



National human rights institutions (NHRIs) Series:
Tools to support child-friendly practices.

NHRIS AND MONITORING CHILDREN'S RIGHTS IN CLOSED SETTINGS

ACKNOWLEDGEMENTS

This tool was developed by Vanessa Sedletzki. It is part of the National Human Rights Institutions series 'Tools to support child-friendly practices' developed by Rights On. The UNICEF Regional Office for Europe and Central Asia (ECARO) would like to thank members of the reference group Ankie Vandekerckhove, Nataša Jovic, Julien Attuil and Makhabat Turdumamatova for their invaluable contributions and insights. Their practical experience ensures that the tool is relevant for intended users. Development of the tool was coordinated by Phenny Kakama, ECARO's child protection specialist.

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ABOUT THIS TOOL

NHRIs and monitoring children's rights in closed settings

This tool provides detailed guidance for National Human Rights Institutions (NHRIs) on how to fulfil their independent monitoring function in places where children are cared for or detained without the possibility to leave freely (usually based on a judicial or administrative order). The main settings are those in which children are in institutional or residential care or are deprived of liberty (e.g., juvenile detention centres or other facilities managed by the juvenile justice system), but may also include: prison type facilities; detention centres hosting children and their parent(s); hospitals and psychiatric institutions; education or rehabilitation centres; and asylum centres, refugee camps or reception facilities for children on the move, whether unaccompanied or with their parent(s).

- **Section One:** Introduction
- **Section Two:** Importance of the monitoring function
- **Section Three:** Applying a rights-based approach to monitoring closed settings
- **Section Four:** Monitoring process – steps and approaches
- **Section Five:** Monitoring for change: enhancing the impact of monitoring
- **Section Six:** Addressing challenges to monitoring
- **Section Seven:** Monitoring and evaluating the monitoring function

Wherever possible, the content is illustrated by examples from the field.

The objectives of the tool are to:

- Enhance understanding of the monitoring function
- Offer a step-by-step approach to effective monitoring
- Explore the complexities of monitoring children's rights in closed settings
- Help to ensure that monitoring leads to positive change.

1. INTRODUCTION

Human rights monitoring is defined as “the active collection, verification and immediate use of information to address human rights problems.”¹ It does not consist merely of passive observation, but rather calls for proactively seeking information, ensuring that it is accurate and then using it to redress wrongs, halt violations and prevent abuse.

Independent monitoring of children’s rights is one the central functions of NHRIs’ work related to children. It spans various topics and levels – from reviewing laws and policies to handling individual complaints – to assess whether rights have been violated and seek ways to achieve redress. NHRIs monitor the extent to which children’s rights are respected and implemented from an entirely independent perspective, without requiring orders from governments, parliaments or other authorities. As the Committee on the Rights of the Child (CRC Committee) underlined in its General Comment No. 2:

NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.²

Independent monitoring by NHRIs specifically includes visits to settings in which children are either under the care of someone other than their parents or being held together with their parents, without freedom of movement. The NHRI mandate for monitoring children’s rights in closed settings derives from a number of provisions of the Convention on the Rights of the Child (CRC) and other international standards, which delineate the specific role of NHRIs in such contexts:

- *Article 3 of the CRC* requires States Parties to “ensure that the institutions, services and facilities responsible for the care or protection of children (...) conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”
- The CRC Committee’s General Comment No. 2 explicitly links this provision to the NHRIs’ mandate to “undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement.”³
- *Article 37 (a) and (c) of the CRC* provide that “no child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment” and “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner

¹ Office of the High Commissioner for Human Rights, *Manual on Human Rights Monitoring*, OHCHR, Geneva, 2001 ed. with updates.

² Committee on the Rights of the Child, General Comment No. 2, ‘The role of independent national human rights institutions in the promotion and protection of the rights of the child’, CRC/GC/2002/2 (2002), para.9.

³ *Ibid.*, para. 19 (s).

which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."

- *Article 33 of the Convention on the Rights of Persons with Disabilities* obliges States Parties to "maintain, strengthen, designate or establish, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention (...) [taking] into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights."
- *The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* aims to "establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhumane or degrading treatment or punishment."⁴ It requires States Parties to establish one or several independent national mechanisms to prevent torture in the country and in so doing, to give due consideration to the principles related to the status of national institutions mandated to promote and protect human rights.⁵
- *UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)* call for the appointment of independent inspectors with the power to conduct unannounced and regular inspections of facilities with unrestricted access to employees, juveniles and records, and with full guarantees of independence in the exercise of this function. They also specify that an independent office (Ombudsman) should receive and investigate complaints made by juveniles deprived of their liberty.⁶
- *UN Guidelines on Alternative Care* call on States to "ensure that an independent monitoring mechanism is in place, with due consideration for the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The monitoring mechanism should be easily accessible to children, parents and those responsible for children without parental care."⁷

The objective of NHRI monitoring of children deprived of their liberty is to assess whether their rights are being respected

Monitoring goes beyond ensuring compliance with legal and administrative standards and that the children's 'basic needs' are met. The CRC is the guiding framework for NHRI monitoring, along with other relevant instruments mentioned above. Yet NHRIs are not the only bodies overseeing the situation of children in closed settings; others might include internal administrative entities or NGOs conducting investigations. Other national or local independent monitoring mechanisms might also be authorized to provide oversight. These mechanisms should be seen as complementary, not as in competition with one another. They usually have different approaches and sets of competencies for monitoring

⁴ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted on 18 December 2002 by the General Assembly of the United Nations by resolution A/RES/57/199, entered into force on 22 June 2006, Art. 1.

⁵ Ibid., Articles 17 and 18.

⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Adopted by General Assembly resolution 45/113 of 14 December 1990, paras. 72 and 77.

⁷ UN Guidelines on Alternative Care, para. 130.

closed settings. It is, however, important to understand how they operate, to build on their respective mandates and support their strengthening. Since the NHRI's larger monitoring function applies to all public (and in some cases private) institutions, it can also be called upon to review how other relevant actors and systems are functioning and make recommendations for improvement.

The table below compares three main types of monitoring, highlighting key differences and commonalities. Many NHRIs may not fully attain such standards, but it is assumed here that they fit into this overarching framework.

	NHRIs	Inspectors	NGOs
Independence	Independent status	External to the facility, but not independent from the authority under which the facility is placed (e.g. Ministry of Justice, child protection agency etc.)	Independent status but may also manage services, such as care institutions
Scope	Broad – all children's rights	Often limited to compliance with legal standards and regulations, with a focus on material conditions	Varies significantly
Access/collection of information	Unrestricted access to facilities, employees and documents, subject to legal mandate	Unrestricted access	No access, unless there is a specific agreement
Public findings	Findings usually made public	Findings not necessarily made public	Findings usually made public
Use of information	Information used to feed into systemic advocacy efforts; recommendations directly addressed to authorities/decision-makers	Information used internally, for sanctions and, ideally, for strengthening	Information used for advocacy and access to decision-makers, depending on contextual factors and NGO's own networks

Slovakia – Public Defender of Rights advocates for a stronger inspection system

In 2017 the Public Defender of Rights conducted a special investigation at one rehabilitation centre for children. It found, inter alia, that the inspection system was inadequate. Although children and parents filed complaints about the centre, neither the government authority financing the centre nor the Ministry of Labour, Social Affairs and Family accrediting the centre acknowledged competence to conduct an in-depth inspection. Eventually, the financing authority inspected the facility and found serious breaches of children's rights, about which it notified the Ministry. Yet the Public Defender found that the Ministry did not take adequate steps to address the situation. After a special investigation, the Public Defender concluded that there were "no standards in place to clarify which authority should carry out inspections in facilities, as well as how they should be carried out and what their subject matter should be" and that "the inspection bodies failed to act and downplayed the complaints of children placed in social rehabilitation centres or re-education centres. The downplaying approach is particularly manifest in that the individual complaints are typically considered groundless and untrue and are taken into account only when submitted on a massive scale, i.e., if at least 90% children raise a complaint." Following the report, in February 2018, the ministry revoked the rehabilitation centre's accreditation.

Sources: Public Defender of Rights, 'Special report concerning the facts indicating a severe violation of the fundamental rights and freedoms of children by authorities of social and legal protection of children and social guardianship', Report on the activities of the Public Defender of Rights of Slovakia, 2017.

2. IMPORTANCE OF THE MONITORING FUNCTION

NHRI's monitoring mandate is broad and extensive, and its impact is palpable at various levels – on individual children, on an institution or facility and on policy, for systemic change.

Independent monitoring of the situation of children in closed settings by NHRIs is particularly important for several reasons, but particularly because although all children are vulnerable to rights violations, children in closed settings face additional risks.

