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

CHILD-FRIENDLY COMPLAINT MECHANISMS

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CONTENTS

ABOUT THIS TOOL	6
1. INTRODUCTION	7
2. OVERARCHING PRINCIPLES UNDERPINNING A CHILD-FRIENDLY COMPLAINT MECHANISM	10
3. PRACTICAL ELEMENTS OF A CHILD-FRIENDLY COMPLAINT MECHANISM	13
4. SETTING UP AND STRENGTHENING A CHILD-FRIENDLY COMPLAINT MECHANISM	18
5. ADDRESSING THE CHALLENGES	21
6. MONITORING AND EVALUATING THE CHILD-FRIENDLY COMPLAINT MECHANISM	22
7. RESOURCES AND SOURCES	24
APPENDIX 1. ADDITIONAL EXAMPLES OF CHILD-FRIENDLY COMPLAINT MECHANISMS	26

ABOUT THIS TOOL

Child-friendly complaint mechanisms

This tool provides detailed guidance to National Human Rights Institutions (NHRIs) on what makes a complaint mechanism child-friendly, the principles the mechanism needs to abide by, the key elements to be considered, as well as the common challenges NHRIs face and how to overcome them. Recognizing that NHRIs' complaints mechanisms are one way for children to access justice, this document largely draws on standards developed in the context of justice for children. The tool needs to be read in conjunction with the tools on child participation and outreach, both of which have applicability for child-friendly complaint mechanisms.

The content is structured as follows:

- **Section 1** introduces the issue, emphasizing its importance for both children and NHRIs, and elaborates on what is meant by "complaint" for children.
- **Sections 2 and 3** present the key principles and elements to be considered for the complaint mechanism to be child-friendly.
- **Section 4** explains the various practical steps NHRIs need to take to establish or strengthen a child-friendly complaint mechanism.
- **Section 5** identifies common challenges NHRIs face and suggests ways to address them.
- **Section 6** provides elements for a monitoring and evaluation framework.

Objective of the tool

The Toolkit has been developed:

- To provide guidance to NHRIs on setting up and strengthening child-friendly complaint mechanisms;
- To detail how to make complaint mechanisms accessible to all children, including the most marginalized;
- To help NHRIs ensure that complaints received are handled in a child-sensitive manner;
- To identify the strengths of NHRIs, and the challenges they face on a daily basis to provide an effective complaint mechanism for children;
- To give practical and promising examples from the field illustrating how NHRIs have addressed these issues; and
- To introduce a framework for NHRIs to monitor and evaluate their complaint mechanism.

1. INTRODUCTION

The information available reveals that children and young people make up a very small proportion of complainants to NHRIs. This can be attributed to a range of factors, including lack of information, lack of trust in public institutions, a belief that the complaint will not be taken seriously, and fear of reprisals. It indicates that complaint mechanisms are insufficiently accessible to children and need to be more child-friendly.

A complaint mechanism is a means through which children who believe their rights have been violated, as individuals or collectively as a group, can seek redress and make the violation stop. This is integral to the right to a remedy in case of a rights violation.

The right to a remedy is a fundamental human right and an essential dimension of access to justice for children. Acknowledging and ensuring that children have direct access to a remedy is also recognition that children are full citizens and actors in their own lives. The right to a remedy is particularly important for children and young people who are marginalized and more at risk of having their rights violated (e.g. child victims of violence, children in care or in closed institutions, children who belong to a minority, children on the move and children in contact with the law, among others).

“Independent, safe, effective, easily accessible and child-sensitive complaint and reporting mechanisms should be established by law in compliance with international human rights norms and standards, in particular the Convention on the Rights of the Child. Where such mechanisms already exist, States should secure their availability and accessibility for all children, including children deprived of their liberty, without discrimination of any kind. In addition, States should ensure that complaint and reporting mechanisms act in an effective and child-sensitive manner and pursue the best interests of the child at all times.”

Access to justice for children.

Report of the United Nations High Commissioner for Human Rights.

