above, 38% of surveyed teachers stated that they witnessed at least six cases of verbal bullying during the period of six months before the study and 13.7% handled at least six cases of verbal bullying during the same period. It showed that verbal bullying is the most common type of bullying among the four types.

According to the Legislative Council's record, the number of cases of school bullying has been fluctuating. Every year the EDB conducts questionnaire surveys focusing on discipline and counselling cases among public primary and secondary schools. From the surveys, the number of school bullying incidents have decreased from 257 cases in 2012/13 to 124 cases in 2016/17<sup>33</sup>, and raised to 202 cases in 2017/18.<sup>34</sup>

While existing researches and studies do not present uniform figures on the rate of school bullying in Hong Kong, there seems to be a consensus that bullying is prevalent among schools and verbal bullying is the most common type of bullying in Hong Kong. It is also worth noting that statistics/studies on bullying among post-secondary students are currently missing in Hong Kong. It might be worthwhile for scholars/ organisations to extend their scope of research beyond secondary schools, since school bullying for elder youth can also be a serious issue on the wellbeing of youth.

### Prevalence of cyberbullying

Recently, cyberbullying has become the new focus of bullying research. Since 2009, local scholars and researchers have been conducting surveys to learn about the current status of cyberbullying among children, adolescents and youths in Hong Kong.

In 2013, the HKFWS issued a questionnaire study report in relation to cyberbullying in Hong Kong.<sup>35</sup> The target population was students of primary 4 to secondary 3, with a sample size of 1,500 students. Percentages of victimisation and perpetration were 30.8% and 18.1% respectively. The most common form of cyberbullying was name-calling, insults and teasing. The study also indicated a significant positive correlation between victimisation and depression.



Another research conducted by Chen Ji-Kang in 2010 showed that 17.8% of Hong Kong secondary students admitted cyberbullying others, and 30.9% reported experiencing victimisation. Both groups, the bullies and the victims, reported that being cursed, insulted or humiliated were the most common form of cyberbullying behaviours.<sup>36</sup>

The Hong Kong Federation of Youth Groups issued a study report on cyberbullying in Hong Kong.<sup>37</sup> In the part of questionnaire study, 2,981 students of secondary 1 to 4 and secondary 6 were interviewed. The percentages of victimisation and perpetration in 2009 were 30.2% and 22.0% respectively. It is worth noting that 11 victims (1.2%) reported that they would like to end their lives.

In 2009, the Department of Social Work of the Chinese University of Hong Kong was commissioned by the HKFWS to conduct a questionnaire study about the status of cyberbullying in Hong Kong from December 2009 to February 2010.<sup>38</sup> The study report was issued in July 2010. The target population was students of secondary 1 to 7, and the sample size was 1,800 students. Percentages of victimisation and perpetration were 30.9% and 17.8% respectively. The most common form of victimisation was name-calling, insults and teasing. The study found that the most adverse impact of cyberbullying was depression.

## **Harmful effects of bullying and cyberbullying**

Bullying and cyberbullying can lead to negative impacts on the physical and mental well-being of the victims, bullies and even bystanders. It can also contribute to violence in schools and in the society in the long term.

### **On victims**

When bullying incidents occur, victims may not only suffer from physical harm but will also have a higher risk of being depressed, feeling stressed, having anxiety or a lower self-esteem in the long term, or even having suicidal thoughts.<sup>39</sup> Similar mental health risks exist for victims of cyberbullying specifically.<sup>40</sup>

A study found that the percentages of suicidal ideation and suicide attempt were significantly higher among youths who had been involved in bullying to various degrees.<sup>41</sup>



Table 5: Suicidal ideation and attempt of youth involved in bullying

	% of suicidal ideation	% of suicide attempt
Uninvolved youth	6.3	1.2
Moderate involved youth	11.4	2.3
Frequent perpetrator	16.5	5.0
Frequent victim	21.8	6.5
Frequent perpetrator-victim	26.1	11.1

A study compared the negative outcomes of cyberbullying between participants and non-participants.<sup>42</sup> It found that victims of cyberbullying were 2.35 times more likely to self-harm; 2.10 times more likely to exhibit suicidal behaviours; 2.57 times more likely to attempt suicide; and 2.15 times more likely to have suicidal thoughts than non-victims. Comparing with non-perpetrators of cyberbullying, perpetrators were 1.21 times more likely to exhibit suicidal behaviours and 1.23 times more likely to experience suicidal ideation.

#### On victims and bullies alike

Furthermore, bullying behaviours will also have a negative impact on students' academic outcomes and even lead to social and economic costs.<sup>43</sup> Some studies showed that both the victims and the bullies displayed poorer performance in school and concluded that students constantly exposed to violence in their school environments will achieve lower educational performance.<sup>44</sup> Studies also found that students involved in bullying behaviours are more likely to display antisocial and criminal behaviour in the future.<sup>45</sup> In particular, a study found that there was a significantly positive relationship between bullying perpetration and later participation in criminal offence.<sup>46</sup> Perpetrators of bullying were 1.89 times more likely to become offenders than non-perpetrators.

Both perpetrators and victims are at risk of being unable to develop proper interpersonal relationships, as well as lacking sympathy for those around them.<sup>47</sup>

#### On bystanders

Bystanders are also affected because they may worry about their own safety, and this may undermine their wellbeing and school life satisfaction. As such, bullying is a problem that could negatively impact a school in far-reaching ways.



### On the school environment (vicious cycle of traditional bullying and cyberbullying)

In many cases, incidents do not involve only one type of bullying behaviours, and the role of perpetrators and victims might even switch. In some incidents, a seriously injured victim might actually be the original perpetrator, who was hurt by the revenge actions of the original victim of bullying behaviours.<sup>48</sup> Bullying can be a forerunner of school violence and serious offence.

Dennis Wong described this phenomenon as a vicious cycle of bullying, referring to the recurring and revengeful nature of bullying.<sup>49</sup> In the modern age, the vicious cycle might even be more complicated, as cyberbullying behaviours might be involved and be used as a means of revenge.

#### **Case Study 3: Vicious cycle of traditional bullying and cyberbullying**

##### *The case of Heung, a secondary one student<sup>50</sup>*

A few secondary one students of a secondary school in Kwun Tong bullied their classmate Heung. They had slammed the classroom door shut deliberately when Heung entered the classroom. HEUNG's fingers were injured. As shown in the video clip, a teacher entered classroom right after Heung but did not take any actions. Meanwhile, bystanders gathered and yelled but did not help.

Wong, one of the perpetrators, then created a group on Facebook. They posted Heung's personal photos and shared a video clip that recorded the bullying (happy slapping). Heung thus suffered from both traditional and cyberbullying. Ng, the principal of the school, denied that it was school bullying, and insisted that it was just an accident. Ng refused to report the matter to the Police.