- *Children in closed settings are more vulnerable to rights violations.* Closed settings are always unfavourable for a child's growth and development. They endanger children's wellbeing and do not stimulate their social, emotional, intellectual, physical and psychological development or inclusion and integration in the same way as living within a family. Children are often in the care of professionals who may not always have their best interests at heart, or who may be ill-equipped to handle difficult situations. Children are typically totally dependent on the facilities in which they live and their staff. This creates an imbalance of power that can foster negative or dangerous behaviour in the absence of appropriate safeguards. The scale and magnitude of rights violations and violence against children in care and justice institutions was comprehensively documented in the 2006 United Nations report on violence against children.⁸
- *Children in closed settings often remain out of sight; violations can easily go unnoticed.* These children usually have only limited interactions with the outside world, compared to children living with their families. As a result, they have only limited opportunities for speaking out about their experience. Visits by external actors to closed setting are usually restricted or limited to a designated area.
- *Children in closed settings have limited access to a remedy when their rights are violated.* Their daily care is in the hands of employees of the facility that is frequently the source of the rights violations. These children also enjoy less freedom of movement and limited or controlled access to communication tools, such as phones and the internet.
- *In closed settings, children's capacity to communicate about possible violations may be more limited.* They may be in a fragile emotional state due to the traumatic experience that led them to be placed in a closed setting, their ability to communicate may be impaired due to language and/or disability, and they may have difficulty identifying someone to trust and confide in, especially if they distrust the institution or its staff and fear public authorities and possible sanctions.
- *Children in closed settings often suffer from social exclusion and discrimination, exacerbating vulnerabilities.* Children typically find themselves in closed settings because they have committed a crime, or because they are in care, on the move, have mental health issues or disabilities. Across societies and communities, these children are often the victims of discrimination and exclusion. Negative perceptions may influence how they are treated in closed settings as well as their living conditions. Insufficient maintenance and investment in conditions at these facilities can be a result of dysfunctional accountability channels or lack of will. The testimony of children in closed settings may be met with mistrust and disbelief by those assigned to protect them – even more so than other children. These risks are multiplied for children whose characteristics are often subject to discrimination – such as their gender, sexual orientation, nationality, ethnicity or religion.

⁸ https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/document_files/world_report_on_violence_against_children.pdf

Monitoring fulfilment of children's rights in closed settings is an essential aspect of the NHRI mandate, and one in which its role and added value is very specific:

- *NHRI monitoring includes the full range of children's rights, rather than a sole focus on specific aspects such as the fulfilment of material needs and basic service provision.* NHRIs take a comprehensive, systemic approach to monitoring the rights of children in closed settings. Beyond monitoring conditions in a given facility, they are mandated and able to identify the root causes of problems, beyond the individual facility, and point to systemic issues that affect children's daily experiences. This includes assessing whether the placement of a child in a restrictive setting was in the child's best interests in the first place and whether alternatives for less restrictive measures – such as community service, support to the family of origin, or placement in a family setting – were thoroughly considered. NHRIs use monitoring visits to feed into their advocacy positions for policy change; thus visits serve as an important link between the reality on the ground and policy interventions.
- *NHRIs seek to encourage change and orient their monitoring towards ensuring improvements. They do not merely observe the situation.* NHRIs are not empowered to impose sanctions. Instead, they issue constructive recommendations. This influences how they go about conducting monitoring, using approaches that aim to promote cooperative attitudes on the part of facilities' staff and management and regulatory authorities.
- *NHRIs' role is both reactive and preventive.* NHRIs often respond to alleged violations of child rights, undertaking visits and monitoring activities and issuing recommendations in response to an identified violation. Independent monitoring also allows the NHRI to identify risks and address them before violations occur or significantly worsen, putting children in danger.
- *NHRIs' monitoring enables assessments of progress over time,* in particular on the implementation of recommendations issued after a previous monitoring visit or following a new policy measure.

France – Cooperation agreement between the Rights Defender and the NPM

In France independent monitoring of closed settings is not conducted by the Rights Defender, but by a separate independent institution called the “*contrôleur général des lieux de privation de liberté*”, which is also the country's official NPM. It is in charge of controlling all the places where people are deprived of liberty to check whether or not the fundamental rights of detained people are being respected. The places under its jurisdiction include detention centres, health institutions, police cells and administrative detention centres for foreigners, among others. In 2011, when the Rights Defender was established under a new law, the Rights Defender and the monitoring institution signed a formal cooperation agreement, according to which if the Rights Defender receives a complaint about the functioning of a place of deprivation of liberty, it will refer it to the monitoring body, while if the latter receives a complaint about an individual situation – including one concerning the best interests of a child – it will refer it to the Rights Defender.

Source: Convention entre le Défenseur des Droits et le Contrôleur général des lieux de privation de liberté, 8 November 2011.

NHRIs, NPMs and children's rights

National preventive mechanisms (NPMs) were established under the Optional Protocol to the Convention against Torture as independent mechanisms mandated to prevent torture and other cruel, inhumane and degrading treatment through visits to places where people are deprived of liberty.⁹

The mechanism originated from within the European Committee for the Prevention of Torture and Inhumane or Degrading Punishment (CPT), established by the European Convention of the same name and placed under the Council of Europe. The committee's role is to visit places where people are deprived of liberty and issue a report on its findings, recommendations and requests for further information to the State concerned. The State is then invited to provide a detailed response to issues raised. These reports are confidential – although States usually authorize their publication – and form the basis for dialogue with national authorities. The committee functions on the basis of cooperation, with the objective of protecting persons deprived of liberty from possible abuse, rather than condemning States.¹⁰ The system has proven particularly effective, leading to the adoption of a similar approach at the global level.

Most states have set up their NPM under the NHRI, as a specific function, but the two mechanisms can also be hosted in different institutions. Interaction between the functions of the NPM and the NHRI is complex, yet complementary. Establishing the right balance of responsibilities can play an essential role in protecting the rights of children in closed settings.

How do the functions differ?

The NHRI's function is primarily investigative – identifying and denouncing rights violations – while the NPM has a preventive function – identifying risks and seeking to address them, to prevent violations from occurring, through dialogue and cooperation. These functions therefore require different approaches with counterparts, in particular governments and facility personnel.

Thus, while placing an NPM within an NHRI can be valuable to the former – allowing it to benefit from the NHRI's expertise, political clout and existing infrastructure – it has also been recommended that NPMs be established as clearly separate departments, to avoid having the same team performing both investigative and preventive functions. The rationale is that the level of trust needed for fruitful dialogue with relevant authorities may be impaired if combined with the mandate to report violations.

⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, ratified by all ECAR countries, and its Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002, ratified by most, but not all, ECAR countries (see ratification status <https://indicators.ohchr.org/>)

¹⁰ Council of Europe, About the CPT <<https://www.coe.int/en/web/cpt/about-the-cpt>> Last accessed 4 July 2020.

How can the NHRI monitoring function and the NPM interact?

NHRIs usually have some level of specialization in child rights, increasingly through a dedicated department or specialized institution. They also have a longstanding practice of visiting children in closed settings. The NPM will typically consist of a small team with limited specialization in children's rights. Building on the traditional NHRI function in this field will enable the NPM to develop child-sensitive approaches and an understanding of the specific situation facing children in closed settings.

While the two functions are separate, they can collaborate. Reports by an NHRI, as part of its investigative function or as a separate body, as well as the existence of numerous complaints within a closed setting, can lead the NPM to visit that setting for the purpose of prevention. Conversely, if it becomes aware of a rights violation requiring an investigation, the NPM can call the NHRI's attention to the matter.

Finally, NHRIs have a set of advocacy functions related to the development and implementation of an adequate legal framework that enable it to address the legal and political environment to promote changes in law and practices to prevent torture.

Source: Adapted from [Association for the Prevention of Torture, 'National Human Rights Institutions'](#), last accessed 4 July 2020.

Armenia – Cooperation between the child rights unit and National Preventive Team (NPM) team in the Human Rights Defender's Office

Establishing and applying a model for joint monitoring visits by the child rights unit and National Preventive Mechanism/rapid response team of the Human Rights Defender's Office (HRDO) allowed the child rights unit to carry out monitoring visits in all closed settings (residential care institutions, special boarding schools), document the results and present them to the ministries in charge. Following two years of intense monitoring activities and consultations with government bodies, the HRDO, in cooperation with the parliament's standing committee on human rights, organized a large-scale advocacy event on human rights, with participation by numerous state and civil society actors, UNICEF and other international organizations. The event was also linked to the country's universal periodic review. The rights of children in closed institutions and emphasis on children's right to live in a family was one of the key points on the agenda. Many recommendations issued by the Human Rights Defender were later included in government plans for reforming alternative care and developing standards to ensure the protection of rights of children in care.

Source: Information provided by UNICEF's country office in Armenia, 2020.

3. APPLYING A RIGHTS-BASED APPROACH TO MONITORING CLOSED SETTINGS

A rights-based approach to monitoring rests on a number of key principles, which were highlighted in the introduction to this series ([Presentation of the Tool Kit and Child Rights Approach](#)). How these principles play out concretely in the NHRI's monitoring activities is further elaborated by the description of each step of the monitoring process in the present document.

