

Expert Consultation: Child sensitive counseling, complaint and reporting mechanisms. 30 September 1 October 2010, Geneva

Monitoring Children's Rights in Mauritius through investigations

In Mauritius one of the main functions of the Ombudsperson for Children (OC) is to investigate and either to find a solution to the specific problem or issue raised and/or to make proposals for change. The objective is to promote better respect for the rights of a child or of children in specific situations.

The investigation is opened under section 7 of the Ombudsperson for Children's Act 2003 (OCA 2003). This article provides that "where the OC considers either upon complaint made to him or on his own motion, that it is necessary to investigate a matter relating to the rights of a child, the OC shall investigate the complaint in such manner as he thinks fit." This section also provides that the OC may summon witnesses, request anyone, including a public officer, to provide any information or to produce any document or other exhibit, enter any premises where a child may be in danger or is in employment or to assess the suitability of the place.

Section 5 of the OCA 2003 which provides inter alia, that the Ombudsperson for Children (OC) "shall ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and association of individuals."

When and why does the OC decide to investigate

When there is a complaint, if it concerns a case of child abuse, the case is referred to the Child Development Unit (CDU) of the Ministry responsible for child development. The CDU is mandated by law to investigate cases in the field and assess the situation. In particular it must evaluate the child family situation and take specific decisions on how to help the child to overcome his difficulties. This would often imply that the child must be seen by a psychologist. He may need to be medically examined.

There may be a criminal case, if the child has been physically or sexually abused. In this case there will be a close cooperation by the police and the child will only be allowed to give his statement in presence of a woman police officer and with the help of the Officer of the CDU after an assesment

of a psychologist.

If the child is victim of abuse by his parents or one of them, the question of his removal from his home will most of the time be relevant. That would also be the case if there is evidence of gross child neglect. Then the Officers of the CDU will apply for an emergency protection order (EPO) from a District Magistrate. The child will be removed and put in a place of safety. The parents can ask for the discharge of the order after 72 hours. Otherwise the order is for 14 days and can be renewed or be converted into a committal order, in which case the child is placed in an alternative care institution.

The OC will sometimes intervene to advise an institution, including a public body, to alter its decision if the rights of a child is not being respected and could be. Often this will concern the problems related to school on issues of alleged discrimination, or difficulties to attend far away schools etc. The OC has mostly investigated cases of corporal punishment since the Ministry or other institutions which could investigate never seem to come up with real findings. The OC has been campaigning for clear criminalisation of the offence but with no success up to now.

The OC will only open a full investigation if those who are supposed to protect a child, or ensure the respect of his rights, have allegedly failed in their mandate. In the past I have opened some high profile investigations. For example, concerning a case of a shaken baby who had been admitted to hospital and had been returned to his abusive parents who had brought him back dead five days later. I also opened an investigation concerning a teenager who was tortured in the Correctional Youth Center. He was punished for having played a joke on a new inmate, by hiding his clothes while they were having a shower. His punishment was to remain naked for 48 hours in isolation, and without any bedding. It was a prison guard who could not accept this and who phoned me anonymously. In both of these cases I made proposals to the Minister. In the last case I wrote to the Prime Minister to remind him of the provisions of two conventions ratified by Mauritius: the CRC and the CAT. I also sent him all the UN guidelines concerning juvenile justice and the treatment of young offenders. He sacked the persons involved in the torture, including the director of the prison. Now several reforms are taking place, based on the UN guidelines.

My last investigation took place last week. It concerns a child who had been found carbonised in a place not too far from her house but where normally

she should not have been, as it was isolated. The police enquiry found out that in fact she had been sexually abused by her maternal uncle who lived at her home with his father, his brother and his sister who happens to be the minor's mother. There was a huge public uproar as this child had been abused in March this year by an alleged partner of her mother. The mother was known to be an alcoholic and to ask her child to roam from house to house to ask for money and food.

I decided that this was a proper case for a full investigation and, last week, I gave a report to the Minister where I gave my conclusions and recommendations. I also made my report public thereafter. The Minister has already announced that she will undertake a full reform of the system and she has presented the project to the Cabinet. This case and the investigation that took place will presumably have a positive effect on the decision of the Government to increase the budget of the Ministry and support a full and in-depth reform. I will now ensure that change is taken place over the weeks and months ahead. I believe that we will see tangible changes of systems and attitudes because of the fact that the media has relayed the opinions of NGOs and social workers and gave me full support throughout the investigation. They are now giving a good amount of space and air-time to make my recommendations known and reassure one and all. I attach herewith the details of the conclusions and recommendations for reference purposes.