The matter was rapidly spread in a local forum. Netizens were unsatisfied about the bullying and also the responses and actions by the school. They started to disclose the personal data of the two perpetrators (outing). The perpetrators thus became the victims of cyberbullying. The matter was widely reported by local media, but no further action was taken by any parties.



#### **Case Study 4: Mixture of traditional bullying and cyberbullying**

*The case of two secondary three students Chu and Wong<sup>51</sup> (Con't)*

Following the case of extortion bullying in Case Study 1, a schoolmate was unsatisfied with the bullying of Chu and thus posted the details of the incident and the perpetrator's identity to a local online forum. Wong's (the perpetrator) personal data, including Facebook account, details of his family members and his personal photos were revealed to the public without his consent.

Wong felt threatened due to the leakage of personal data. He then asked for Chu's forgiveness via a phone call and offered to return the money (HKD\$680) to Chu.

When the school and their parents finally learnt about the incident, the Vice Principal of the school claimed that the school would notify the Police later about the matter. In response to inquiries from a local newspaper, the Police replied that there was no report from the school.



## 4. Existing legislations and policies

Considering the different approaches in the Government's toolbox to address public health issues, law and policy often play a key role. It is also common for governments to use the law to address violence by or against youth. This section will review existing legislations and policies addressing school bullying and cyberbullying in Hong Kong.

### Legislations

There is no specific legislation in Hong Kong addressing school bullying and cyberbullying. However, some legislative provisions may still be able to address these two types of behaviours.

#### Traditional bullying

There is no specific statute on bullying. Physical bullying and extortion bullying often involve criminal offences and are addressed by relevant legislations, while verbal and exclusive bullying are more often not criminal offences. Youth CLIC (Community Legal Information Centre) of the University of Hong Kong has provided a useful summary on offences that might be applicable to traditional bullying behaviours.<sup>52</sup> The following table lists out relevant offences and their linkage with common bullying behaviours mentioned in Chapter 2.

Table 6: Offences related to traditional bullying behaviours

Bullying behaviour(s)	Possible criminal offence(s)
<b>Physical bullying:</b> pushing, hitting, punching, kicking, destruction of property	Assault occasioning actual bodily harm <sup>53</sup> ; Wounding and inflicting grievous bodily harm with intent <sup>54</sup> ; Unlawful and malicious wounding or inflicting grievous bodily harm <sup>55</sup> ; Fighting in public <sup>56</sup> ; Possession of offensive weapon in public place <sup>57</sup> ; Possession of offensive weapon with intent <sup>58</sup>
<b>Extortion bullying:</b> threatening, robbing other's property	Criminal intimidation <sup>59</sup> ; Blackmail <sup>60</sup> ; Robbery <sup>61</sup>
<b>Verbal bullying</b>	Claiming to be a member of a triad society <sup>62</sup>



### **Case study 5: Criminal Offences of Common Assault & Assault Occasioning Actual Bodily Harm**

#### *The case of a secondary 5 student<sup>63</sup>*

A 15 years old male student was violently attacked by his classmates repeatedly from November to December 2003. The first attack took place on 21 November 2003 and since then the victim was being bullied repeatedly till 1 December 2003, when he was injured and found bleeding by teachers. The school decided to call the police after a brief investigation.

Later, a few video clips emerged on the internet. These clips showed that the victim was being kicked and punched all over his body and head, and even being hit by chairs. Those video clips went viral over the internet and received public attention. Some blamed the school for its slow response on the case.

The incidents ended with the 11 bullies prosecuted, of which some were placed on probation and some were sentenced to rehabilitation centres or detention centres. While the school principal at that time also resigned when the case was closed<sup>64</sup>, it was still widely remembered as a shocking case of physical bullying which eventually involved the Police and criminal prosecution.

### **Cyberbullying**

Compared to traditional bullying, the law is even more ill-equipped to deal with cyberbullying. There is no specific legislation on cyberbullying. Similar to traditional bullying behaviours, some cyberbullying behaviours may fall within the ambit of criminal laws (see table below) while some might not be covered, such as exclusion and happy slapping.

Table 5: Suicidal ideation and attempt of youth involved in bullying<sup>65</sup>

Cyberbullying behaviour(s)	Possible criminal offence(s)
Harassment	Offensive telephone calls <sup>66</sup> ; Possession of child pornography <sup>67</sup>
Denigration; Outing (including Trickery); Sexting	Procuring unlawful sexual acts by threats <sup>68</sup> ; Blackmail <sup>69</sup> ; Possession of child pornography
Cyberstalking	Criminal intimidation <sup>70</sup> ; Procuring unlawful sexual acts by threats; Blackmail



### **Case study 6: Criminal Offences of Harassment and Cyberstalking**

*HKSAR v Ko Kam-fai (CACCC 83/2001)*<sup>71</sup>

Ko pleaded guilty to the charges of criminal intimidation and criminal damage (Sections 24 and 60 of the Crimes Ordinance) between September 1998 and May 1999. Fung, the Senior Inspector of the Police, stated that this was the first ever criminal offence of cyber-stalking that the Police had cracked down.

Apart from sending incessant emails to a female student A, Ko hacked into the personal computer of another female student B. More seriously, KO threatened to rape the two victims and kept sending indecent and obscene materials to them (cyber-stalking). The two victims had been intimidated, harassed, humiliated, and frightened for a long period of time by those horrible experiences and offensive photos.

On the other hand, Ko sent a great number of sexual emails to more than 20 staff as well as the students in the University of Hong Kong (harassment).

### **Policies, guidelines and informational materials**

Hong Kong has long adopted a School-based Management (SBM) approach in the education system. It decentralises the process of decision-making from EDB to schools, including personnel procedures, financial matters and the design and delivery of curriculum. The idea behind is to provide freedom to the heads of school to develop their own policies and measures to fulfil individual school's needs.<sup>72</sup>

#### **School Administration Guide**

As a general guideline for school management, the EDB has provided a School Administration Guide to schools, majorly applicable to government-aided schools. The guide provides advice and directions to school management on various matters, including bullying.<sup>73</sup> Together with other resource packages also provided by EDB, they serve as the major official guidelines from the government to help schools with the development of their own school policies when dealing with bullying cases.



The School Administration Guide recommended schools to adopt a “Whole School Approach” when formulating anti-bullying strategies. It reminded schools to include four principles when dealing with school bullying:

1. Clear stance on “Zero Tolerance”;
2. Reporting mechanism and handling procedures;
3. High transparency monitoring; and
4. Handling each bullying incident with a proactive and serious attitude.