When monitoring children's rights in closed settings NHRIs need to ensure, in particular, that they:

- *Do no harm.* This principle should guide all NHRI monitoring activities and form the basis for other related principles. It serves as a guide to reflections on how to prepare visits, engage with children, pose appropriate questions to facilities and ensure that children are not put at risk by the NHRI's actions. It also involves establishing adequate procedures and policies – particularly safeguarding principles – to guarantee that children's rights and best interests are upheld throughout the monitoring process.
- *Treat children as children, not adults.* This implies being aware that the way the NHRI interacts with children will be different from its interactions with adults, in terms of how its questions are formulated, the words used, the types of issues raised and the overall demeanour and approach.
- *Respect for the child's dignity.* NHRI staff must pay particular attention to respecting the child as a person. This includes, for example, respecting a child's privacy by asking for permission before entering their room or looking at their personal belongings, only asking necessary or non-intrusive questions and refraining from making degrading comment. It also involves fully recognizing children's agency, hearing their views – or respecting their wish not be heard – whether explicitly expressed or communicated through behaviours and attitudes. A guideline for conduct might be: 'Would this approach/action be acceptable if this was me (or my child), in my home?'
- *Best interests of the child.* The best interests of the child should be the primary consideration during the visit and should prevail over the NHRI's need for data. If interviewing a child or holding a focus group is likely to prompt trauma and secondary victimization and/or could put children at risk, other means of gathering relevant information should be used.
- *Non-discrimination.* The selection of facilities to be monitored and children to be interviewed should be performed in a non-discriminatory way. During the visit the NHRI needs to be mindful of any attitude, question or remark that may be, or be perceived as, discriminatory; for example, remarks that echo a society's entrenched stereotypes.
- *Right to be heard.* Hearing children's views is integral to the monitoring process. Unless it is against the child's best interests, the NHRI need to ensure that children are directly involved in assessing whether or not their rights are respected in the closed setting, and their views need to be reflected in the NHRI's findings.
- *Right to life, survival and development.* NHRI monitoring should not jeopardize children's right to life, survival and full development by putting them at risk or exacerbating trauma.
- *Protection and confidentiality.* Interactions with children during the monitoring process must include safeguards to ensure their right to protection and the ability of the NHRI to act if it learns that children are exposed to significant risks. (See section on child protection policy.) Confidentiality of information collected from individuals and management of personal data are integral to a sound protection strategy in the context of monitoring children's rights in closed settings and apply to both NHRI staff and others who might be involved, such as interpreters. The NHRI's monitoring report needs to present information in such a way as to protect sources and avoid referring to specific individuals.

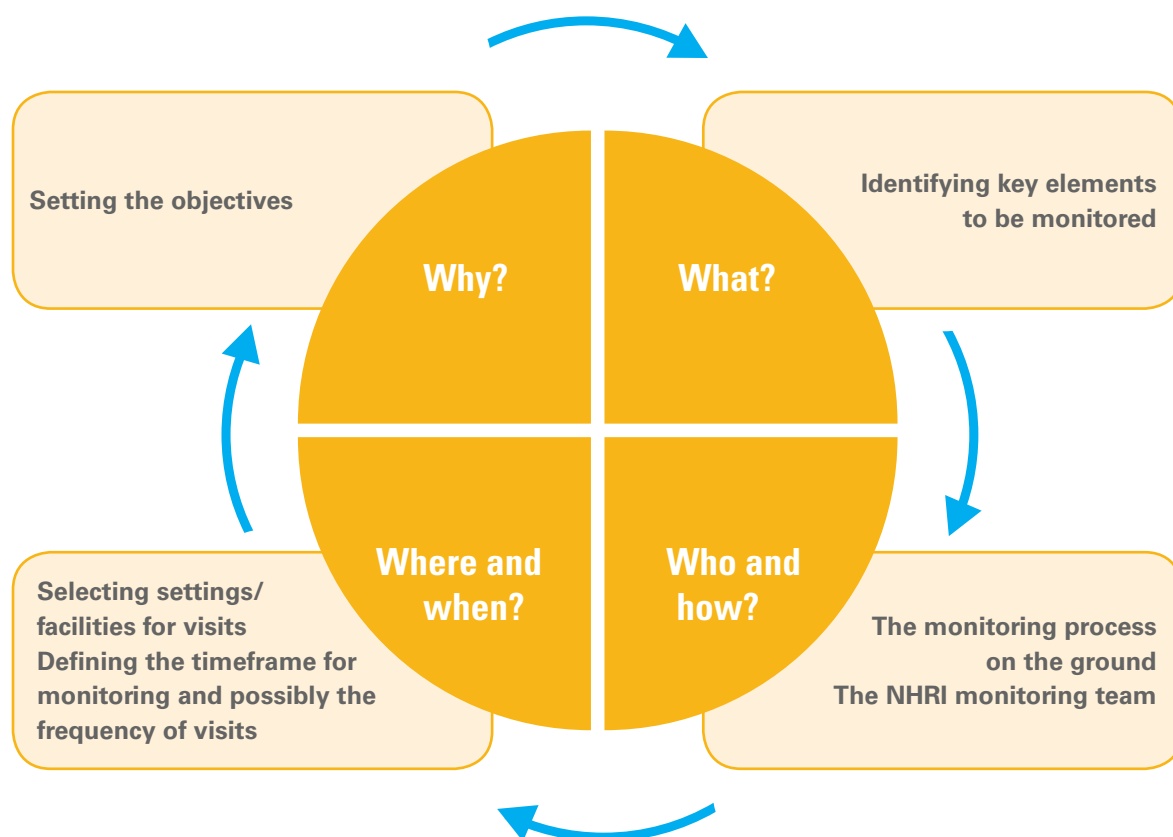
4. THE MONITORING PROCESS – STEPS AND APPROACHES

A monitoring strategy

Monitoring of child rights in closed settings needs to be approached as a core function of the NHRI's overall strategy for promoting and protecting children's rights, and human rights more generally. It should not be seen as an add-on activity, separate from others, but rather should be integrated into plans and broader objectives. This will help the institution to:

- Adopt a coherent approach to monitoring by working toward overarching goals and a broader vision
- Enhance the impact of monitoring by linking it to other interventions; for example, by feeding into an advocacy initiative to end institutionalization or detention or reform migration laws
- Be proactive, by selecting the topics and facilities it wants to investigate, rather than merely responding to reports of violations
- Position itself vis-à-vis other monitoring mechanisms operating in closed settings with a view to complementing their work
- Conduct a thorough monitoring process, building on a clear and reliable methodology.

Based on this overall plan, the NHRI will be able to develop a coherent monitoring strategy that delineates the various steps of the process. For easy reference, these steps can be summarized as key questions: Why monitor, what to monitor, where and when to monitor and how to conduct monitoring of children's rights in closed settings?



Why monitor? Defining specific goals

The specific goals of monitoring visits need to be clearly laid out in the institution's strategy and work-plan and be coherent with the institution's broader objectives and vision. Formulating these goals in terms of their impact on children's rights will help the institution to define the change it wants to achieve and keep its monitoring activities focused. It will also enable the NHRI to reflect, from the outset, on avenues for enhancing that impact.

Defining monitoring goals is a determining step in the monitoring process, as it will shape the many choices an NHRI must make when carrying out monitoring in closed settings; i.e., answers to the what, where, when and who questions.

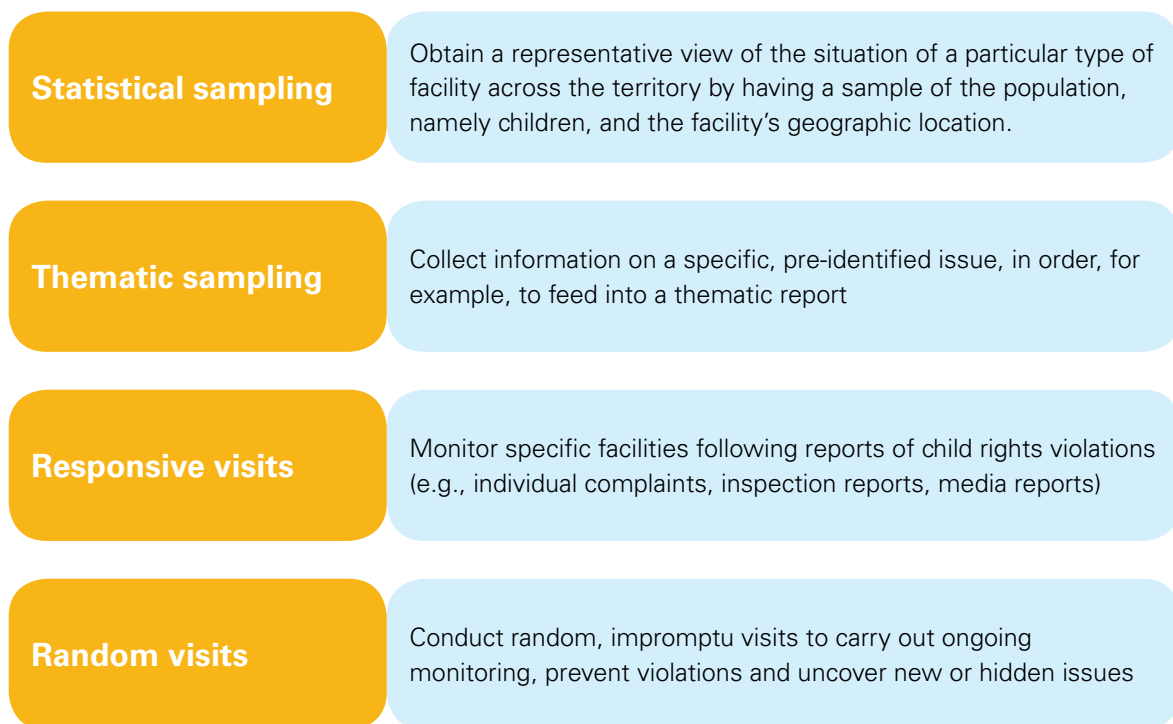
Where to conduct monitoring visits?

Determining where to conduct monitoring visits is a vital part of the overall strategy. It is instrumental to the relevance of the findings and their ability to shed light on a given situation and/or systemic issue. The selection of facilities to be visited will depend on a number of factors. Some relate to the need to cover a large range of settings and children and avoid blind spots. Others are more closely linked to the NHRI's specific goals and rationale for monitoring. Finally, the number of visits that can be undertaken, in light of available human and financial resources, will also inform the selection of facilities. Whether the institution is able to visit less than a handful or a large number of settings will influence the selection process and the use of findings to feed into broader advocacy objectives. It is also important to consider that planning of visits can be envisioned as a multi-year programme (typically over a two- or three-year period) aligned with the institution's strategy.

