

Expert Consultation on Bullying Florence 9-10 May 2016

The role of legislation in
preventing and addressing
bullying and cyberbullying

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Role of legislation

- Essential component of response to violence against children.
- Lays foundation of culture of respect for children's rights and can spur change to the social acceptance of violence against children.
- Legislation is also essential to provide access to redress, to fight impunity and to ensure that children can access safe and child-sensitive complaint, counselling and reporting mechanisms.
- Effective implementation of legislation in this area relies on other measures for success, including national policies, capacity-building initiatives and the empowerment of children.
- Different approaches have been adopted to legislating for bullying and cyberbullying, including: relying on existing law; introducing new criminal offences or civil remedies; introducing laws specific to cyberbullying; and introducing laws relating to the education sector.



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Relying on existing legislation

- The absence of specific legislation on bullying does not indicate a legislative vacuum.
- Constitutional, criminal, civil and educational welfare law can be applicable to cases of bullying even if bullying itself is not provided for explicitly.
- Relevant criminal provisions include those relating to harassment, assault and incitement to hatred.
- Relevant civil remedies include restraining orders or injunctions.



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New criminal and civil provisions specific to bullying

- Some new offences are intended to criminalize bullying behaviours (e.g. the offence of student harassment).
- The advent of cyberbullying has led to specific offences being crafted to deal with digital communications (e.g. the Harmful Digital Communications Act 2015 in New Zealand created an offence of intentionally sending a harmful digital communication).
- Tendency to criminalise children in the context of new anti-bullying legislation not in keeping with international human rights standards.
- New civil remedies that have been introduced include take-down orders in the context of harmful material online, orders restraining an individual from encouraging others to harass someone, and orders to issue a public correction or apology



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Cyberbullying legislation

- Cyberbullying creates novel challenges and sets it apart in some respects from other forms of bullying, specifically in relation to the role of internet service providers and social media platforms in removing harmful content.
- The Enhancing Online Safety of Children Act 2015 in Australia provides an interesting and recent example of a legislative response that addresses the different array of actors involved in cases of cyberbullying.
- The Act established the Office of the eSafety Commissioner, which has a range of functions including: handling complaints regarding cyberbullying; liaising with social media services; promoting online safety; coordinating with Government agencies on the issue of online safety; conducting and evaluating awareness-raising activities; and formulating best practice in the domain of online safety.
- The Commissioner is obliged to have regard to the provisions of the UNCRC in the performance of his/her functions and the Act is to be reviewed every 3 years.



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Education sector

- Because of the centrality of education settings to bullying, they have become the focus of many anti-bullying statutes.
- There are a number of different elements that can be found in legislation of this type around the world:
 - An obligation on schools to have a policy.
 - A definition of what behaviours are covered by the policy.
 - A requirement to place a particular focus on vulnerable groups.
 - A requirement to have prevention and intervention programmes



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Education sector cont'd

- A requirement to have staff training in order to assist prevention and to enable them to take appropriate action if a bullying incident occurs.
- Guidance on how incidents of bullying should be investigated and recorded.
- The disciplinary measures to be used in cases of bullying.
- What supports must be made available to children.
- How accountability can be ensured.



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