### Other materials

While there are no specific policies or government bodies designed to prevent and respond to school violence and bullying, on the first school day in 2008, EDB issued a circular (“Creating Harmonious School”) to heads and teachers responsible for guidance and discipline matters of all primary, secondary and special schools, to encourage schools to create a harmonious environment and take positive measures to ensure school safety.<sup>74</sup>

The circular reaffirmed the Zero Tolerance policy on school bullying adopted by EDB. It referred schools to several guidelines and resource packages, to assist schools on “the implementation of a Whole School Approach to Guidance and Discipline and to create a harmonious school environment conducive to healthy development of students.”

Reference materials stated in the circular included the following three items:

1. “Whole School Approach to Guidance and Discipline”
2. Resource package on “Co-creating a Harmonious School”
3. Leaflet for parents on “Help your child develop a harmonious peer relationship in school”

Meanwhile the EDB website provides schools and parents with a number of resources for student guidance and discipline matters.<sup>75</sup> Materials related to school bullying are summarised in the following table, grouped by their functions.



Table 8: Anti-bullying materials provided by EDB

Functions	Items
Facilitate the implementation of the whole school approach (the WSA)/ anti-bullying policy	Whole School Approach to Guidance and Discipline  The “Co-creating a Harmonious School” and “Co-creating a Harmonious School – Stop bullying” resource packages
Provide teaching materials to educational staff	The “Co-creating a Harmonious School” and “Co-creating a Harmonious School – Stop bullying” resource packages  Self-control and Handling Conflict Teaching Materials  Cyberbullying Teaching Package ETV programmes
Raise awareness among students and parents	Peace Ambassador Training Manual  A set of posters, themed “Regarding Positive Behaviour”, “Prevent Bullying”, and “Social Relationship and Personal Growth”
Build the capacity of parents	“Some Tips on Parenting” leaflet  “Help your child develop a harmonious peer relationship in school” leaflet

### Facilitate the implementation of the WSA/anti-bullying policy

Under the SBM approach, school heads have great freedom to determine school policy, so one of the main roles of the EDB remains in providing adequate information via guidelines, handbooks and resource packages to schools, to build the capacity of teachers and schools on different issues. The EDB has been providing resources to build the capacity of teachers and schools on bullying matters and encourages schools to implement those measures. The following paragraphs briefly summarise the EDB’s works.

The concept of the WSA was first introduced in 1990 by EDB, with the guideline published in 1999, with regular updates since then. It serves as a practical handbook for schools, which listed out important information such as the principles, objectives and implementing details of WSA. It also provided a complete framework of an integrated guidance and discipline service and highlighted the importance of collaboration between the student guidance services of different schools.



The “Co-creating a Harmonious School” resource package and the “Co-creating a Harmonious School – Stop bullying” resource package is also provided by EDB to facilitate and help schools to create a harmonious school environment. Together they introduced the necessary steps for schools to establish a comprehensive anti-bullying policy and also equipped educational staff with the key concepts of school bullying, such as definitions, types and forms of bullying, analysis of bullying behaviour, types of bullies, characteristics of victims and the harmful effects of bullying.

#### **Provide teaching materials to educational staff**

The two resource packages mentioned above also provided schools with different kinds of teaching materials, ranging from scripts for drama education, samples for short speech for morning assembly, recommended flowchart for handling bullying incidents in schools, templates of incident record form, and tips on counselling bullies/ victims.

The “Self-control and Handling Conflict Teaching Materials” is another source of teaching material. It is a four-lesson plan, which outlines the objectives, targeted students, lesson duration and teaching points for each designed lesson. It focuses on building students’ capacity to control and handle conflict by themselves.

To cope with the alarming trend of cyberbullying activities, the Office of the Government Chief Information Officer (OGCIO) developed several resource packages, which are designed for students in primary, junior secondary and senior secondary students, respectively.<sup>76</sup> Each set of resource package includes three items: a user’s manual, a projects handbook and a CD-ROM with teaching materials.

#### **Raise awareness among students and parents**

As a follow-up to the “Co-creating a Harmonious School – Stop bullying” package, the Peace Ambassador Training Manual shares experiences on how to establish a “Peace Ambassador” programme and organise events. It lays out a sample programme consisting of 10 lessons, which can be modified to suit individual school’s needs.<sup>77</sup>

A set of ready-to-use posters were also provided by EDB to raise awareness of school bullying and creating a harmonious school. These posters cover topics ranging from self-control to bullying. It also serves an educational purpose as these posters have summarised some of the key concepts in bullying and advocate the right sense of value and morality such as respect for others.



On cyberbullying, it is OGCIO and the Privacy Commissioner for Personal Data (PCPD) which provided the major source of information to the general public. OGCIO's Cyber Security Information Portal provides useful information regarding cybersecurity.<sup>78</sup> On the other hand, the PCPD has published documents for youth, parents and teachers. Topics included the following: children privacy, basic concepts of cyberbullying, wise usage of computers and the internet, practical tips for parents and teachers, and social media.<sup>79</sup>

### **Build the capacity of parents**

The "Some Tips on Parenting" leaflet was published by EDB in 2009. It gives a general guidance to parents on how to handle various issues that are commonly faced by many. One section includes a suggested action plan for parents when their child is victim, bystander, or the bully, accordingly.<sup>80</sup>

Another leaflet "Helping Your Child Develop a Harmonious Peer Relationship in School" was also produced by EDB, which explains the basic concepts of bullying, such as the definition and signs of bullying, and the suggested actions to stop and prevent bullying.<sup>81</sup>

### **Programmes**

The Government funded a few anti-bullying programmes. One of them is Project C.A.R.E.: Children and Adolescents at Risk Education.<sup>82</sup> Starting from 2006, the first phase of the programme was sponsored by the Quality Education Fund and lasted for three years, till 2009. The programme targeted S1-S3 students and aimed to develop an anti-bullying prevention and intervention strategy in schools. The successful result of phase one eventually led to its second phase (2009-2011), which was also funded by the Quality Education Fund. It further expanded its scope of services to primary school students and aimed to reduce school violence.



## 5. Issues

Although the previous section outlines a list of relevant legislative provisions and policies in Hong Kong that address and govern bullying and cyberbullying incidents, there remains several outstanding issues in the overall anti-bullying efforts in Hong Kong that are worth mentioning, which are: (1) regulatory inadequacy; (2) Insufficient awareness; and (3) weak enforcement.