The selection process will take a number of criteria into consideration, such as:

- *Type of setting* (e.g., juvenile detention centre, care institution, boarding school, mental health institution, refugee camp), with due consideration to ensuring a balance among types of facilities and to covering all settings to the extent possible
- *Characteristics of the children* in the facility (e.g., age, gender and personal situation with regard to: mental and physical health, disability, parental care, migration/residency status, membership in a specific ethnic or religious group)
- *Geographic location* of the facility (e.g., rural/urban, socio-economic situation of the area/region/ neighbourhood, degree of isolation of mountainous areas or islands, emergency area due to conflict or natural disaster)
- *Country context* and nature of risks to which the child may have been exposed.

Identifying individual facilities to be visited can involve different approaches, depending on the objective sought. The table below describes various identification methods and how they align with certain objectives.



These approaches can be combined. To develop a thematic monitoring report originating in a situation identified through individual complaints, the NHRI can rely on statistical analysis to cover and compare, for example, urban and rural areas or richer and poorer areas.

In any case, it is essential for the NHRI to consider how to cover closed settings located throughout the entire territory under its jurisdiction, especially areas that are more difficult to access. Remote areas typically enjoy limited political visibility, tend to be populated by the socially and economically disadvantaged and often suffer from limited coverage and quality of social services. Hence facilities are also more likely to be underfunded and lacking in trained staff. It is thus particularly important that the NHRI monitor these locations and identify problem areas.

Who should conduct the monitoring visit?

The question of who should conduct monitoring visits depends on the number of staff, their skills and specialization, and their positions and is closely related to the objective of the visit. In any case, since a key main objective is to obtain cooperation from facility personnel the approach by those conducting the visit should be on cooperation, avoiding antagonism to the extent possible.

Since facility staff may fear that the NHRI will make negative judgements, it is important that NHRI staff work to defuse such concerns through their attitudes and behaviour. The goal is to seek the collaboration of facility personnel, highlighting that the objective of the visit is to improve children's lives and that the visit is an opportunity for both staff and children to express their concerns and be heard at a higher level.

Consequently, a team of two for a small facility or a minimum of three for a medium to large one is

usually adequate to carry out a visit. A small team permits more personal interactions with the facility's staff and children. It will also be easier for the NHRI to manage, given the often very limited personnel available and the significant financial resources that can be involved in traveling to certain facilities. However, in some instances – particularly when monitoring a large facility – a larger team might be necessary. Interviews with children and staff should preferably be carried out by a two-person team, even when the monitoring team onsite is larger. This makes it possible for one person to conduct the interview while the other takes notes, without creating too much of a numerical imbalance.¹¹

The monitoring team needs to include trained staff with relevant skills. The NHRI's strategy needs to fully consider training for staff members who will be assigned to monitoring the situation of children in closed settings, particularly in relation to interviewing techniques and reliable data collection.

In addition, monitors should have diverse characteristics and backgrounds, including gender, language and culture. A mix of professional expertise can also be helpful; a healthcare professional can assess health-related matters, while a teacher can best assess educational matters.

When interpreters are required, they must be able to conduct interviews and interact with children. When selecting interpreters it is important to be aware that certain characteristics, such as their national or ethnic background, might prompt fear or concern among those interviewees who are asylum-seekers and fear retaliation from their home government, or because there is a history of violence between ethnic groups that speak the same language.¹² Interpreters must also be bound by confidentiality clauses.

A team that includes the head of the NHRI may be called for in certain circumstances; for example, when significant complaints have emerged about the facility or when the issue is particularly politically sensitive. It is crucial for the head of the institution to participate in some of the visits, so s/he gains better understanding of children's experience and daily lives and can convey their views to the audiences with whom s/he interacts, including decision-makers and the media.

What does the NHRI need to monitor?

As noted previously, the NHRI's mandate is to monitor all children's rights. It therefore differs from inspection systems that may focus only on specific matters, such as conformity with certain regulations or finances. Given the NHRI's broad mandate it is important to identify, before conducting visits, the concrete issues to be addressed to assess whether children's rights are being upheld.

The table below highlights key areas to monitor and corresponding provisions of the CRC. It is not meant to be exhaustive, but to give an indication of how rights translate into tangible elements in the lives of children in closed settings. The NHRI will need to develop its own checklist of concrete items to be monitored on the ground, ensuring that all relevant issues are adequately covered and that data collection is consistent across facilities.

¹¹ Office of the High Commissioner for Human Rights, *Manual on Human Rights Monitoring*, 2001 edition with chapters currently being updated.

¹² Ibid.

Areas	Main corresponding CRC provisions	Examples of items to be monitored
Material conditions	Article 27 – Right to an adequate standard of living	<ul style="list-style-type: none"> <input type="checkbox"/> Do children receive enough food? Do they have access to a nutritious and healthy diet? <input type="checkbox"/> Is the setting clean? <input type="checkbox"/> Are sanitation facilities clean, accessible, functioning and sufficient for the number of people hosted in the setting? Do they ensure privacy and safety for children, especially in settings where boys and girls are held together? <input type="checkbox"/> Is the setting safe? Are there any hazards for children (electrical, fire safety, protections on windows/balconies and access to dangerous areas such as kitchens)? <input type="checkbox"/> Is the setting adequately heated, cooled or ventilated? Is there sufficient (or not too much) light? <input type="checkbox"/> Is there sufficient space for children to move around? Any overcrowding issues? <input type="checkbox"/> Is the space adequately equipped/furnished? <input type="checkbox"/> Is the setting child-friendly, with equipment adapted for children, decorations, play areas? <input type="checkbox"/> Is the setting accessible to children with disabilities?
Access to education	Article 28 – Right to education Article 29 – Objectives of education	<ul style="list-style-type: none"> <input type="checkbox"/> Do children have: <input type="checkbox"/> Access to mainstream educational settings and in line with the national curriculum? <input type="checkbox"/> Access to educational activities? <input type="checkbox"/> Access to support based on their specific educational needs? <input type="checkbox"/> Access to the digital environment to allow learning on an equal basis with other children?

Areas	Main corresponding CRC provisions	Examples of items to be monitored
Access to health services	Article 24 – Right to health and health services	<ul style="list-style-type: none"> <input type="checkbox"/> Is there a health service within the facility? <input type="checkbox"/> Do children have access to external health services? <input type="checkbox"/> Are there any obstacles to such access? <input type="checkbox"/> Do children have access to mental health services? <input type="checkbox"/> Do children have confidential access to sexual and reproductive health services and counselling?
Individualized approaches	<p>Article 3 – Best interests of the child</p> <p>Article 20 – Children deprived of adequate parental care</p> <p>Article 23 – Rights of children with disabilities</p> <p>Article 37 – Rights of children deprived of liberty</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are children’s individual needs taken into account; if so, how? <input type="checkbox"/> Are children allocated a particular staff member to whom they can turn for help and information? <input type="checkbox"/> Do facility staff hold meetings to review the situation of each child? <input type="checkbox"/> Are adaptations made to the functioning of the facility to address specific needs of some children? <input type="checkbox"/> Do children receive individualized treatment if needed? <input type="checkbox"/> Do children receive individualized psychosocial and educational support? <input type="checkbox"/> Is there an external, community-based support network and how does the facility cooperate with it? <input type="checkbox"/> Is there a system-wide mechanism for periodic review of placement?

Areas	Main corresponding CRC provisions	Examples of items to be monitored
<p>Access to play, leisure and recreation</p>	<p>Article 31 – Right to rest, leisure, play, recreational activities, cultural life and the arts</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Does the facility have areas dedicated to play and recreation? <input type="checkbox"/> Do children have access to outdoor space for play and recreation? <input type="checkbox"/> Are these areas equipped with a sufficient quantity of play materials (toys, balls etc.)? <input type="checkbox"/> Are there dedicated times for play and recreation? <input type="checkbox"/> Do children have access to recreational activities within the facility and/or outside? <input type="checkbox"/> Do children have access to sport activities within the facility and/or outside? <input type="checkbox"/> Are play and recreation facilities/spaces accessible to children with disabilities?
<p>Respect for civil rights (expression, religion, language, association, information)</p>	<p>Article 13 – Freedom of expression</p> <p>Article 14 – Freedom of thought, conscience and religion</p> <p>Article 15 – Freedom of association</p> <p>Article 17 – Access to appropriate information</p> <p>Article 30 – Rights of children from minorities and indigenous peoples to enjoy their culture, practice their religion and use their language</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Can children practice their religion and speak their language in the closed setting? <input type="checkbox"/> How do they receive information, particularly information on their rights? <input type="checkbox"/> Are children able to form associations and elect representatives?