16 December 2016.

The Committee on the Rights of the Child has emphasized that States must provide effective and child-sensitive means for children to have their complaints heard before appropriate bodies.¹ In its General Comment 2, it has also stressed that the complaint mechanism should be a mandatory feature for NHRIs and that NHRIs must have the power to consider individual complaints and petitions, including those submitted on behalf of or directly by children, and to carry out investigations.²

¹ UN Committee on the Rights of the Child (2003). General Comment 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5.

² See Committee on the Rights of the Child (2002) General Comment 2: “The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child.” CRC/GC/2002/2, 15 November, paragraph 13.

Complaints are also a very important source of information on children's daily experiences and an instrument for change for NHRIs:

- Complaints submitted by children reveal the concrete difficulties they face in their lives;
- They help to identify problems and bottlenecks in the system that prevent children from enjoying their rights;
- Handling complaints is a major means for the NHRI to promote change in public policies and practices; and
- The complaint mechanism gives the NHRI a basis to communicate about its work and results achieved.

England (UK)

In July 2012, the Office of the Children's Commissioner in England (UK) published two reports on children's and young people's access to, and experience of, the complaints systems in the health service and youth justice secure estate settings. Children and young people are not provided with information about their right to a remedy, how to complain, confidentiality issues or what happens when they complain (the process). Young people's opinions include, for example:

"I have never thought of putting in a complaint anyway. Don't have a clue how to."

"I wouldn't think as a 14-year old that I could complain. I'd expect my parents to do it for you."

"It takes time to know what your rights are and to have the skills and not feel guilty to say what you wanted to say."

Portugal

In Portugal, the NHRI received 21 calls from children, and 541 from caregivers to the Children's Line, a specialized and free-of-charge helpline that provides personalized assistance to children themselves or to whoever calls on their behalf. As children have the right to file a complaint directly to the NHRI, its website contains accessible, simple and child-friendly instructions on the complaint procedure, as well as an explanation on the content of each child right.

Source: Children's Rights in National Human Rights Institutions: A Mapping Exercise, 2018, GANHRI/ UNICEF.

The definition of a complaint, or rather the identification of a complaint, differs for children and adults. The very first step to a child-friendly complaint mechanism for NHRIs is recognizing these differences and setting up appropriate channels to receive complaints accordingly. For adults, a complaint will often comprise a formal, usually written, document giving the reasons why the person claims his or her rights have been violated and by whom or by which institution/public body.

For children and young people, the complaint is likely to be less formal, may not be in writing, and can even be implicit or hidden behind a question or a seemingly general reflection. A phone call, a simple question sent by email or a request for an explanation of a request to the NHRI for an explanation of a human right or legal issue can often reveal a bigger issue and therefore needs to be treated as a potential complaint. Many children would typically prefer asking questions “for someone else” or “in general” instead of directly saying “I have a problem”. Very often these questions are not real questions but requests for help. It is up to the NHRI to identify them as complaints and have adequate tools to make sure they are properly addressed, including by resorting to procedures initiated by the NHRIs themselves.

The NHRI’s complaint mechanism is quasi-judicial, in that it does not usually result in binding decisions. In return, the rules for accessing it need to be flexible and more open than those of the judicial system.

A combination of elements is required to make a complaint mechanism child-friendly. The complaint mechanism of the NHRI is one channel through which children have access to justice. Therefore, the principles of child-friendly justice also apply here. Various studies and guidelines developed by NHRIs and international organizations have sought to identify the key ingredients necessary for the complaint mechanism to be child-friendly.

The way the NHRI will receive and handle complaints depends on its legal mandate and competencies. These vary significantly across institutions. Some NHRIs do not have the mandate to handle individual complaints. However, they may come into contact with children who raise issues requiring attention and need to address them – even if through referral. This tool aims to provide a general framework to provide guidance on the elements needed to make a complaint mechanism child-friendly. It can also be of use to NHRIs that only refer and reorient cases.

The tool presents these elements, focusing first on key principles and then on practical components, before addressing concrete approaches for the NHRI to establish a child-friendly complaint mechanism, reviewing possible challenges and providing a framework for monitoring.