### 5.1. Regulatory inadequacy

There is no specific legislation on bullying or cyberbullying in Hong Kong. Various experts and scholars have suggested that a well-developed and enforced legislation is one of the important elements of a comprehensive response to bullying against adolescents and youth.<sup>83</sup> In Hong Kong, a lack of specific legislation on bullying and cyberbullying is arguably a contributing factor leading to the latter two issues. Firstly, there is no statutory definition of the two terms, leading to low or poor awareness. Secondly, there is no legal requirement for schools to report these incidents and set up a prevention programme. Together, these regulatory gaps severely undermine the effectiveness of our current anti-bullying work, despite the extensive guidelines and resource packages provided by the EDB. Without the support of legislation, those resources are not adequate to act as a comprehensive anti-bullying strategy.

That is not to say that there are no other factors that exacerbate the issue. For example, the lack of transparency in official bullying statistics have hindered public understanding, and the passivity of schools in reporting and handling bullying also exposes disincentives of actors in the system which can be hard to surmount. However, given the prevalence and harmful effects of bullying and cyberbullying, it is arguable that Hong Kong's laws have not provided an adequate response.

The lack of legislation is especially problematic as far as cyberbullying is concerned. The Personal Data (Privacy) Ordinance (PDPO) is sometimes applied to govern cyberbullying. However, the intention of the PDPO is to govern the collection and use of personal data.<sup>84</sup> For the PDPO to apply, a complaint must be filed by the victim who must successfully identify the perpetrator for the purpose.<sup>85</sup> Given the anonymous nature of cyberbullying, it would be difficult for the perpetrators to be identified.

More importantly, many cyberbullying incidents do not involve the unauthorised or unfair use of personal data, e.g., exclusion or "ignoring" cases, or cases in which the victim is not named and yet is identifiable (e.g., by nicknames), and these cases will not be captured by the PDPO.



Apart from the limitations mentioned above, there is also an exemption of “domestic purposes” under Section 52 of the PDPO which may be used by perpetrators as defence<sup>86</sup>. Section 52 concerns situations where personal data are held by an individual and concerned only with the management of personal, family or household affairs, or so held only for recreational purposes. Personal data that are obtained from Facebook accounts of common friends may also be exempted.<sup>87</sup>

## **5.2 Insufficient awareness**

Dennis Wong is of the view that the general public do not understand the harmful effects of bullying. Bullying behaviours are sometimes considered as “casual” by many adults, including parents and teachers, as they might encounter bullying previously as well. Thus they do not consider bullying carries serious consequences. They treat school bullying and even cyberbullying as a small conflict between peers and expect youth and adolescents to deal with the problems themselves.<sup>88</sup> Sometimes, bullying behaviours might be regarded as harmless jokes or “games” between young people. Teachers may not pay sufficient attention to those “minor aggressive behaviour”.

The lack of awareness can be attributed to two root causes: (1) the lack of a statutory definition, which is a barrier in the detection/reporting of bullying and cyberbullying; and (2) the lack of a compulsory school reporting mechanism, which has allowed schools to downplay the existence of bullying and cyberbullying. The lack of a compulsory school reporting mechanism is also a leading factor for the enforcement issue, and will be discussed further in the next section.

### **a. Lack of a statutory definition**

Bullying behaviours are not clearly defined in Hong Kong by law. The case below illustrates how a lack of definition can be problematic when stakeholders have different interpretations.



### **Case Study 7: Different interpretations among various stakeholders**

#### *The Case of Hong Kong University students*

In April 2017, two bullying incidents happened successively in the University of Hong Kong.

In the first incident, a male student, who was a candidate in the hall's council election, claimed that he was being harassed and intimidated by more than 20 students, with wax poured over his genital area. Only several days later, in the second incident, another male student was being hit in the face by the bully's genital, with more than two students holding the victim down.<sup>89</sup>

Disciplinary actions had been taken by the relevant halls as a consequence. Some students were ordered to leave the hall of residence, while some were temporarily suspended from living there. However, the spokesperson of the hall and student association only regarded the incidents as "ragging". The student association of the respective hall even claimed that the case "raised no concern about bullying" after their investigation.<sup>90</sup>

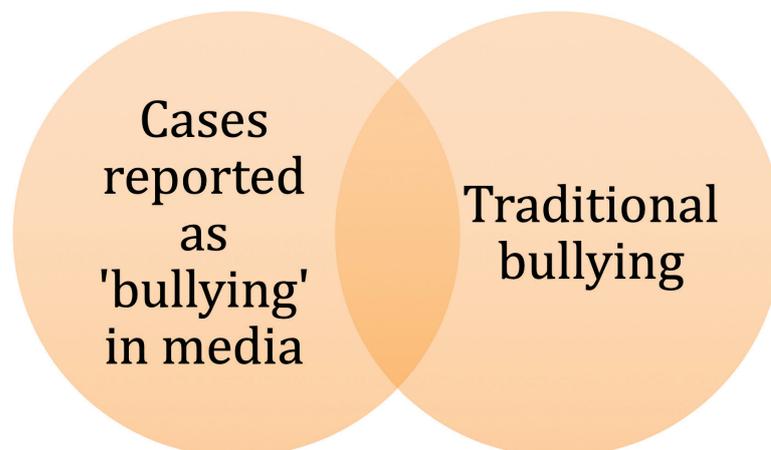
When being interviewed, Dennis Wong stated that both cases were clearly bullying, as they consisted of all the three key elements in bullying.<sup>91</sup> It raised questions on whether stakeholders know what constitutes bullying which is necessary for them to take action when these incidents occur.

The absence of a definition will lead to a failure to detect bullying cases, especially those do not lead to criminal offence, such as verbal bullying, exclusive bullying or some types of cyberbullying.

On the other hand, there are cases that media and the general public misunderstood school violence cases and categorised them as "school bullying". For example, some criminal cases that involved youth gangs might also be labelled as "school bullying" in printed media.<sup>92</sup>

As mentioned in the earlier chapter, bullying is regarded as behaviours that consists three elements: (1) unwanted and negative actions; (2) repeated behaviours; and (3) power imbalance. While bullying behaviours and violence can overlap sometimes, especially in physical bullying cases, there are other kinds of bullying behaviours that are not regarded as bullying, such as verbal bullying or exclusion; and there are also violence behaviours that do not necessarily involve bullying elements but have been labelled as "bullying" in media.

Figure 2: Awareness issues



A clear statutory definition of bullying can outline the scope of bullying behaviours for stakeholders so that they can detect, report and take necessary enforcement actions. A definition can also offer a unified vision for the wider society, which will be the groundwork of policy evaluation and policy making, and eventually lead to a comprehensive and effective response to the issue.

### **5.3 Weak enforcement**

Some may argue that we do not need a specific legislation dealing with bullying as the EDB has already provided guidance on these issues. However, it must be noted that current guidelines do not obligate schools to report bullying cases. The absence of obligation has led to under-reporting by schools.