I think that investigation complaints of this nature is very important as only an Ombuds with wide powers can access the relevant information and document the findings in such a way as to make it clear that a policy or strategy is not giving results. Only an Ombuds respected by one and all can also speak with an authorised voice and be heard.

Of course Government departments cannot always accept what is often seen as a direct criticism. But if public opinion is clearly in favour of a real change, a democratic government cannot remain in a defensive position.

In the case which I have described, the fact that it was not the first time that a child had died through negligence of government officers, and that the CDU was being criticised was crucial to bring about some positive attitude from the government quarters. But my investigation placed the issue higher on the agenda and gave the possibility to the Minister to change her attitude as I drew attention to the lack of resources and capacity of the CDU and

proposed a feasible reform.

Shirin Aumeeruddy-Cziffra

(Ombudsperson for Children in Mauritius)

Investigation in the case of child neglect, sexual abuse, and murder of a young mauritian girl and the failure of the authorities to protect from the risk of great harm.

Objective of the investigation

The main objective of the investigation was to analyse all the information available to establish if there had been negligence on the part of anyone and which has put the minor at risk and finally led directly or indirectly to the fatal aggression of the minor. The investigation looked particularly at whether the child was at risk of harm at her mother's place and whether she should have been removed under the Child Protection Act 1994 and be put in a place of safety.

Method of investigation:

I have not enquired as such on the two crimes of which she has been a victim. That is for the police to do. I have however paid particular attention to the first sexual abuse to find out how each one reacted. This includes the family and the authorities.

I have decided to interview all persons in the immediate environment of the child, and from the locality, who could provide independent and relevant

information regarding the minor's situation.

I also interviewed several officers of the Child Development Unit of the Ministry of Gender Equality, Child Development and Family Welfare (MGECDWF) as well as the officer in charge of the Family Support Bureau. I questioned a psychologist and an educational social worker of the Ministry of Education and Human Resources. I also questioned the police officers of Petite Rivière Police station who have been involved with the case. I summoned the Superintendent of Jeetoo Hospital to delegate someone who could provide useful information on the mother of minor and eventually on the minor herself. I obtained a report from the Brown Sequad Hospital (BSH) with regard to the minor's mother. Finally I discussed with the Permanent Secretary of the MGECDWF.

I have asked for and obtained several documents from all those who kept a record concerning the minor.

I have not questioned the mother and members of the family because they would not provide independent evidence.

I also saw no need, at this stage, to visit the house, or any place in the environment, as I would not rely on the issue of how the house was or even how the mother is to-day. Although the Ombudsperson can make site visits, this was not considered relevant to the present investigation, the more so as I had to remain very serene in the face of a very "hot" situation.

Conclusions regarding the CDU's role and involvement:

I am very concerned:

1) that the CDU did not act with greater diligence in this case. It took almost a month before the perpetrator was arrested. This is due to a combination of the casual way of dealing with the case by the CDU officers AND the negligence of the Woman Police Officer who was not present when she was needed. It is also due to the fact that there were many cases, specially of sexual abuse, and they are overwhelmed and have little time to give for follow up of each case.

2) that although the mother did not bring the child to the office on her

appointments, the officers still thought that she was a "good mother" and was able to look after her child. We now know that she had been admitted to hospital.

3) that the CDU Officers failed to interview neighbours, other members of the family, the relevant persons in the school environment and then assess the mother's capacity to look after her daughter. They relied only on the fact that the mother seemed to have stopped to consume alcohol. Even when they were told that the mother was irresponsible, they took no heed. They clearly felt sympathy for the mother and had concluded that no one liked her. They did not want to know why this was so.

4) That they did not discuss the case formally between them before taking the decision to leave the minor with her mother. They talked casually and put nothing on record.

5) They did not call for a case conference with all stakeholders in order to get the best picture of the situation and not shoulder the responsibility alone.

6) They did not even try to find out whether the school social worker could share her views with them. Vice versa the officers of the Ministry of education did not come forward to share their information.