Checklist of things to remember

- ❑ Treat any concern raised by a child as a potential complaint and act upon it
- ❑ Consider the complaint mechanism as a critical source of information on children’s daily experiences and how the system functions to protect and realize their rights
- ❑ Use the complaint mechanism as a tool for advocacy and communication purposes

2. OVERARCHING PRINCIPLES UNDERPINNING A CHILD-FRIENDLY COMPLAINT MECHANISM

The *introduction to the toolkit* presents key concepts guiding a child rights approach to the work of NHRIs and constituting the reference framework. These principles have practical applications for establishing and strengthening a child-friendly complaint mechanism.

- **The Convention on the Rights of the Child as the reference framework.** The NHRI's complaint mechanism needs to take the Convention as its main framework for receiving and handling all complaints submitted by children and/or involving a child rights violation. This means that the approach needs to be rights-based (see the *introduction to the toolkit*) in terms of both process and outcome. As a general rule children's rights, as articulated in the Convention, should inform interpretation of national practices and legislation in handling a complaint.
- **Respect for the child's dignity.** The complaint mechanism needs to ensure that the child's dignity is respected throughout the process. This includes treating the child with the same respect as any other person, taking the child seriously without undermining any views expressed, and providing necessary information and answers to questions asked. Even when the child's complaint may seem futile, trivial or irrelevant, it needs to be addressed with respect.
- **Best interests of the child.** This guiding principle of the Convention on the Rights of the Child (see the *introduction to the toolkit*) must inform the reception and handling of all complaints submitted by or on behalf of children. This means that at every step of the process the NHRI needs to consider whether the best interests principle has been examined and taken into account. Determination of the best interests of the child may be challenging. In complex cases raising dilemmas regarding the best option for the child, it is especially important to:
 - ▶ Hear the child's views.
 - ▶ Ensure that decision making involves consultations with several actors from various disciplines and from the child's environment as relevant. Obtaining different perspectives, including that of the child, is the best way to consider different facets of the question and find a balanced outcome.
 - ▶ Consider the various factors at play, concerning the child's characteristics but also the child's environment.
 - ▶ Assess and anticipate the impact of the decision on the child's development over the long term.
- **Child participation (see tool on child participation).** Child participation in the complaint mechanism encompasses hearing children's views when handling individual complaints, with regard to both the case matter and the way the process is handled. Children should have a say concerning when, how and where they want to be heard, and also have the possibility to not be heard. Child participation also extends to the design of the mechanism itself, with children's views being gathered on various aspects to make it more accessible and effective, and to monitoring and review of the mechanism. NHRIs can take a number of steps to ensure the safe and effective participation of children in this process:
 - ▶ Communication needs to be adapted to the child's age, stage of development and individual situation (language, gender, disability). The onus is on the NHRI to ensure that it has adequate tools to communicate with all children. This may involve using cards and images (for younger children in particular), translating legal concepts into simple words, using sign language, and having an interpreter available.

- ▶ Power differences should be minimized. This includes (among others) avoiding formalities, having seating at the child's level, and paying attention to body language, tone of voice and terms used.
- ▶ Adults need to listen actively and treat children with dignity. They have to pay close attention to what the children are saying. They should reformulate to ensure that the children have understood properly, and ask follow up questions. The professionals should systematically ask the young persons if they have any questions or concerns. They should not minimize or trivialize the child's situation and views.
- ▶ The process, as well as the roles and functions of the adult(s) interacting with the child, must be explained. Children need to be informed about whom they are sharing their views with and how these views will be used. They must receive clear information about confidentiality and its possible limits (e.g. if the child reveals a criminal offence that requires prosecution).
- ▶ Professionals in direct contact with children should be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability. Regular refresher training should also be held to equip professionals with new skills and to share experiences.

Latvia

40-hour mandatory training programme on child rights for professionals working with cases involving children

The training programme is mandated by the Law on the Protection of the Children's Rights and covers all actors working with children (judges, prosecutors, police, guardians, social workers, lawyers and others). It was prepared by the Ministry of Welfare, but can be taught by any specialized NGO. The main modules for the training of lawyers include:

1. The child rights protection system and legislation on child protection;
2. The rights and obligations of children and parents;
3. Interdisciplinary cooperation for child protection;
4. The forms and characteristics of violence against children;
5. Children in criminal and civil proceedings; and
6. Children's right to be heard and the principles of contact forming with the child.