Areas	Main corresponding CRC provisions	Examples of items to be monitored
Mechanisms/ opportunities for children to have their views heard (individually and collectively)	Article 12 – Right to be heard See also civil rights	<ul style="list-style-type: none"> <input type="checkbox"/> Do children have regular opportunities to meet with staff and share their views and concerns? Do they feel heard? Have they seen concrete change as a result of expressing their views? <input type="checkbox"/> Does the facility have a formal child participation mechanism? Is it used and effective? Has it prompted concrete change? <input type="checkbox"/> Are there specific measures in place for children with communication difficulties (children with disabilities, young children, children who do not speak the national language, children who have suffered trauma, among others) to be heard?
Protection from violence and abuse	Article 34 – Protection from sexual exploitation Article 35 – Protection from abduction, sale and trafficking Article 36 – Protection from other forms of exploitation Article 37 – Prohibition of torture, humiliating and degrading treatment Article 39 – Physical and psychological recovery and reintegration of child victims	<ul style="list-style-type: none"> <input type="checkbox"/> Are children reporting cases of physical, sexual or psychological violence? <input type="checkbox"/> Does the facility have a child protection policy? <input type="checkbox"/> Is there a mechanism to address complaints of violence and abuse by staff? How is staff accountability ensured? <input type="checkbox"/> How is peer violence addressed?
Staff training and competencies	Article 4 – General measures of implementation	<ul style="list-style-type: none"> <input type="checkbox"/> Do staff, including management, receive training on children’s rights? <input type="checkbox"/> Do staff receive other relevant training, such as on child development, handling trauma and positive discipline?

Areas	Main corresponding CRC provisions	Examples of items to be monitored
Access to a remedy	<p>Article 4 – General measures of implementation</p> <p>Article 37 – Rights of children deprived of liberty</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Do children have access to an effective remedy in case their rights are violated? <input type="checkbox"/> Are children aware of the remedy? Do they trust it? <input type="checkbox"/> Who do children speak with when they have a problem?
Privacy	<p>Article 16 – Right to privacy</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Do children have their own rooms? <input type="checkbox"/> Do children have a space where they can isolate themselves? Do they have a space for keeping personal/valuable belongings? <input type="checkbox"/> Is children’s correspondence, including e-mail and phone, private or controlled? <input type="checkbox"/> Can children access the digital environment with privacy? Is there a policy on confidentiality and protection online? <input type="checkbox"/> Are sanitation facilities equipped to guarantee privacy? <input type="checkbox"/> Are children able to have private/ unmonitored conversations with their peers inside the setting and with peers, relatives, and other relevant persons (e.g. doctor, lawyer, relevant adult) outside the setting? <input type="checkbox"/> Do staff respect children’s privacy, including keeping their situations confidential vis-à-vis other staff, children’s peers and third parties – with due respect for balance between confidentiality and protecting children from violence?
Relationship with parents and other close relatives	<p>Article 9 – Separation from parents</p> <p>Article 22 – Rights of refugee children</p> <p>Article 37 – Rights of children deprived of liberty</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Are visits by parents and relatives allowed (beyond judicial decisions in the child’s best interests)? <input type="checkbox"/> Can children communicate with parents and relatives on a regular basis (e-mail, phone, messages)? <input type="checkbox"/> Are communications private (see also right to privacy)?

Areas	Main corresponding CRC provisions	Examples of items to be monitored
Discriminatory practices	Article 2 – Right to non-discrimination Article 14 – Freedom of religion Article 22 – Rights of refugee children Article 23 – Rights of children with disabilities Article 30 – Rights of children from minorities and indigenous peoples	<ul style="list-style-type: none"> <input type="checkbox"/> Are there different rules for boys and girls? <input type="checkbox"/> Is the facility accessible to children with disabilities and parents/relatives with disabilities? <input type="checkbox"/> Are some groups over-represented in the facility? <input type="checkbox"/> Do reception standards vary according to the child family's wealth/optional fees?

Georgia – Monitoring of the childcare system by the public defender

Georgia's public defender conducted monitoring visits in small family homes, with foster care families and families participating in the state's reintegration sub-programme and in religious boarding schools. The monitoring of childcare institutions and state sub-programmes was conducted by employing both quantitative and qualitative methods: questionnaires for beneficiaries, caregivers and social workers and qualitative interviews with beneficiaries, caregivers and social workers, as well as visual inspections and examination of documentation.

Monitoring covered the following aspects: children's emotional development and protection against violence, education and psychosocial development; physical environment and health care and nutrition. As a result of the monitoring, the public defender initiated proceedings on 45 alleged violations of children's rights and issued four recommendations to relevant entities. A special report with recommendations was drawn up on the basis of the information gathered.

Source: Public defender (Ombudsman) of Georgia, Monitoring of Child Care System – Effectiveness of Alternative Care, special report, Tbilisi 2019.

How should NHRIs monitor?

Onsite monitoring is a complex process, frequently marked by dilemmas and tensions between two sets of critical concerns. On the one hand, the importance of accuracy involves collecting, verifying and analysing vast amounts of information from different sources. Particular attention needs to be paid to the comparability of data collected, especially when monitoring is meant to feed into a broader investigation or report on a particular issue. On the other hand, monitoring requires being mindful of the impact of the visit on the functioning and dynamics within the closed setting, in particular possible repercussions for children. This implies ensuring that safeguards are in place to minimize any potential negative effect.

Which documents need to be reviewed?

NHRIs' legal mandate may differ in regard to access to documentation. In many cases, however, facilities are obliged to submit all documentation requested. The types of documents that will usually be useful to the NHRI include:

- *Accreditation documents and financing agreements.* These documents state the responsibility of the facility vis-à-vis public authorities and establish accountability processes. In particular, they enable a determination of what the closed setting is committed to and which specific authority it falls under for financing and oversight. They can therefore help to identify systemic issues that have an impact on the facility's functioning.
- *Inspections, administrative and financial reports.* These reports provide indications of how the setting is run and its use of available funds. They need to be read in conjunction with accreditation and financial documents.
- *Documents related to the functioning of the facility and rules of behaviour.* Internal documents provide insight into the setting's self-established rules. They can especially provide an effective entry point for discussing and addressing inappropriate actions and behaviours by staff and management.
- *Chart of engagement.* A chart of engagement or other similar document publicly states the facility's commitment and is typically aimed directly at users, including children and their parents or relatives. It should: be written in plain and accessible language, contain contact information for a complaint mechanism and be displayed in the facility. Its existence and quality point to the facility's degree of consideration vis-à-vis rights holders, which can then be checked against other documents and interviews.
- *Child safeguarding policy.* The mere existence of such a policy attests to a certain degree of attention paid to preventing and addressing violence against children within the closed setting. Its quality, in line with recognized international standards, and information gathered through staff testimony, will enable further assessment of its effectiveness.
- *List of staff, roles, qualifications and training.* The number of staff and their role and professional qualifications will help to determine whether the setting is understaffed and whether it has the right set of skills to carry out its function. Training attended indicates which competencies staff have improved, as well as whether there is on-going investment in developing staff skills. Additionally, a review of human resources provides insight into recruitment processes and possible inadequacies, for further investigation.

- *List of children, with their key characteristics (age, gender, reason for being in the closed setting) and milestones in their life in the facility (length of stay, frequency of visits, permissions to leave the facility, schooling, activities/hobbies).* Such information is private and sensitive, and therefore needs to be handled with great care. Access to children's files provides information about which children are in the closed setting, why and for how long. It further helps to identify opportunities for children to interact with the outside world for their comprehensive development or the detection of possible issues. Written comments made by staff on individual children also provide insight into how children are viewed and treated within the closed setting.

Who needs to be heard?

The monitoring visit needs to include interviews with a range of actors. These interviews enable the NHRI to collect relevant information, explain its monitoring role and reflect jointly on avenues for change. This double function needs to be fully integrated into the NHRI's approach to interviewing, in particular through asking relevant questions and having a collaborative attitude.

Actors to be interviewed include:

- *Facility management, particularly the director.* It is important to explain the NHRI's role, mandate and competencies in relation to monitoring child rights in closed settings to the top managers of the facility at the inception of the visit. They need to be informed about how the monitoring process will take place and what access should be provided to NHRI staff. The initial interview should also include fact-finding questions on the facility's functioning, respect for children's rights, achievements and challenges. The structure's top management should also be interviewed at the end of the visit, to verify the information received from other sources and specify next steps. When appropriate the monitoring team's first impressions can be communicated orally to the management.
- *Children with different characteristics and in different situations; not only those identified by the facility.* Upon review of the facility's documents, it is important to identify children in the setting who are in different situations due to their own characteristics, reason for being there and length of stay. The facility's management may indicate a few children to be interviewed, but NHRI staff need to go beyond these suggestions and should not feel obliged to comply with them. Whether they are interviewed individually or in groups, children should be able to interact with NHRI staff without facility staff members present. However, children should also be able to choose to talk in the presence of trusted person and should always be asked for consent prior to the interview.
- *Education staff and/or daily caregivers.* These are the people in regular contact with children in the closed setting, and who are responsible for providing care and fulfilling a parental role with children separated from their parents. The interview allows for gathering concrete information on children's daily experiences, but also on how education staff see their role, the difficulties they face and their views of the overall functioning of the facility and system.
- *Other staff, including (as relevant) healthcare staff, cooks, cleaning persons, security guards, and cultural mediators/translators, among others.* Such staff may be seen as having a more indirect role in children's care, but they are often the eyes and ears of what is happening within the facility and may act as children's confidants. They may therefore be able to provide critical information on the status of children's rights in the facility.

- *Parents and caregivers inside or outside the facility (as relevant and possible).* Children's relatives may be able to provide information from a different standpoint, whether they are outside the facility or held there together with their children. They may have seen things and heard children talk about their experiences in the facility. They may themselves have encountered difficulties with the facility staff, involving visits or behaviours they disapprove of. When interviewing children's relatives, it is essential to bear in mind possible biases and vested interests in portraying the setting in either a positive or negative light.