7) They did not seek a medical report from Jeetoo hospital to find out the real medical situation of the mother and whether she was logically able to give up alcohol so easily. They never thought of asking the BSH for her record, if any. A mother who is extremely sick cannot be said to be able to look properly after her child.

8) That they did not question anyone or themselves to understand the circumstances which led to the first sexual abuse of the minor and the responsibility of the mother in that sad event. Yet they heard the child relate that it was her mother who took her there. The mother admitted to the police that she used to take her child there and leave her with the person that she describes as her friend. The CDU officers did not discuss this aspect with the police. The police did not either draw their attention to this fact.

9) They did not contact their head or coordinator about the case which

means that they did not really think that it was so serious. Despite the several calls of people from the forces vives.

10) I am even more concerned that, to date, they do not think that they did not act in the best interests of the child. To err is human. But to persist in the face of what happened, i.e. that a child was victimised and died for lack of proper control of her mother over her, is baffling.

General conclusions

During the investigation, we also learnt that:

1) Many cases had been reported to the CDU of Bambous but few cases had been dealt with satisfactorily. We will seek reports in each of these cases.

2)The CDU officers are clearly unable to deal with all reported cases as there is a great increase in the number of cases and they are few officers in the Family Support Bureau (FSB): for the CDU exclusively, there is one Family Welfare Protection Officer (also acting as officer in charge of the team and only person to be able to go to court), one Family Welfare Officer (who can only accompany another officer or the psychologist, and a care worker (who can only do minor tasks).

There is a psychologist who also goes to Phoenix on certain days. Further she is not attached to the CDU but must go and lecture on family issues etc. She is not accountable to the Head of CDU. There are three officers who work at the Family unit, in the same building. The overall head of the FSB does not really look after the cases of the CDU although her scheme of service provides that she must supervise the work of officers of the FSB and that includes the CDU. Again she is not accountable to the Head of the CDU. When questioned she contented herself with stating that there is conflict between the units.

3)The incapacity of the CDU to respond efficiently to all complaints is also due to the lack of proper training and of clear guidelines. It seems that new recruits learn sur le tas. There has never been any manual for a proper step by step approach. But the Head maintains that there is an induction course for new recruits and that others had followed many training courses from experts including well respected international experts, like Dr Murphy.

4) Transport is also a huge problem as no vehicle is attached to any given unit and officers must apply in writing to get a car. A few years back one vehicle used to be attached to each unit. It is to be noted that Officers cannot take the bus, even though in this case it was a direct route from the CDU to the police of Petite Rivière, as there may be problems of security, we were told. This issue must be solved with a lot of seriousness.

5) The lack of co-ordination is proverbial. It has even been said that some officers are arrogant and state that so and so will not teach them their job. They are particularly harsh on social workers who go to lodge complaints. We fully believe this, as even our officers are told off harshly when they query. People who are referred by our office also complain about being told off for having contacted us first.

6) There is no SYSTEM, no proper reporting, no evaluation and no monitoring on a case to case basis and also overall.

7) The fact that the officers are recruited on the basis that they can work for the three units of the Ministry is an aberration. This must change soon. Child abuse requires a specialised and dedicated staff. I have had the occasion to state in the past what a waste it was to transfer an officer who had gathered a lot of experience in child matters to another unit. Yet this is happening all the time.

Recommendations for the immediate future:

1) A full manual must be drawn to establish the way that CDU officers must carry out their enquiries in the field. The decision to remove a child or not must be taken according to proper rules and be taken by the whole team after referring to the Head Office or a supervisor attached to the decentralised unit for a rapid examination of the case. The guiding principle must be the best interests of the child. The fact that the child loves her mother is unfortunately not always relevant. It is well known that children always love their abusive parents.

2) A training programme must be prepared with the help of an expert. Some officers have followed courses organised by my office last year based on the guidelines that obtain in the United Kingdom. They should be trained in effective investigation strategies, interviewing techniques, effective case

management and reporting skills.

3) CDU officers must be trained and receive refresher courses regularly on all laws, Conventions, international reports and guidelines and rules relating to children and how to respect them.

4) CDU officers must be dedicated and not be expected to respond to all sorts of cases with different implications but they must nonetheless co-ordinate with their colleagues who may have been involved with the same family. This also applies to psychologists who should not move from one to the other unit and waste their time responding to queries on why they did not accept orders from a head and went to do the job of another. This quarrel, and the ensuing bureaucratic fuss, is really unacceptable and constitutes serious institutional abuse of children.

