Peter Newell, Co-Chair International NGO Advisory Council for follow-up to the UNSG's Study on violence against children

OHCHR/SRSG Expert consultation September 30 2010

The International NGO Advisory Council hopes that another expert consultation will take place early in 2011 to discuss the necessary legal frameworks for the prevention and prohibition of all forms of violence against children and for response to violence when it occurs.

Legal frameworks

The recommendations from this expert consultation should stress the importance of securing a legal framework which:

- prohibits all forms of violence against children (no state can pretend it has an effective child protection system while its law still authorises or justifies violence against children, including violence disguised as tradition or discipline);
- establishes in domestic law obligations to prevent all forms of violence against children;
- provides for an effective response to violence when it occurs, including powers for emergency intervention to protect children when necessary.

Throughout, the legal framework needs to respect all children's rights: most of the CRC's articles are relevant to the development of an effective child protection system. And for the rights to protection to have meaning, children must have access to remedies for breaches of their rights, including compensation.

The CRC is a legal instrument, placing legal obligations on States: it is important to use the language of rights and obligations.

We need to emphasise that children and those acting on their behalf have ready access to courts to pursue enforceable legal remedies. Babies are rights-holders too and there must be clear mechanisms to ensure that violations of their rights can be pursued.

The legal framework needs to include obligations on the state to take reasonable steps to ensure early identification of violence against children and when it is identified, to ensure effective investigation and when necessary intervention, including judicial intervention.

When, despite an identified risk, the state fails to protect a child it must be possible to pursue that failure through courts, to hold the state accountable. A series of judgments of the European Court of Human Rights (against the UK) have reinforced these obligations across the 47 member states of the Council of Europe.

Confidentiality

In relation to reporting violence against children, confidentiality is a hugely important and still controversial issue. It needs clear definition and debate. Studies in a number of countries which believe they have a highly developed child protection system, including

the UK, have found that only between a third and a quarter of children who were sexually abused as a child told anyone about it during their childhood; only a tiny proportion told any sort of professional. When asked the reason, it is primarily because they believe that their confidences will not be respected and that their life will be even less under their control.

Children – and of course here I am talking not of young children but children with the capacity to understand - need access to genuinely confidential advocates, by which I mean advocates who will only breach the child's confidence without his or her consent if they believe that the child or someone else is at risk of death or serious harm unless there is a breach. Offering confidentiality to a child in those circumstances does not of course mean an inactive role. It means taking on responsibility to support the child, in their own time, to do what is necessary to stop the violence; children want the violence to stop, but they want to feel control over how it stops and the consequences.

Of course children and those acting on their behalf also need to know where to go to report violence to an agency which has an immediate obligation to investigate and power to take protective action.

The World Report on Violence against Children proposed this in Chapter 1 (see extracts circulated for the consultation).

Introducing general legal duties of mandatory reporting without considering the rights of children with capacity to confidentiality is not, according to a lot of evidence we have at the moment, going to reduce violence against children, because children will not use services they do not trust. Some regard respecting children's confidences in these circumstances amounts to colluding with the perpetrators. But isn't it colluding with perpetrators to deny confidentiality, if it is going to continue to prevent very many children from seeking help? At present, the confidentiality issue is being fudged and children are often being misled about how information they disclose will be used.

Helplines operate to a high standard of confidentiality; generally they have to because the children can simply break off the call. But there can be a danger of helplines raising expectations that children will receive direct support; they need to be able to offer more than phone counselling.

To sum up: one cannot design and develop child protection services and procedures usefully without advocating for a consistent legal framework that reflects States' obligations to protect children. In designing systems we have to take particular care that we are respecting children's rights and not further disempowering them.

Two other proposals for the recommendations:
It is important that where domestic legal remedies fail to protect children, children and those acting on their behalf must be supported in using regional and/or international

human rights mechanisms to hold States to account. The proposed new Optional Protocol to provide a communications/complaints procedure for the CRC will hopefully add an essential avenue for pursuing violations of CRC rights.

All States need to systematically collect and views and comments of children who have been subjects of child protection systems or procedures. All such children and young people could be offered a confidential exit interview: has the system served them well or not; how could it have been improved. Hearing these views and responding to them in the development of services and procedures is surely an essential way to move towards greater child sensitivity.

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