Conducting interviews with children in closed settings

Before the interview

- Prepare the interview questions
- Anticipate possible communications issues (due, e.g., to age, language, disability or trauma) and how to address them
- Ensure interview setting is adequate
- Prepare the interpreter as relevant

During the interview

Introducing the interview

- Say hello and possibly apologize for interrupting what the child was doing
- State your name and function (for all persons in the room, including interpreters)
- Ask the child's name, age, and how long they have been in the closed setting
- Possibly, ask the child how they are doing today, what they were doing just now, where they go to school, their favourite hobbies or any other appropriate and neutral ice-breaking questions
- Explain what the NHRI is and its role
- Explain why you are here, the purpose of the interview
- Be clear about confidentiality, what information will be shared, with whom and how
- Be clear about what you can do and what you cannot do
- Ask the child whether they agree to answer your questions and indicate that they are free to stop at any time
- Emphasize that you are interested in what they have to tell you, because what they think is important to you
- Ask the child if they have questions about the interview
- Find out whether the child is comfortable with the setting and with the persons in the room, preferably by asking open-ended questions (e.g. would you prefer to talk to a man or a woman? Is there another place you'd rather be to discuss or are you ok here? Is there anything or anyone here that makes you feel uncomfortable?)

Conducting the interview

- ❑ Build on key questions, but keep the interview semi-structured in a way that feels like a dialogue rather than an interrogation
- ❑ Ask open questions, rather than yes/no questions
- ❑ Listen carefully to the child and ask follow-up questions
- ❑ Show empathy by expressing that you understand how they feel, but without making judgements about the validity of a statement the child has made or endorsing it
- ❑ Reformulate the information shared by the child to make sure you have understood it properly and verify it
- ❑ Avoid repeating the same question several times to verify the information – while this technique can work for adults, children will usually think they gave a wrong answer and try to correct it, making the statement inconsistent
- ❑ Do not ask questions that are intrusive and not directly related to the subject matter
- ❑ Beware of any comment or body language that may appear as judgemental, approving or disapproving of what the child says
- ❑ Remember that children will usually want to please the adult, especially the adult in a position of authority and give the “right” answer. Thus it is important to be aware of your own expectations, step back from them, and remain neutral throughout the interview
- ❑ Do not hesitate to interrupt the interview if you see that the child is uncomfortable or looks distressed
- ❑ Do not refer to something someone else told you, that could put the other person at risk if identified
- ❑ Give children time to think about their answers, avoid rushing and do not hesitate to pause between questions
- ❑ Record the interview or take notes, using direct speech and reflecting the exact words used by the child, insofar as possible

Closing the interview

- ❑ Ask the child if there is anything else they would like to tell you about – and give them a few seconds to reflect
- ❑ Ask the child whether they think there are any specific precautions to be taken after the interview
- ❑ Explain that you are now reaching the end of the interview
- ❑ Tell the child what will happen next, what you will do with the information collected, and whether or not they will receive additional feedback on what they said

- ❑ Clearly explain again what you can and will do, and what you cannot and will not do, especially if the child has made a request during the interview
- ❑ If you will need to report a case to another person or to the police because the child is in danger, it is important to communicate this to the child, unless it is not in their best interests
- ❑ Give the child information for getting in contact with you or with the NHRI, inviting them to do so if they wish
- ❑ Thank them for their participation and emphasize again that their views are important

After the interview

- ❑ Review and complement your notes, identifying information that may require triangulation/ verification or further exploration
- ❑ Take immediate action to fulfil any commitment you have made to the child
- ❑ Ensure the protection and confidentiality of information collected
- ❑ If a child is in danger, take the necessary steps to address the situation by referring the case

What needs to be seen?

Seeing first-hand the premises where children are accommodated and spend their time is an essential component of a monitoring visit. It provides an indication of the material conditions in which children live as well as an overview of how the space is organized and how that positively or negatively impacts children's enjoyment of their rights.

Some elements that could be considered include:

- Overall cleanliness. Further to hygiene concerns, a dirty or untidy place can be an indication of mismanagement and inadequate care for children.
- Sufficient, child-friendly equipment (size, design, decoration, safety). A welcoming space, with neatly painted walls and child-friendly furniture and equipment, as well as relevant safety precautions (barriers on windows, balconies and stairs, fire protections, etc.) gives a sense of children's experience in the setting. The NHRI's role is not to oversee compliance with all safety rules but observing basic hazards will suggest whether children's safety has been adequately considered.
- Room size, number of children per room, children's privacy and space for valued possessions (photos, personal objects) demonstrates whether or not there is overcrowding and respect for privacy and sheds light on children's overall living experience.
- Condition and availability of sanitation services. The state of sanitation services and the number of functioning toilets, showers, etc. in proportion to the number of children living in the facility provides a vivid sense of living conditions and respect for children's rights.

Georgia – Monitoring access to water and sanitation for public school students

Georgia's public defender conducted monitoring visits at 108 public schools to assess access to water and sanitation for students. Schools selected were from both urban and rural areas, including the highlands, and of all different sizes. The monitoring was based on both quantitative and qualitative methods: one questionnaire covered the visual examination of institutions while a second was used during interviews with representatives of school administrations. In addition, the monitoring included focus groups with school children in fifth to seventh grade. Relevant documents, such as school regulations and headmasters' instructions, were also reviewed. The final report included a number of photos depicting the gaps identified.

Source: Public defender (Ombudsman) of Georgia, Access to water and sanitation in public schools of Georgia, Special Report, Tbilisi, 2018.

- *Availability of spaces for privacy, in bathrooms and elsewhere.* In closed settings, children are typically living in collective facilities, limiting the availability of spaces where they can be alone. Likewise, allowing for privacy – particularly in bathrooms – is critical to respecting children's dignity.
- *Dining areas.* Visiting areas where meals are taken will enable the NHRI to assess whether the arrangement and equipment is appropriate for children and to understand the overall process and whether it is favourable for peer interactions.
- *Play and recreation space.* Spaces where children can play and spend non-structured time with their peers are essential and may have been overlooked, especially where children are held with adults or are deprived of liberty due to juvenile justice proceedings,
- *Outdoor spaces.* While not all facilities have an outdoor space, especially in urban areas, opportunities for safe outdoor play and sports need to be investigated as essential to children's development.

What safeguards should be in place during monitoring visits?

Child protection concerns may arise during monitoring visits, usually falling into two main categories:

1. *Behaviour and actions of NHRI staff.* Staff may, consciously or not, have attitudes that pose a risk to children's development, reflected, for example, in intrusive or judgmental questions, making degrading statements or using their authority to behave inappropriately with children.
2. *Issues that emerge during the visit, in particular during individual interviews.* Children may reveal situations of violence (maltreatment or abuse, including sexual abuse) that put them at immediate risk and require swift action to keep them safe. Such issues do not fall within the remit of medium- to long-term needs for improvement following the monitoring process. Such issues are complex, because an NHRI's intervention (such as referral to the police or justice system) must be balanced against the framework of its monitoring function. Thus the European committee to prevent torture and inhumane treatment recommends that NHRI's have different, clearly separate, departments

for addressing individual complaints and conducting monitoring visits to protect children in closed settings. The rationale is that a certain level of confidence between the independent NHRI and the facility being reviewed is instrumental to creating a cooperative atmosphere and to the NHRI's ability to use its soft power to promote change. The risk of handling individual situations in such a context is that the NHRI will be perceived as a threat and children will be exposed to sanctions. Yet when a child's life and physical or psychological integrity is at stake, the NHRI should carry out relevant follow-up, depending on the situation, and possibly call on authorities to act.

Therefore, steps taken when gathering information – especially during interviews with children – need to be weighed against their potential impact on children who may have experienced trauma within or outside the facility, as well as the expectations that might be created and any possible sanction to which they might be exposed as a result of speaking to the NHRI.

Like any organization that has direct contact with children, it is important that NHRIs develop their own child protection policies, to address both the prevention and handling of internal child protection concerns and procedures for addressing concerns that come to light during its work.

Keeping children safe: International child safeguarding standards

Standard 1: Policy

Development of a policy that describes the organization's commitment to preventing harm to children, outlining the steps that must be taken should an incident occur.

Standard 2: People

Identification of clear responsibilities and expectations for all staff and associates, supporting them to understand and act accordingly.

Standard 3: Procedures

Creation of a child-safe environment by implementing high-quality safeguarding procedures that are applied in all programmes and activities.

Standard 4: Accountability

Regular monitoring and review of an organization's safeguarding measures.

Source: [Keeping Children Safe](#), 'Setting tough international child safeguarding standards', London, 2002.

At a broader level, adopting ethical guidelines for monitoring is also very valuable for providing guidance to monitoring staff on the 'dos and don'ts' for in situ visits and when interviewing children. Guidelines will help them assess, for instance: whether an interview is necessary, whether informed consent has been secured, the type of information that should be shared with children and staff (how the information they share will be used, level of confidentiality, data protection, reporting mechanism).

Possible elements to be included in ethical guidelines

- ❑ Basic principles for conducting interviews with children during a monitoring visit
- ❑ Inclusion and exclusion criteria for child participation in an interview or focus group
- ❑ Key elements for preparing/conducting/concluding interviews with children
- ❑ (e.g., preliminary contact: introduction; informed consent; presence of a
- ❑ third person; monitors' behaviour, attitudes and perceptions)
- ❑ Issues/common problems to consider before, during and after an interview with children.

Source: Defence For Children International, 'Practical Guide – Monitoring places where children are deprived of liberty', DCI, Geneva, 2016.