The burden is then on government authorities to take proactive enforcement actions, but this is inherently very difficult. Further, a lack of coordination among government departments has led to a rather fragmented and ineffective approach in dealing with bullying and cyberbullying.

#### **a. No obligation for school to report and set up prevention programmes**

Although every school is asked to submit statistics on bullying each year to EDB<sup>93</sup>, currently, the availability of data and evidence depends solely on the self-report of students and schools.

While children might hesitate to report bullying that happened to or among them, school heads might also view bullying as a taboo, as it is harmful to the reputation of the school, and deny that bullying incidents happened in their schools.



Meanwhile, only bullying cases that involve criminal, injuries or death, or other special cases receive media coverage. Other “minor” cases will largely go unnoticed. This disparity in media coverage have also contributed to the misunderstanding and lack of awareness of bullying in the society.

There are reported incidents in which school officials opted to deny any bullying incidents in their schools and avoided to talk about it at school or gave minimal response when dealing with those incidents. As it is not a statutory responsibility for schools to actively report bullying incidents, some schools might refuse to inform the public or even the parents. Thus, it remains questionable to what extent a self-report mechanism allows the HK Government to have a comprehensive understanding about the actual status of bullying.

### **Case Study 8: The existence and potential danger of bullying behaviours went unnoticed**

#### *The case of Kei-kei, a primary 5 student<sup>94</sup>*

Kei-kei, a primary five student, fell down from the fifth floor of a building in school and died in December 2013. Kei-kei was a quiet girl and her academic results were not that good. As her mother said, Kei-kei was assigned to a special class because of her inadequate learning abilities. Kei-kei was punished by cancelling her break time and recording her serious demerits as she always forgot to submit her homework.

Kei-kei was always teased for her poor academic results. Kei-kei once told her mother that her classmates mocked her as she did not understand simple English. Prior to her death, Kei-kei was repeatedly teased by her classmates as she failed the mathematics test.

In November 2013, Kei-kei lost her water bottle. It was known later that the water bottle was lost when three classmates dumped all belongings from her school bag on the school bus. Her father complained to the school about this, but school staff only asked the bullies to write a letter of apology to Kei-kei.

Kei-kei also complained about her classmates being naughty and noisy, and that they disturbed her study. Her mother requested Tam, the head teacher of the class, to transfer Kei-kei to other class.

On 9th December 2013, Kei-kei was found lying motionless on the school playground. She fell down from the fifth floor of the school building and passed away on the same day.



During the Coroners' Court proceeding, Tam admitted that he did not follow up on Kei-kei's mother's request for class transfer. Further, he did not notice the bullying behaviours happened earlier on the school bus and did not think that was contributing to Kei-kei's suicide. Tam did not search for Kei-kei when she was not in the classroom and only noticed that Kei-kei fell down when the lesson ended as he was returning to the office.

How the school handled the incident was another focus of the proceeding. When the staff members learnt that Kei-kei fell down in the playground, they decided not to report the matter to the Police but called the Hong Kong St. John Ambulance Brigade instead. It was arguable that Kei-kei missed the best opportunity for treatment. Although the four staff members escaped criminal liabilities, their testimonies were referred to the Police for further investigation as to whether they made false testimony during the proceedings.

### **Case Study 9: School claimed to have "more urgent matters" to deal with**

*The case of Hin, a primary one student<sup>95</sup>*

In November 2017, a case of school bullying from a primary school was reported by the media. A primary 1 student, Hin, was bullied by two classmates by having a pencil eraser forced into his ear.

The boy also claimed that others had slapped his face and used a pencil to poke his right ear. The boy's mother added that his child had been bullied by classmates since the start of the school term, and she had filed six complaints since then. However, the school always claimed that there were no signs of bullying.<sup>96</sup>

The school headmistress later explained that the school had "more urgent matters" to deal with in response to the initial complaints and said that there were "no previous signs" that Hin was being bullied before the injury.



It is also worth noting that schools are not required to set up a prevention programme and a standard handling procedure for bullying or cyberbullying now. The EDB has provided various guidelines and suggestions regarding the establishment of prevention programmes and handling procedure at the school level. However, there is no obligation for schools to impose such programmes, which weakens the effectiveness of those guidelines and suggestions. When schools are considering whether to establish an anti-bullying programme, capacity is one of the major concerns. School management and teachers usually prioritise teaching test-relevant knowledge, but not wellbeing issues or the development of life skills and ethics through moral and life education.

### **b. Lack of coordination among government departments**

Currently, different government departments and bureaux are implementing separate measures to tackle bullying. The lack of coordination will lead to a rather ineffective and fragmented approach.

While the EDB has issued guidelines on how to handle bullying incidents to both teachers and parents, sometimes bullying cases might fall into Social Welfare Department's (SWD) responsibilities, when those cases involved child abuse elements. As for bullying incidents that happened in a school environment, the EDB will decide whether to set up a special investigation into the matter. However, if the case potentially involves a criminal offence, victims and parents will need to seek help from the Police on their own initiative. In some cases, victims and their parents have expressed their feelings of helplessness, that they do not know where to go when assistance is needed.

As for cyberbullying, various government departments are involved. Apart from EDB, the OGCIO and the PCPD all have roles in governing and addressing cyberbullying.<sup>97</sup>

To further complicate the issue, recall the vicious cycle of bullying and cyberbullying. One case may involve both harmful behaviours, rendering all of the above government actors potentially responsible, which can be very confusing for victims and their parents.



The overlapping roles of different authorities require a high-level coordination to work together effectively and efficiently. However, there is no such coordinating body at the moment, which implies that these authorities are now acting in silos when dealing with bullying and cyberbullying. In the case of Heung (case study 3)<sup>98</sup>, even though the video clip of the incident revealed that there was bullying and potentially criminal behaviour, EDB did not report the matter to the Police and it is unclear whether EDB sought clarification from the Police in this respect. One can argue that if there had been more cross-departmental communication, the outcome of the case might have been different.

Further, without a clear description of the responsibilities of different authorities and no legislation on the procedures of filing a complaint, it is difficult for victims or their parents to efficiently seek redress. They may not know whom to report bullying or cyberbullying incidents. Taking the case of Chu as an example, Chu's parents could only complain about the matter to the school while there is no legislative power to force the school to investigate into the matter, let alone providing a formal report to parents and allowing further complaints to the police if parents are not satisfied with the results of the school's investigation. This problem can also be seen in the previous case of Kei-kei (case study 8).

### **c. No obligation for internet service providers to remove cyberbullying content**

Currently no law enforcement agency, not even the PCPD, is empowered to direct online forum providers and web page operators to remove contents that constitute cyberbullying, given that those parties are not defined as data users under Sections 2(1) and 2(12) of the PDPO.<sup>99</sup> It means that the materials that cause harm to the victim may not be ordered to be removed from the Internet.