5) They must also work in close collaboration with all other government departments involved and also with the civil society. The CCPP must be a hands-on programme and not remain theoretical. It must be based on mutual trust, respect for the skills and knowledge of others and recognition that there is one common objective and only a multi-sectoral approach will give results.

6) I therefore propose the review of the system at decentralised level, with at least four dedicated full fledged teams for each FSB and working on a shift system. Otherwise we must not be surprised that officers are not performing as they are burnt out. The dual head must be abolished. Time is for modernity and reform in favour of children.

7) I also propose that the matter be taken with the Commissioner of Police (CP) to ensure that one police officer at least is available for each shift and for each FSB.

8) I will also recommend some reform to the CP regarding the role of the Brigade pour la Protection des mineurs who only work until 4 p.m. and who are wasting precious time lecturing whereas they should be doing emergency response in child abuse cases. Many of us give lectures but the BPM should be a flying squad and be available in the field and not in classrooms. That was what was the original mission of the BPM when it was set up just after the creation of my office.

9) Further I will try to convince all stakeholders to make progress on the setting up of the child friendly video recording of statements in cases of child abuse specially sexual abuse. The recording system is already possible now under the Courts Act and the Chief Justice has given his green light. In this case the taking of the statement would have been possible soon after the child revealed the crime.

10) I also propose that, in specific cases, children may give a statement in presence of a CDU officer if the parents are not available or refuse to cooperate. If need be the Child Protection Act must be amended urgently.

11) I would like the protocol signed between the Ministry responsible for Child Development and the other partners to be reviewed. There MUST be regular meetings to ensure that all partners are respecting the protocol.

10) I would also like to see the Mentoring System be applied when children are not removed but are vulnerable. The putting into practice of the system is already long overdue.

11) There must be an approach towards the Courts to facilitate the work on child protection by applying the best interests of the child principle. This means avoiding delays for hearing CDU officers and releasing them so that they can attend to their ungrateful protection work.

Overarching recommendations

If we want to take the bull by the horns in terms of Child Protection, we need an in-depth and courageous reform. I am therefore now appealing to the Prime Minister, all Ministers and members of the National Assembly from whichever party, so that everyone at the highest level will do his/her best to depoliticise the issue and work hand in hand to find the best solutions to improve our Child Protection System. The difficult social situation should be of concern to everyone. We are a "paradise" and our only resources are our citizens. If our children in general, and specially those from the most vulnerable sections of our population, do not benefit from a modern protection policy with the corresponding services, we will be jeopardising our own future. I therefore appeal to everyone to undertake a serious reform.

This can be initiated now and we could try and get assistance from UNICEF

and other organs of the United Nations, specially in the context of the implementation of the Pinheiro Report on Violence against Children.

1) There could be an overhaul of the CDU, as we know it now, and the setting up of a separate independent unit for Child Protection which is highly professional and fully equipped to work around the clock in the spirit of the 24/7 principle. Like a hospital. The Unit would be independent but remain under the aegis of the Ministry. I have said time and again that Ministries should not provide services but make policy.

2) The CDU would then concentrate on child development issues and engage only in policy making, strategising, training, facilitating and overall monitoring. As it is, they are both judge and party when there is a conflict, and this is not good from a governance point of view. And they provide service which is not the role of a Ministry.

3) A full redefinition of the profiles of the employees of the independent unit is needed. We need people not just with diplomas and degrees but also with experience in field work and with commitment.

4) A full fledged systems review is needed for that. It can be initiated as of now even if the big reform may take time. I therefore an evaluation of the CDU by the Mauritius Audit bureau as there is also a clear governance issue. We are wasting public money and the outcome is not so satisfactory.

5) I also reiterate my proposal for a social audit if only regarding children in order to look at all departments which deal with children, like the Ministry of Social Security and its Probation service. We could also see what social workers in different ministries are doing and why they are not collaborating.

5) A computerisation of the cases dealt with is needed by way of the setting up of a proper Child Protection Register. This would allow good referencing for the recurrent cases in the same family. It would also facilitate research.

6) The Ministry must encourage the setting up of specialised Courses in Child Rights and Child Protection.

7) A Plan of Action to end Violence against Children is now a must. We have proposed to help with the finalisation of this Plan.

8)The legal reform will also then take these policy reforms into consideration in the new Children's Bill.

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