The training programme is repeated after five years. While shorter, the refresher training covers similar topics and focuses on any changes in the law and implementation practices.

- **Non-discrimination and attention to the most vulnerable children.** In order to uphold the principle of non-discrimination, the complaint mechanism must be accessible to all children equally, and in particular to the most vulnerable, who need it most. Importantly, the NHRI should be mindful of not reproducing prejudices that exist in society and prevent some groups of children from enjoying their rights.

- **Protection.** Complaints and the investigations they prompt may present risks and thus raise protection concerns for children. Child protection should be a permanent and priority concern for NHRIs. In all of its actions, the NHRI should be careful not to expose children to risks, and to take the measures necessary to ensure their protection. This principle is closely related to the best interests of the child. Privacy, confidentiality, and the need for possible referral to the prosecutor need to be fully taken into consideration. If a case involves serious protection concerns, the NHRI should recognize that it may have to be dealt with by another actor, such as the child protection services.

Checklist of things to remember

- Always keep the CRC as the reference framework for determining the process and outcome of the complaint mechanism for children, including in the interpretation of national legal provisions.
- Ensure that the best interests of the child are respected at all stages of the process and involve various actors (including the child), disciplines and viewpoints to determine it.
- Communicate with children directly in a way that is safe, respectful and non-threatening.
- Ensure that the most vulnerable children have access to the complaint mechanism, and identify and remove any possible discriminatory barrier.
- Assess possible protection concerns and take the measures needed to guarantee the child's safety.
- Ensure that professionals interacting with children receive adequate training.

3. PRACTICAL ELEMENTS OF A CHILD-FRIENDLY COMPLAINT MECHANISM

In addition to the principles mentioned above, a number of operational considerations need to be taken into account to ensure that the complaint mechanism is child-friendly. The elements mentioned here are non-exhaustive but constitute reference points for an effective mechanism to handle child rights complaints.

Accessibility

Accessibility refers to the ability of all children to easily access the NHRI's complaint mechanism when they believe their rights have been violated. All children face numerous challenges when accessing remedies, and in particular the complaint mechanisms of NHRIs. From a child's perspective, the complaint mechanism may seem complex, far out of reach and "not for children". For children from marginalized groups, these aspects are combined with lack of support in their environment to submit a complaint, and a range of additional barriers linked to the inadequacy of procedures – or perception of inadequacy – and mistrust in public institutions. This is why NHRIs need to constantly review the accessibility of the complaint mechanism and to actively work to increase its outreach. In doing so, various practical elements need to be considered:

- Children need to be aware that the mechanism exists and how to submit complaints. The NHRI should publicize its complaint mechanism to children and explain what it does using a range of communication supports (see *tool on promotion and outreach for and with children* for details on possible approaches).
- Formalities need to be reduced to the minimum absolutely necessary. As a general rule, the more limited the formalities required to file a complaint with the NHRI, the more accessible the complaint mechanism is to children. As explained in the *introduction*, any means through which children express a concern, orally or in writing, by stating a specific claim or by asking a general question, should be accepted as a possible complaint. It is important to communicate extensively about the lack of formality in the process and the fact that the support is free of charge.
- Children need to be able to submit a complaint directly. There should be no need for parental consent, even if (as minors) children do not enjoy full legal capacity in the country's legal system. Ideally, everyone should be able to make a complaint to the NHRI without preconditions. Legal representatives, NGOs and other actors can be complainants on behalf of a child, but the NHRI should ascertain that the child has given her or his consent to the complaint. In some institutions a complaint can be submitted by anyone who has witnessed a child rights violation, provided that the person gives concrete information about the case. Should the NHRI's mandate include limitations, the NHRI can use its capacity to take on a case on its own initiative if it suspects a child has experienced a rights violation.
- The NHRI needs to pay particular attention to the possible barriers that may prevent some groups of children from accessing the complaint mechanism. These include:
 - ▶ *Attitudinal barriers.* Roma children, migrant and refugee children, and children belonging to various minority groups face ongoing discrimination in every aspect of their lives. Children with disabilities also face barriers to being treated with respect and having their views taken seriously. Other groups, such as adolescents, may also face stigma in society. The NHRI needs to ensure that staff have a welcoming attitude to vulnerable children and recognize and address possible fear of public institutions.