## 6. Recommendations

In this section, we will, based on the issues identified above, give recommendations on how the Hong Kong Government can do more to tackle traditional bullying and cyberbullying more effectively, with reference to overseas experiences.

A supportive legal and policy framework is essential for stakeholders to work together effectively and respond to bullying and cyberbullying. Even though there are existing laws and efforts from different government departments to tackle these two issues, we believe that the effectiveness of anti-bullying work will be undermined without the support of a specific legislation against bullying and/or cyberbullying. Therefore, we propose introducing a specific legislation on bullying and cyberbullying (**Anti-Bullying Law**). For ease of reference, we will use “Anti-bullying Law” to refer to a legislation that addresses both bullying and cyberbullying, and the same applies to the proposed “Anti-Bullying Working Group” which will be discussed below.

Before going on to discuss our recommendations to the Government to work toward an Anti-Bullying Law, the following questions should first be addressed: why do we need a specific legislation? How can it resolve the aforementioned issues of low and poor awareness and ineffective enforcement?

### a. Why do we need a specific legislation?

Most developed countries have an anti-bullying law.<sup>100</sup> Various studies have suggested that specific legislation is one of the necessary elements for a comprehensive and effective anti-bullying strategy.<sup>101</sup> The United Nations (UN) also emphasised the importance of a specific legislation to protect children against violence, stating that it is an “essential building block of a strong national child protection system”.<sup>102</sup>

Take the United States as an example, in 2010, the US Department of Education identified a statement of scope with a specific definition of bullying as a recommended component for state and local laws on bullying.<sup>103</sup> As of 2012, 44 states have a statutory definition of bullying behaviours.<sup>104</sup>

A legislation that clearly defines bullying and cyberbullying can align all stakeholders in their understanding of the matter, including schools, teachers, parents and also the general public. Legislation can also strengthen enforcement in the sense of imposing obligations on relevant stakeholders for them to take action whenever bullying or cyberbullying is detected, and not leave it to their discretion.



Beyond awareness, detection and enforcement, legislation goes a long way in fostering an anti-bullying culture in Hong Kong. An anti-bullying legislation can send a clear message to the society regarding the Government's stance on bullying behaviours. It establishes the foundation for best practise sharing and capacity building.<sup>105</sup>

## **b. How can a specific legislation resolve the aforementioned issues?**

As mentioned in the previous sections, existing problems in Hong Kong's anti-bullying work are mainly low awareness and weak enforcement. We believe that an anti-bullying law can simultaneously address awareness and enforcement issues.

Despite the fact that EDB is providing guidelines and training for schools and teachers to set up prevention programmes and handle bullying incidents, low awareness and therefore weak enforcement (due to low detection and reporting rate) are restricting the impact of these resources. Without heightened awareness of the existence and the potential dangers of bullying, and an obligation on schools to act accordingly, these resources will not be put to best use in helping to tackle bullying.

Hong Kong is no stranger to legislations that regulate and discipline organisations or bodies in a particular industry or field to protect public safety/interest. A similar approach can be found in other industries. For example, the Estate Agents Authority (EAA), established under the Estate Agents Ordinance (Cap. 511)<sup>106</sup> is granted the statutory power in enforcing regulations, licensing, and disciplinary actions against real estate agents to protect consumers' interest.

Three elements are especially important when considering an Anti-Bullying Law: (1) a statutory definition of both traditional bullying and cyberbullying, which can raise the awareness of all stakeholders; (2) an obligation on schools to set up prevention programmes and follow a standard handling procedure, which can guarantee the implementation of EDB's guidelines; and (3) a redress/remedies mechanism. More details will be discussed in the next section.

With that being said, it is also important for the government to provide adequate support and funding for schools to impose anti-bullying measures, both on the prevention and intervention side. At the end of the day, only a strategy that consists of legislation and policy support can provide a comprehensive response to bullying.



## **6.1. Short-term recommendation: the establishment of the Anti-Bullying Working Group**

The Hong Kong Government adopts the approach of evidence-based policy making. Thus, it is important for government, policy makers and other stakeholders to have a better understanding of the current situation. It should designate an authorised body to gather evidence and pick up school bullying issues.

Set up as a non-statutory body to advise the Government on the overall development of education, the Education Commission (EC) can be a suitable candidate to take up the duties. Since 1984, they have been providing advice to the Government on a wide range of education-related issues, assisting the Government to implement initiatives, and enlightening the public on topics related to education through their close liaison with the education sector.<sup>107</sup> To step up in the school bullying matters, it can set up a special working group to review the existing anti-bullying policies and act accordingly.

The Anti-Bullying Working Group can perform three main functions: (1) to raise public awareness on school bullying; (2) to coordinate data collection, and consult stakeholders on bullying and cyberbullying; (3) to review current legislations and policy measures; and (4) to encourage anti-bullying research. It can then submit a report to the Government, to provide recommendations on the need for and feasibility of an Anti-Bullying Law, and on other supporting policies.

### **a. Raise public awareness on school bullying**

As mentioned in the previous chapter, people sometimes overlook the existence and seriousness of bullying behaviours. It is important to enhance the awareness of the public, especially teachers and parents, on school bullying in Hong Kong. Before Hong Kong can have an anti-bullying law with statutory definitions on both traditional bullying and cyberbullying, the Anti-Bullying Working Group can implement various measures to help raise the awareness of bullying in Hong Kong. Some overseas practices are shown below.



In USA, there is a one-stop web portal for bullying issues, called StopBullying.gov. It coordinates with different government agencies and the Bullying Prevention Steering Committee, to provide useful information on bullying matters.

Content in the website is mainly provided by the Department of Education, Department of Health and Human Services and the Department of Justice. It includes various topics, such as the definitions of bullying and cyberbullying, the role of different stakeholders, prevention guidelines to teachers and parents, and also a summary of policies and laws in different states.

StopBullying.gov can also be found on social media, on Facebook and Twitter.<sup>108</sup>

## **b. Coordinate data collection**

Quality statistics on the extent of bullying and cyberbullying are essential for constructive public discussions. A lack of regular official data on bullying and cyberbullying behaviours makes it difficult for the government, legislators, policymakers to further formulate evidence-based anti-bullying policies, as they cannot grasp a clear picture of the prevalence of bullying and cyberbullying in Hong Kong and are not able to evaluate the current measures and resources in a scientific manner. In the past, the Government had occasionally released statistics on bullying upon enquiry by a member of the legislative council.<sup>109</sup> However, as have been shown in previous chapters, such statistics do not provide a comprehensive and accurate picture of the prevalence of bullying and cyberbullying in Hong Kong.