How long should the visit take?

The length of a visit depends on a number of factors, both internal and external to the NHRI, such as:

- *Purpose of the visit.* Whether the monitoring consists of a full review of the functioning of a facility or focuses on specific aspects will dictate different timeframes. It is important, however, to allow sufficient time to meet with a range of actors and reveal problematic issues.
- *Nature and size of the facility to be visited.* For instance, visiting a child care institution hosting just a handful of children or a small psychiatric hospital department may take one day, while monitoring a refugee camp could require several days.
- *Situation and characteristics of children in the facility,* including possible additional time needed to conduct interviews due to age, disability, trauma and language. Extra time should be factored in when interviews are likely to take longer, in order to allow time for quality interactions – either because children need specific assistance in communicating or to carry out further trust-building efforts.
- *Overall NHRI monitoring plan and resources.* The NHRI strategy might call for short visits to a large number of facilities or for an in-depth review of just a few facilities. The two strategies may also coexist, depending on the nature of the facilities; for example, numerous short visits to child care facilities, along with longer visits to two or three centres holding child migrants.

When does the NHRI need to undertake monitoring visits?

The NHRI should undertake monitoring visits on an ongoing basis. Visits can be organized ad hoc or in conjunction with planned travel to a specific area for other reasons. Ideally, once a visit has been conducted and a report with recommendations issued, the NHRI should return to the facility six months to a year later to assess whether recommendations have been implemented and identify outstanding bottlenecks.

The NHRI's legal mandate should include conducting unannounced visits, which offer an opportunity to see a setting the way it really is. This is usually considered to be the most effective way to monitor children's daily experience. However, the NHRI may decide to advise the facility ahead of its visit. This gives the facility time to present a more positive – but possibly less truthful – picture of conditions. However, it also allows for more preparation and can help to ensure the presence of relevant stakeholders to be interviewed, such as management and children's relatives outside the institution. Announced visits can sometimes be valuable for follow-up monitoring, allowing the NHRI to assess progress and discuss the implementation of its recommendations.

5. MONITORING FOR CHANGE: ENHANCING THE IMPACT OF MONITORING

Monitoring of children's rights in closed settings by NHRI's needs to be geared toward change – change in children's daily conditions, staff attitudes towards children, children's ability to have their views heard and more. The goal is for such change to occur at both the facility level and system levels. This perspective needs to be factored into the NHRI's monitoring strategy from the inception – not after the visit has been completed and the report issued. Seeking positive change should be integral to the NHRI's approach throughout the monitoring process. It is therefore important that the NHRI reflect on how to augment the impact of its monitoring activities.

Strategies for enhanced impact include:

In facilities

- *Discussing issues and findings.* During the monitoring visit, it can be valuable to set aside time for meeting with staff and management to: discuss the NHRI's preliminary findings, double-check some of the information gathered and hear views on possible concerns or obstacles that affect the facility's ability to fully realize children's rights. The goal should be to create a collaborative atmosphere and present the NHRI visit as an opportunity to reflect on needed improvements.
- *Invite the facility to develop a plan for implementing recommendations.* It is important to take steps with the facility to ensure that recommendations are taken into account and translated into concrete actions. If facility staff and management argue that the broader context limits opportunities for improvement, it is essential to highlight actions that can be readily implemented, even in the absence of additional funding or authorization. This will help to create a positive perception of the value of the monitoring process.
- *Monitor implementation by conducting follow-up visits and/or surveys to assess progress and concrete steps taken.* Follow-up visits conducted six months to one year after the monitoring visit provide an opportunity to: assess whether actions have been taken in light of recommendations made; identify new developments; and convey the message that NHRI monitoring is not a one-time event but a continuing engagement, further encouraging facilities to take the necessary steps to comply with recommendations.
- *Use monitoring visits to identify individual cases of child rights violations.* As mentioned above, using visits to identify and report cases of rights violations has a double edge. On the one hand it is an opportunity to uncover situations requiring attention. On the other if facility staff fear sanctions, it may significantly impair their willingness to be open and cooperative. Each NHRI has to strike the right balance, depending on the context. The NHRI could establish a set of criteria based on the seriousness of the violation, risks involved and effect on the child's development. In any case, it is important to be clear and communicate with the closed setting about whether or not reporting specific situations that reflect negatively on the facility or its staff is a potential outcome of the visit.
- *Use monitoring visits to raise awareness about children's rights with children and staff.* Visits also offer an opportunity to make the NHRI, its role and, in particular, its complaints mechanism, known to children and staff. Here again, the approach to communicating about the institution and its mandate needs to take full account of the monitoring objectives and context and the importance of eliciting cooperation from the facility.

Sweden – Ombudsman for Children monitors children in police cells and remand prisons

In 2013 the Ombudsman for Children in Sweden met with 34 young people suspected of crimes and deprived of their liberty. It visited police cells at seven locations and remand prisons at six locations around the country. It spoke to each young person in private, with the aim of learning directly from children and young people suspected of crimes how to guarantee their best possible treatment and uphold their human rights. The investigation received support from the Swedish Prison and Probation Service and the National Police Board. The Ombudsman also interviewed various categories of staff, from management to youth administrators, prison officers and police cell guards, asking in particular how children were treated compared with adults and how their specific needs were addressed. It observed the physical environment for children in police cells and remand prisons. It further reviewed court detention orders and data from police authorities on children held in police cells and remand prisons and the grounds for their incarceration. The Ombudsman's final report was written using language and a format accessible by young people. The report was submitted to the UN Committee on the Rights of the Child.

Source: Office of the Ombudsman for Children, [‘From the Inside: Children and young people on life in police cells and in remand prisons’](#), Ombudsman's Office, Stockholm, 2013.

At the systems and policy level

- *Linking findings in at facilities to broader policy issues.* Monitoring visits will give the NHRI insight into how policy decisions play out in children's daily lives in closed settings. Visits can potentially reveal unexpected impacts (negative or positive), highlight gaps or gauge the effectiveness of certain measures in changing the situation on the ground; for example, funding levels, laws and policies. Monitoring activities therefore help the NHRI to identify critical issues and provide solid ground upon which to build its strategy for addressing them. By using concrete examples, echoing children's views and using pictures taken during monitoring, the NHRI can provide a vivid account of children's experiences.
- *Highlighting patterns based on several visits.* Similar issues that arise consistently when conducting monitoring visits in various facilities help uncover the existence of a pattern (e.g. of inadequate staff behaviours, insufficient investment, issues being ignored or overlooked, etc.). Monitoring helps to identify both systemic issues that affect children in closed settings and the policy interventions needed to address them.
- *Feeding into research reports and investigations with evidence and concrete examples.* Visits provide the opportunity to obtain a first-hand account of children's experiences in closed settings. A narrative describing these experiences can serve as a valuable resource to inform research reports and alert the public and authorities through concrete illustrations.

- *Publicizing findings.* The ability to make findings public (e.g., via a press release, inclusion in NHRI's thematic and annual reports or public statements) is an important tool that allows the NHRI to use its soft power to promote change and create pressure on relevant authorities and facilities to implement recommendations. In addition, the findings can serve to inform development of an advocacy strategy founded on evidence and critical findings. [see tool on advocacy]
- *Briefings with key actors.* An important tool in NHRIs' soft power toolbox is their direct access to decision-makers. This access can be used to hold briefings and dialogues with parliaments and ministries and agencies responsible for the facilities visited.

6. ADDRESSING CHALLENGES TO MONITORING

Challenges to undertaking monitoring are related both to the institution itself and the environment in which it operates. This section addresses both dimensions and lays out paths for overcoming obstacles.

NHRI's often must seek to overcome several internal challenges:

- *Limited human and financial resources.* Monitoring activities involve significant costs. Conducting visits requires the mobilization of personnel and incurs travel costs, especially when traveling to remote areas or those difficult to access via regular means of transportation. One strategy for overcoming these difficulties is to plan monitoring visits to coincide with other travel to the same area. For example, when attending a public event or holding a training session in a certain location, the NHRI could add a day or two to monitor closed settings in that area or nearby. However using means provided by the government, such as a ministry's cars, should be avoided to preserve independence.
- *Inadequate staff skills.* As mentioned above, conducting monitoring visits requires specific skills for successfully interacting with children, collecting relevant and reliable data and developing a collaborative approach with the facility. It also involves solid knowledge of the NHRI's specific mandate for monitoring – in particular its legal powers. Staff training needs to be provided by the institution itself.
- *Legal mandate.* The NHRI's legal mandate is critical to its ability to effectively carry out monitoring in closed settings. By definition, these settings are not open to external visits. But NHRI's are often authorized to conduct unannounced visits and enter the premises without prior notice or authorization, as well as to access all documentation it requests. However, in some cases the law may limit the institution's monitoring powers, for example by requesting a judicial order or subpoena to access premises and documents. This significantly limits the institution's power and such provisions should be removed. While it is not within the NHRI's power to amend its own legal mandate, ensuring that it has the legal authority to carry out its monitoring function should be integrated into its advocacy strategy with decision-makers. In many countries, such advocacy – conducted by NHRIs and ombudspersons and supported by others, including child rights NGOs – has led to the revision of legal provisions, to facilitate enhanced effectiveness. Some premises may also be off-limits for NHRI monitoring. For example, in many countries military areas cannot be accessed and privately owned settings, including privately run childcare institutions, may not be accessible without a judicial order.
- *Lack of adequate child safeguarding procedures.* As mentioned above, child-safeguarding procedures serve to prevent possible abuse by staff, but also to help staff report on serious child rights violations they may learn about. It is essential that the NHRI develops guidelines and procedures to follow when a staff member learns that a child is in danger and that it trains staff on such procedures. A monitoring visit may reveal that a child does not receive needed health care, or that physical conditions at the facility present a particular danger or that a child has been sexually abused. In such cases, staff need to know to whom to report the situation, how to do so, what the consequences will be, the limits to confidentiality of information from a child and his or her role in collecting evidence for the court.