- ▶ *Physical and geographic barriers.* Physical barriers include building infrastructure that may prevent access for children with disabilities (for example, stairs or narrow doors), as well as geographic distance that prevents children from rural and remote areas from accessing the NHRI. The NHRI needs to ensure it is accessible in all of the country's territory (see *tool on promotion and outreach*).
- ▶ *Communication barriers* are of particular concern to children with sensory impairments who need alternative means of communication to read, hear, see and communicate. Lack of access to the internet, which is increasingly vital as a means of information and social participation, can also serve to exclude children from poor families. Language can be a barrier to migrant and refugee children too, especially for unaccompanied minors.
- ▶ *Economic barriers*, such as the costs and time of travel or access to a facility can also disproportionately serve to exclude children from the poorest communities.³

Responsiveness

As a rule, each and every complaint submitted concerning a child rights violation should receive a response showing that the complaint has been taken seriously and acted upon – and if not, stating the reasons why and offering other avenues for redress or support relevant to the situation. This means concretely:

- If the complaint is formally submitted, acknowledging receipt and providing information as to how and within what timeframe it will be handled. The recipient should understand when the NHRI will reply and the process it will follow. Information should be shared in a manner that is understandable for the child, using text but also drawings or a video, for example, where applicable.
- If there is no formal complaint submitted but the NHRI has understood from a child's words or behaviour that there was an issue, it should inform the child of the process it will follow, what will happen and when.
- The complaint needs to be adequately investigated. The NHRI should access relevant documentation, visit locations, and hold interviews with relevant actors, including the child, in order to develop a solution and/or address the situation to make the violation stop.
- If the complaint deals with issues that are not within the competence of the NHRI and/or if the NHRI does not have the mandate to receive individual complaints, it should nevertheless provide indications as to which institution can provide the support needed. It should follow up directly with that institution on the case through a referral process, rather than request that the child and the child's family do it themselves, which may discourage them. For this purpose, the NHRI can valuably develop protocols and memoranda of understanding with the most frequent counterparts involved in handling complaints.
- The child needs to be kept informed at every stage of the process of the progress of complaint handling (see below).

Timeliness

Timely complaint handling is an essential component of child-friendliness. Because children are in the

³ See Child Friendly Cities and Communities Initiative (CFCI) Toolkit, UNICEF. Chapter 6. Are all children equally included?)

process of development, their sense of time is different from that of adults. For a child, missing several months of schooling, enduring bullying for weeks or not accessing health care immediately can have very negative, long-term consequences.

“A child or a youth’s sense of time is not the same as for adults. A month can seem like an eternity. Children and youth are constantly growing and changing, so processes need to be timely and move at a faster rate than those that respond to adult concerns.”

Representative for Children and Youth and BC Ombudsperson (2010). Joint Special Report: Hearing the voices of children and youth – A child-centred approach to complaint resolution (quoted in UNICEF, Championing Children’s Rights).

In most cases, NHRIs do not have a specific obligation to respond to a complaint or conduct an investigation within a certain timeframe. However, they should set internal rules specifying a reasonable time within which complaints need to be addressed. A reasonable time for responding should be approximately within two months. If a situation requires additional time, the child should be informed and adequate explanations need to be provided.

Estonia

Although the law does not prescribe a timeframe for the Chancellor, internal rules require that a complaint has to be answered within 30 days. There is also the possibility of handling complaints informally, through informal contacts with other officials, schools, kindergartens and civil society.

Source: <http://www.oiguskantsler.ee/en/protection-rights-children-and-youth>

A specific process needs to be in place for complaints that raise urgent matters. These should be prioritized and handled through a fast-track procedure.

Costa Rica

The NHRI in Costa Rica (Defensoria de los Habitantes) has set up a special department for cases requiring immediate attention, in which complaints involving a serious, imminent or irreparable violation are meant to be resolved within 72 hours.

(UNICEF, Championing Children’s Rights. Florence, 2013)

Fairness

While the complaint mechanism is not subject to the same standards of due process as a tribunal, in order to constitute an effective remedy it needs to adopt a fair process. Fairness implies ensuring that the NHRI deals with the complaint thoroughly, impartially and in accordance with basic procedural standards.