To improve the data collection progress, the Anti-Bullying Working Group can adopt a bottom-up approach in addition to the existing top-down approach. It means that the working group can coordinate various programmes undertaken by different departments and initiate student surveys directly. These can provide different perspectives regarding school bullying. By using both top-down (i.e. survey filled by school administration) and bottom-up approach, the data and statistics on school bullying will become more comprehensive and accurate. The following examples demonstrate how the US and Norway adopt a similar approach on data collection.



In the United States, the National Education Statistics Centre (the Centre) of Education Department has taken up the role to collect bullying statistics.

Sponsored by Department of Justice and Bureau of Justice Statistics and provided with information by Census Bureau, the Centre has set up the School Crime Supplement (SCS) Survey<sup>110</sup> and has been collecting information about the victimisations and perceptions of bullying behaviours from the reports of students.

The SCS survey has been conducted every two years from 1999 to the present, with the target population of those who were aged 12 to 18 and enrolled in grade 6 to 12 of public and private elementary to high schools. Particularly, in 2015<sup>111</sup>, the sample size was 4,767 and “fighting, bullying, and hate-related behaviours” are one of the topics covered in the survey.

Founded in June 2004, Norwegian Directorate for Education and Training (Udir)<sup>112</sup> has become the agency under the Ministry of Education and Research responsible for the administration of kindergartens, primary and secondary schools.<sup>113</sup>

Udir has published an annual report entitled The Education Mirror: Facts and Analysis of Kindergarten, Primary and Secondary Education in Norway, giving an up-to-date picture of figures and research on key issues surrounding education.

From the first annual report issued by Udir in 2005, containing a questionnaire study among pupils, statistics of bullying, including the rate of victimisation, has consistently formed a big part of the discussion in the chapter entitled Learning Environment.

### **c. Review current legislations and policies**

Prior to the new legislation, the Government needs to review current legislations for regulatory loopholes, particularly gaps related to cyberbullying, and the Anti-Bullying Working Group can also serve this function.



The working group can take a closer look on how the existing legislative and policy framework tackles bullying and cyberbullying, and identify potential challenges and gaps in the current approach. Chapter 5 has already mentioned some of the issues we have found. The committee will then provide recommendations on the outstanding issues.

The below case of New Zealand in the latter section (p.50) will serve as an example on how other countries tackle the gaps in their legislation, in its case regarding cyberbullying. While this simply serves as an example, as the exact recommendations in Hong Kong are subject to the Anti-Bullying Committee's findings, New Zealand demonstrates how legislation can fill loopholes by ordering the removal of harmful cyberbullying content and introducing penalties for a failure to do so.

#### **d. Encourage anti-bullying research**

In addition to the above work of data collection and current status review, the Government can provide research grants through the Anti-Bullying Working Group to encourage local anti-bullying research. It can facilitate and support research to inform anti-bullying policies and laws. The case below demonstrates how the Australian Government supports local research on anti-bullying matters.

*The Australian Government funded several research projects related to bullying to broaden their knowledge on the issue and inform policy-making. Funded projects include<sup>114</sup> :*

- a five-year study to evaluate and verify the effectiveness of anti-bullying programmes in schools. The project was led by a local university, together with the support of the National Health and Medical Research Council (NHMRC).*
- two studies on the issue of cyberbullying, again led by local universities. One study explored the prevalence and impact of cyberbullying; the other study investigated real life experiences of stakeholders, including victims, perpetrator, bystander, teacher and parent.*

### **6.2. Medium-term recommendation: stakeholders' and public consultation**

Based on the data collected and its review of existing legislations and policies, the Anti-Bullying Working Group will submit a report to the Government with recommendations on the need for and feasibility of an Anti-Bullying Law, and recommendations for other supporting policies.



The working group should invite stakeholders to give feedback on the report and engage in public consultations.

### **6.3. Long-term recommendation: establishment of an Anti-Bullying Law**

The above efforts of the Anti-Bullying Working Group will facilitate a better understanding of bullying and cyberbullying among the Government and the community as a whole. Using these discussions as a foundation, the society will be better placed to arrive at an appropriate policy response. Whether or not this entails a specific legislation is subject to public debate and consensus.

That said, based on our review, an Anti-Bullying Law will have the benefit of raising awareness, aligning understanding, and imposing more stringent obligations on stakeholders to take action against bullying and cyberbullying. It can also foster an anti-bullying culture in the society and lay the groundwork for best practices and capacity-building. Therefore, it is proposed that an Anti-Bullying Law should be set up in the long term.

It must be noted that having an anti-bullying law does not automatically entail criminalisation of all bullying behaviours (which might be too draconian). Some countries have resorted to administrative rules, enforced by an administrative body, to tackle bullying problems. Some examples include: The Committee for Counter-measures against School Violence in the Republic of Korea; and the Danish Centre for Education Environment in Denmark.

Based on our review of anti-bullying laws in overseas countries, there are three essential elements for consideration:

1. Definition of bullying and cyberbullying behaviours
2. Obligations/responsibilities of educational institutions
3. Redress/ remedies mechanisms for victims

The first two elements, definition of terms and obligations of education institutions, are particularly apt in Hong Kong in light of the issues mentioned. The latter element is innovative and potentially effective, but their suitability in the Hong Kong context requires further research and public deliberation, both of which should be led by the Anti-Bullying Working Group. The detailed provisions with overseas examples are listed below.



### 1. Definition of bullying and cyberbullying behaviours

A statutory law shall first include an accurate definition of bullying. It is recommended that the definition is aligned with the one widely agreed among researchers and scholars in Hong Kong and internationally. The differentiation among “bullying”, “harassment” and “racism” should be clearly defined. Instead of only a conceptual definition, some countries also include an operational definition which permits the related parties to enforce the law more effectively.

In Massachusetts, USA, *An Act Relative to Bullying in Schools* laid out a clear definition on bullying and cyberbullying<sup>115</sup>:

Definition of bullying: *“bullying means the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a target that:*

- (a) causes physical or emotional harm to the target or damage to the target’s property;*
- (b) places the target in reasonable fear of harm to himself or herself or damage to his or her property;*
- (c) creates a hostile environment at school for the target;*
- (d) infringes on the rights of the target at school; or*
- (e) materially and substantially disrupts the education process or the orderly operation of a school. Bullying shall include cyberbullying.”* – 603 CMR 49.03

Definition of cyberbullying: *“cyberbullying means bullying through the use of technology or any electronic communication, which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyberbullying shall also include:*

- (a) the creation of a web page or blog in which the creator assumes the identity of another person, or*
- (b) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions in 603 CMR 49.03: Bullying(a) through (e). Cyberbullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions in 603 CMR 49.03: Bullying(a) through (e).”* – 603 CMR 49.03



In the *Enhancing Online Safety Act 2015* of Australia, instead of defining cyberbullying, it laid down how Australian children can make complaints about cyber-bullying material, and how will the Commissioner may follow up with the complaints.