- *Competing priorities.* In a context of limited resources and opportunities for policy advocacy, NHRIs usually have to focus on a limited number of issues. Given the significant efforts required to monitor children's rights in closed settings, it might be tempting to solely respond to issues that arise in the media or to primarily address issues for which information is readily available. Yet it is precisely the NHRI's ability to uncover new issues and address the situation facing vulnerable children in facilities through its recommendations that lies at the heart of its effectiveness.

The external challenges faced by NHRIs are usually related to reactions or responses to their monitoring function:

- *Resistance from places visited,* including denying access to the premises or to certain areas, refusing to allow or facilitate meetings with staff and children and being reluctant to share documents. Staff may feel threatened by having the eyes and ears of an external actor inside a setting that is, by definition, inaccessible to outsiders. They may fear being judged and blamed, or held accountable if wrongs are unveiled. They may also be concerned that listening to children's views might lead to questioning authority and creating disorder in the facility. Staff may also be unfamiliar with the mandate of the independent institution and its mandate to access all premises and documents. It is therefore important for NHRI monitors to be prepared for such resistance by having solid knowledge of the extent (and limits) of the institution's legal mandate and powers, and possible remedies in case the facility maintains its refusal. Remedies might include contacting the facility's supervisory body, filing a complaint before a tribunal or even requesting police intervention, as a last resort. Yet collaboration should be strongly encouraged, and NHRI staff should be prepared to lay out key arguments in support of monitoring and reassure personnel at the facility, while being transparent about the potential consequences of the visit. This requires advanced planning, with relevant background notes and FAQs produced for both staff and facilities to be visited.
- *Difficulty of access.* Various circumstances may make a facility inaccessible, such as geographical barriers or their location in areas of conflict or natural disaster. Some facilities may host children whose behaviour puts monitors at risk, such as in mental health institutions. However, the NHRI should make a maximum effort to visit all settings, as hard-to-reach facilities are also less likely to be inspected and visited by external actors. A facility's location in an unusually hard-to-reach area should not prevent the NHRI from conducting visits.
- *Fear of sanctions by children and staff in closed settings if they cooperate with the NHRI.* The prospect that once the NHRI leaves they may face sanctions often prevents children and staff from speaking openly about conditions in the facility and disclosing possible issues, especially when management or staff may bear some level of responsibility. The NHRI needs to be clear about the confidentiality of exchanges held and concrete steps taken to preserve the anonymity of information collected, not only by refraining from using names but also by ensuring that information made public cannot be traced back to a particular source. For example, a report describing a particular event in detail may easily lead to identifying who reported the event. When interviewing children and staff, particular attention needs to be paid to that which is being left unsaid and may hint at larger problems.

Mitigating the risk of sanctions related to monitoring for children and their relatives

Children

Possible sanctions

- Physical and psychological violence by staff
- Peer violence
- Isolation
- Restriction of rights (food, activities, medical care, etc.)
- Prohibition of visits and communications with the outside world
- Transfer to another facility, away from relatives and community

Impact

- Fear
- Distrust
- Silence

Prevention strategy

Before the visit

- Develop an internal strategy to prevent sanctions
- Establish clear guidelines for reporting individual cases of deliberate ill-treatment
- Establish a specific policy setting out the types of information that can be collected during group interviews and those that should be collected only in private
- Collect relevant information from other actors, including NGOs working directly or indirectly with inmates

During the visit

- Choose a large group of people to interview at random, or mix the individuals chosen for the interview in a random way, in order to prevent possible identification
- Carry out the interviews in absolute privacy
- Inform staff that it is illegal to apply any sanction on children because they collaborated with the NHRI and that the NHRI will continue to monitor compliance after the visit
- Omit formulating recommendations, suggestions or petitions to staff immediately after the interviews, except in cases of extreme urgency or when the child's demand is unquestionable; in these cases, such information must be recorded in writing

- ❑ When visiting the closed setting, avoid collective demands raised openly as they may expose children
- ❑ Be aware of the possible presence of informants among those living in the closed setting
- ❑ Make sure to inform children of their rights and give them sound advice.

After the visit

- ❑ Carry out follow-up visits
- ❑ Guarantee the presence of multiple monitoring bodies, including NGOs
- ❑ Avoid public exposure, unless the person involved wishes the information given to be publicly known
- ❑ Facilitate communication with the outside world for children in closed settings
- ❑ Submit for judicial review any sanctions concerning children in the setting taken at the administrative level

Relatives

Possible sanctions

- ❑ Prohibition of visits
- ❑ Sanction against the child in the closed setting
- ❑ Transfer of the child
- ❑ Humiliation and hindrances (long wait times, body searches etc.)

Impact

- ❑ Uncertainty, anxiety
- ❑ Silence
- ❑ Disruption of ties with the child

Prevention strategy

- ❑ Offer appropriate advice concerning their rights as relatives
- ❑ Provide support to relatives in administrative submissions and defend their rights
- ❑ Highlight the role of relatives to both judicial and the administrative actors by developing comprehensive programmes to address their needs

Source: Adapted from Association for the Prevention of Torture, 'Mitigating the risks of sanctions related to detention monitoring', Detention Monitoring Briefing no4, APT, Geneva, 2012.

Lack of trust in the NHRI. Regardless of its level of independence, in the eyes of children living in closed settings the NHRI will often symbolize a public authority. They may have had negative experiences with public institutions and see them all as a potential enemy or source of harm. They may believe that the NHRI is “on the side” of the adults who are maltreating them on a daily basis. They may also simply not trust someone they do not know. Building trust with children implies long-term work and continuous engagement to make the institution known to children. See [Promotion and Outreach with and for Children](#). If children have already heard about the NHRI, they will probably feel more at ease interacting with its staff. However, this is not sufficient; trust-building techniques need to be fully applied during interviews.

Backlash from the government if the findings from monitoring are particularly critical of policies and and/or other inadequacies managed by the ministry. This could lead to attacks on the NHRI's findings that question its credibility, as well as other types of sanctions aimed at limiting its independence, such as budget cuts, restrictions on its mandate and even threats to shut down its operation.

7. MONITORING AND EVALUATING THE MONITORING FUNCTION

Monitoring and evaluation (M&E) of an NHRI's monitoring function is critical to enhancing its ability to promote and protect the rights of children in closed settings. The institution's strategy for monitoring and evaluating its child rights work therefore needs to fully include considerations related to the NHRI's role vis-à-vis children in closed settings, in order to identify strengths and gaps and take necessary action to reinforce approaches and activities in this field.

What is the scope for monitoring children's rights in closed settings?

- Does the institution's legal mandate explicitly mention its authority to monitor the rights of children in closed settings?
- Does the institution's legal mandate include full access to premises, documents and interviewees?
- Are there any legal exclusions/exceptions to the institution's mandate for monitoring in closed settings?
- How many settings hosting children did the NHRI visit during the last year? What proportion of total settings visited did this represent?
- How does this compare to previous years?
- Which areas of the country were covered over the past three years?
- Which types of closed settings for children were monitored during the past three years?

What is the quality of monitoring?

- How long does each visit last, on average?
- Did staff conducting monitoring visits receive specific training?
- How many children were directly interviewed? Out of how many?
- How many monitoring reports were produced?
- Do monitoring reports contain recommendations?

What were the outcomes of monitoring?

- Did the NHRI undertake follow-up action after the visits (e.g., follow-up visits, requests for information on implementation of recommendations)?
- Were monitoring findings used for advocacy purposes?
- Has the media reported on the monitoring reports/findings?
- Did monitoring the rights of children in closed settings result in policy change?
- Did monitoring the rights of children in closed settings result in concrete change within the facility?
- Has monitoring the rights of children in closed settings resulted in concrete change in the situation of an individual child?
- Did the NHRI receive follow-up questions or complaints from children or staff at the facilities visited?

ADDITIONAL RESOURCES

Office of the High Commissioner for Human Rights, [Manual on Human Rights Monitoring](#), 2001 (chapters are being progressively updated).

Office of the High Commissioner for Human Rights, [Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide](#), Professional training series no. 21, OHCHR, Geneva, 2018.

Office of the High Commissioner for Human Rights, [Monitoring the Convention on the Rights of Persons with Disabilities – Guidance for Human Rights Monitors](#), Professional training series no. 17, OHCHR, Geneva, 2010.

Council of Europe, [Visiting places where children are deprived of their liberty as a result of immigration procedures – Guide for Parliamentarians](#), COE, Strasbourg, 2017.

Defence for Children International (DCI), [Practical Guide - Monitoring places where children are deprived of liberty](#), DCI, Geneva, 2016.

Association for the Prevention of Torture, [Mitigating the risks of sanctions related to detention monitoring](#), Detention monitoring briefing no. 4, APT, Geneva, 2012.

Asia Pacific Forum and Association for the Prevention of Torture and Office of the High Commissioner for Human Rights, [Preventing torture – An Operational Guide for National Human Rights Institutions](#), APF, APT and OHCHR, May 2010.

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