This is a corollary of the NHRI's independence. In concrete terms, fairness means:⁴

- Dealing with complaints in a fair and impartial manner, keeping the child's best interests as the central consideration. Professionals involved in the case should be aware of their possible prejudices, political orientations, possible links with institutions involved and potential conflicts of interest, and leave them aside when handling the case.
- Respecting, and communicating on, internal rules of procedure for handling a complaint.
- Undertaking a thorough investigation of the case, in order to gather all relevant elements and enable the various parties involved, including children, to give their views – separately and equitably. This will help the NHRI grasp the full complexity and implications of the situation and ensure its resolution is based on facts.
- Involving several persons in the resolution of a case, especially the most intricate ones, as a way of ensuring that the case is dealt with fairly and individual conscious and unconscious biases are limited by collective decision-making.
- Providing information about appeal possibilities and other existing remedies should the child disagree with the outcome of the process.

Information for the child

Information for the child is an essential element of a child-friendly complaint mechanism – and one that can often be left forgotten as the NHRI progresses internally with the handling process. However, a child-centred approach requires that the child be kept informed of:

- *The process.* As mentioned previously, the child should know how complaints are handled, within what timeframe, and when the NHRI is expected to report on progress. The NHRI should clearly inform children of the issues that are within and beyond its mandate. Children should be informed of any support available during the process as relevant.
- *The status of the complaint.* The NHRI should make sure that it informs the child of progress at major steps of the process. Information for the child in this respect should be integral to the complaint handling process. For example, the NHRI may inform the child that it has received the complaint, that it has decided to open an investigation, that it has decided to try and mediate a solution, and so on.
- *The outcome.* The NHRI should systematically provide feedback to the child as to the outcome of the procedure. In providing feedback, it should in particular explain how the child's views have been taken into consideration and what has motivated the final decision or the solution proposed. If the complaint cannot be handled, the child should understand why and be informed of other remedies.

Privacy and confidentiality

Privacy and confidentiality of information related to complaints concerning children is a cornerstone of a child-friendly complaint mechanism. Privacy is an element of the child's dignity, and also protects children from possible threats, retaliation, re-victimization and/or stigmatization and harassment, both during the

⁴ See A Guide to Child-Centred Complaints Handling, at https://www.oco.ie/app/uploads/2018/02/14433_OCO_child-centred-complaints_covers_WEB-1.pdf

proceedings and in the future. It therefore contributes to the accessibility of the complaint mechanism.

For this reason, the NHRI should ensure that there are ways to submit a complaint confidentially, especially for children who are in care, in detention or in other closed settings. Toll free numbers that are not registered on the phone's memory, sealed boxes for complaints in relevant places, and online access are, among others, essential tools to protect children's privacy. In some cases, however, the NHRI may need to inform parents, legal guardians or the justice system. Where this is necessary, children should always be informed that their confidentiality needs to be breached and the reasons for so doing must be properly explained. As a general rule, the child should receive information about who will know what about the case.

Confidentiality of data related to the case involves a number of practical steps:

- A privacy policy, made available to the children that describes where the data is stored and includes the rights to access personal data, request rectification and have data erased;
- Restricting disclosure of information that may lead to the identification of the child and/or that is related to the personal characteristics of the child;
- Non-disclosure of documents related to the case;
- Legal and self-regulatory provisions preventing the media from releasing information that could lead to identification of the child and/or information about the child's personal characteristics and situation; and
- Strict rules of confidentiality for professionals involved in handling the complaint.

Checklist of things to remember

- Limit as much as possible any obstacle to the direct accessibility of the complaint mechanism by children, especially by disseminating information, removing formalities and possible restrictions, and identifying and addressing visible and less visible barriers to access, in particular for the most vulnerable.
- Properly respond to each and every complaint made by a child, regardless of its nature, any possible triviality, the situation of the child and your own mandate – even if you are not in a position to address it yourself.
- Make sure the complaint handling process is swift and complaints are addressed in a timely manner considering the nature of the case.
- Be fair in handling the complaint, by communicating and respecting pre-established rules of procedure, conducting adequate investigations, gathering the views of various actors, and taking steps to remove any possible bias.
- Inform children in a manner they can understand of the complaint handling process, the status of the complaint at each stage, and its outcome.
- Keep information about a case and the child private and confidential and, if information sharing is required (e.g. if a crime was committed) be clear with the child about who will know what.