#### 18 Complaints about cyber-bullying material

*“(1) If an Australian child has reason to believe that he or she was or is the target of cyber-bullying material that has been, or is being, provided on a particular social media service or relevant electronic service, the child may make a complaint to the Commissioner about the matter.”*

#### 2. Obligations/responsibilities of educational institutions

Some countries clarify the role and responsibility of educational institutions on school bullying, both on setting up prevention programmes and following a standard handling procedure. However, adequate support and funding should be made available to educational institutions for undertaking the new responsibility.

On the prevention end, the law can require schools to take appropriate actions on anti-bullying. It should call for the development of a standard set of tools for regular assessment purpose to facilitate the formulation of an evidence-based and updated anti-bullying policy. Once those resources are well developed, relevant training should be provided to school staff, to ensure a successful delivery of services to prevent, identify and respond to bullying in schools.

On the intervention end, the law can state clearly that it is the responsibility of a school to report and track any bullying incidents. It might set up a standard procedure and guideline, to avoid any failure in the reporting mechanism.

In Ontario, Canada, the *Accepting Schools Act, 2012: An Act to amend the Education Act with respect to bullying and other matters* states the responsibilities of teachers and school. Some of their duties and responsibilities are quoted below.

#### Professional development programs, bullying and school climate

*“7.1 establish and provide annual professional development programs to educate teachers and other staff of the board about bullying prevention and strategies for promoting positive school climates”*

#### Programs, interventions and other supports, bullying

*“7.2 provide programs, interventions or other supports for pupils who have*

*been bullied, pupils who have witnessed incidents of bullying and pupils who have engaged in bullying, and the programs, interventions and other supports may be provided by social workers, psychologists or other professionals who have training in similar fields, as determined by the board"*

In the Republic of Korea, the Act on the *Prevention of and Countermeasures against Violence in Schools*<sup>116</sup> demands schools to reporting any bullying cases to the authority:

*'...when the head of a school at which school violence has occurred, or a teaching staff member of such school, intentionally reduces or hides the course or results of such violence in the course of reporting it, the superintendent of the competent office of education shall require the relevant disciplinary committee to pass a resolution on disciplinary measures against such head or teaching staff.'*

- Article 11(10)

### 3. Independent redress/remedies mechanisms

In some countries, either perpetrators or victims and their parents or guardians are given powers to file an appeal regarding the handling measures taken by the relevant personnel of educational institutions. After receiving an appeal, the authorised body/agency will then review it, make a decision and notify the appellant within a certain period of time. If the appellant is not satisfied with the decision, a further administrative appeal can be made to the said body.

In the Republic of Korea, *the Prevention of and Countermeasures against Violence in Schools*<sup>117</sup> ensures the victim's right of appeal in case of bullying:

*'...if a victim student or his/her guardian appeals measures that the head of a school has taken pursuant to Articles 16(1) and 17(1), he/ she shall file an appeal with the competent regional committee within 15 days from the date such measures have been taken.'* - Article 17-2(1)

*'...upon receipt of an appeal filed under Article 17-2(1), the competent regional committee shall review such appeal, make a decision, and shall notify the appellant of such decision within 30 days.'* - Article 17-2(3)



*'...an appellant dissatisfied with a decision made under Article 17-2(3) may further file an administrative appeal within 60 days from the date he/ she is notified of such decision.'* - Article 17-2(4)

Furthermore, remedies in law provides victims the right to institute civil proceedings or request protection orders, for example, separating the victims and bullies temporarily, banning the use of electronic devices involved in cyberbullying, and requesting involved electronic communication service providers to remove the contents about cyberbullying. If the author/ host of the content refuses to remove the said materials, victims shall be given the power to apply to the court for orders.

In New Zealand, the *Harmful Digital Communications Act 2015* lays out the process of the removal of harmful digital content regarding cyberbullying:

A victim should first make a complaint to the host of the online content. The host shall then provide the author of the content a copy of complaint and this should be done as soon as practicable but no later than 48 hours after the complaint. The materials will be removed under the following circumstances:

- if the author is not located, the host shall take down or disable the content and this must be done as soon as practicable but no later than 48 hours after receiving the complaint;
- if the author has agreed to remove the content within the 48 hours, the host shall take down or disable the content as soon as practicable after receiving the said counter notice;
- if the author fails to lodge a valid counter notice, the host shall take down or disable the content as soon as practicable but no later than 48 hours after it advised the author of the right to lodge a counter notice.
- Articles 23 to 25

However, if the author refuses to remove the content, the host should not delete the content and should inform the victim accordingly. In accordance with Articles 19(1) and 19(2), the victim may then decide whether to file an application to District Court for orders against the author namely to take down or disable material, or to publish a correction or an apology, or for orders against the host namely to request the host to take down or disable public access to the posted or sent materials, or to release the identity of the author to the court.



## 7. Conclusion

*“The smallest act of kindness is worth more than the grandest intention” –  
Oscar Wilde*

We should take action now before it is too late. As we concluded in Chapter 3, bullying would bring long-term negative physical and psychological outcomes to perpetrators, victims and bystanders, and it should be treated more seriously in Hong Kong.

The current legislation and policies are facing several limitations when dealing with bullying behaviours, namely regulatory issues, awareness issues, and enforcement issues. Firstly, while some of the bullying behaviours might be covered by existing laws, there are also some difficulties and gaps in the current legislation when handling bullying cases, especially cyberbullying behaviours. Meanwhile, the lack of a statutory definition leads to a rather low awareness of bullying in the society. Lastly, schools have no obligation to set up anti-bullying programmes nor report any bullying incidents to the authority, which leads to an ineffective use of resources provided by the EDB. Finally, the lack of coordination among government departments is making it harder for victims or even the bullies to seek redress efficiently.

To tackle these challenges, we believe that a supportive legal and policy framework is essential. Without the support of a specific legislation against bullying, the effectiveness of anti-bullying work will be undermined. We propose introducing a specific legislation on bullying and cyberbullying, a.k.a. the Anti-Bullying Law. This paper provides three recommendations to the Government to work toward an Anti-Bullying Law.

In the short-term, the Government should set up a working group on anti-bullying (Anti-bullying Working Group) to gather facts and evidence for future legislation. The working group can enhance public awareness, coordinate data collection, consult stakeholders, review current legislations and policy measures, encourage anti-bullying research and issue a report to the Government. The Government can then go through the public consultation process, to lay the groundwork of the new legislation. In the long-term, the Government should consider the establishment of an Anti-Bullying Law.



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