4. SETTING UP AND STRENGTHENING A CHILD-FRIENDLY COMPLAINT MECHANISM

In order to integrate the principles and elements mentioned above, the processes of setting up and strengthening a child-friendly complaint mechanism involve a number of practical steps.

Involving children

Children's involvement in the design of the child-friendly complaint mechanism will help ensure that it is accessible to children and responds to their needs. Children can be consulted in a valuable way on how to make the mechanism more accessible to children, how complaints should be handled, how to publicize the mechanism and increase its visibility with children, and how to provide information and give feedback to children.

There are many ways in which children can be consulted (see *tool on child participation*). A survey could be conducted with children who have used the complaint mechanism to get feedback about their experience and suggestions for improvement. A larger survey could be conducted to assess children's awareness of the NHRI, its role and its complaint mechanism. The NHRI's youth advisory council, where one exists, can be asked to review the functioning of the existing mechanism or make proposals for what a new one should look like. Focus group discussions, in particular with marginalized groups, can be conducted to assess the level of accessibility and how it can be improved.

Staff training

Training for NHRI staff is essential for a child-friendly complaint mechanism. Training needs to focus on what a child-centred approach means in practice, how to interact with children, how to detect a problematic situation, and how to inform and provide feedback to children on a case. It also needs to include investigation skills, including how to gather facts and evidence, interview various actors (children and adults; private and institutional), conduct visits and access documents. Training can also include knowledge sharing on protocols, memoranda of understanding and referral systems for cases received.

Training therefore needs to include both (i) initial training or orientation as new staff join the NHRI and/or its child rights department, and (ii) continuous training as regular reminders of the implications of a child rights approach and to update staff on developments and evolutions in the legal and institutional framework.

Partnerships

Partnerships are an important way to strengthen the child-friendly nature of the complaint mechanism. NHRIs often have limited capacities, with insufficient staff and financial resources to fulfil their mandate. While some aspects – such as receiving the complaint, investigating, and informing the child – need to be handled internally, a number of elements can valuably be carried out in partnership with other organizations, in particular civil society. Promotion of the complaint mechanism among children can be conducted in partnership with schools, the media, civil society organizations working for and with children, and the private sector (e.g. advertising companies, telephone and internet companies and providers and so on: see *tool on promotion and outreach*). Some organizations may support children to submit complaints. A number of civil society organizations and academic institutions with relevant knowledge and skills may contribute to the training of staff. Like in other areas of the work of NHRIs, partnering with other actors will help multiply opportunities for outreach and should be considered

as part of the NHRI's strategies and long term plans to develop effective complaint mechanisms for children.

A child-friendly complaint mechanism within a broad-based NHRI

The structure of the NHRI and, in particular, the fact that it covers the full range of human rights and is accessible to adults and children alike should not be a deterrent to ensuring that procedures and approaches are in place to receive and handle complaints in a child-friendly manner.

Many NHRIs working on children's rights have set up specific channels through which complaints involving children are handled. A general principle is that trained staff with adequate competence to handle children's cases should process such complaints. Even if the NHRI has a complaints department which deals with all the complaints received, it needs to set an internal process through which either children's cases will go to the children's department for review or dedicated trained staff are part of the complaints department with the function to handle child rights complaints. Likewise, if a complaint investigation requires interviewing children or visiting places where children are located (for example a shelter, refugee centre, or hospital), staff specializing in children's rights should be involved in the process, alongside other staff from the NHRI.

Learning from complaints

The complaint mechanism is a major tool through which the NHRI can learn about children's daily experiences and the most common rights violations they face. However, making full use of the material complaints provide requires planning and resources. NHRIs can use the complaints in two main ways.

Firstly, aggregated and disaggregated data on the subject matters of the complaints, the nature of the complainant (age, gender, key characteristics), and the geographic location of the rights violation, among others, provide critical information about the challenges children are confronted with, and can reveal a problematic situation in one area or concerning a specific group of children. They also help the institution to learn about the accessibility of the complaint mechanisms and which children might be excluded.

Secondly, individual complaints may unveil important gaps in the system that require broader intervention. Complaints provide a basis for identifying problems and advocating for change. An individual complaint by or on behalf of a child in care may, for example, prompt a thorough investigation into the functioning of the childcare system that highlights systemic issues. It can also highlight loopholes in legislation that require legislative reform. The NHRI will be able to use individual complaints to show the real-life effects of policy inadequacies.

To use the information contained in complaints requires having a system in place to collect data on complaints received, and record relevant data on the nature of the complaint and the complainant. It then involves analysing the data with a view to identifying possible trends. It also requires ensuring adequate flow of information within the office to guarantee that an individual complaint feeds into the NHRI's advocacy strategy if appropriate.

Checklist of things to remember

- ❑ Involve children in the design and review of the complaint mechanism.
- ❑ Ensure that staff receive initial and continuous training on child-friendly complaint handling.
- ❑ Develop partnerships with other public institutions and civil society organizations to multiply opportunities and competences, and compensate for limited internal resources.
- ❑ In NHRIs with a broad-based mandate, make sure that specialized staff deal with complaints filed by or on behalf of children.
- ❑ Set up a system to be able to learn from complaints by adequately collecting, analysing, and using complaint data.

5. ADDRESSING THE CHALLENGES

NHRIs will meet numerous challenges to providing a child-friendly complaint mechanism for child rights violations. Anticipating them will enable the NHRI to plan for mitigation strategies and ways to address them. Some of the most common challenges include:

- *Handling a large amount of complaints.* As NHRIs get better known and trusted by children, their parents and others, they are likely to receive an increased number of complaints, putting a stress on the NHRI's resources and possibly creating a backlog. While promoting the complaint mechanism, the NHRI also needs to communicate about its scope, limitations and other remedies available. The objective is to ensure that only relevant complaints, which cannot be addressed by other institutions, reach the NHRI. This does not mean, however, that other complaints should not be properly addressed and responded to. Additionally, as mentioned above, the NHRI should develop a referral system and partner with other institutions and organizations, through protocols and memoranda of understanding, to refer cases that fall within the mandates of other bodies.
- *Accessing children and especially the most marginalized ones.* Children will often directly submit complaints when the NHRI comes to them – by visiting their school, youth centre, institution or detention centre. It is through direct and live exchanges that the NHRI will be best able to connect with children. Other tools for outreach can also be used (see *tool on promotion and outreach*). The NHRI needs to ensure that it implements specific initiatives to reach out to the most marginalized children, who may be invisible. It also needs to make the complaint mechanism known to broader society, in particular the people surrounding children, to enable them to support a child in making a complaint.
- *Acting swiftly.* NHRIs are part of the state administration and may have to abide by heavy administrative legal procedures. This may be a challenge when having to act quickly on a case requiring immediate attention. However, the rationale for the existence of an NHRI is precisely to bring flexibility into a public system that is otherwise quite rigid. The NHRI should therefore interpret existing rules with the maximum flexibility and openness. It should maintain the child's best interests as the guiding principle for its actions and be focused on finding solutions.
- *Issuing non-binding decisions.* Unlike tribunals, NHRIs issue decisions or recommendations that are usually not mandatory for the addressee. In case of non-compliance, no sanctions can be imposed. This means that resolving a complaint will require significant mediation, negotiation and advocacy skills to promote the implementation of recommendations by other bodies. NHRIs can also strengthen their influence, and hence compliance with their decisions, through a well thought-out communication strategy (using means such as press conferences on urgent cases, press releases, interventions in the media, press articles and op-eds) and advocacy with public bodies (in particular the parliament).

6. MONITORING AND EVALUATING THE CHILD-FRIENDLY COMPLAINT MECHANISM

Monitoring and evaluating the complaint mechanism's child-friendliness and effectiveness enables the NHRI to assess progress and identify how to strengthen and adapt its procedures and working methods. Each NHRI will develop its own monitoring and evaluation framework depending on its priorities and the local context. However, it could valuably include the following elements:

- **How accessible is the complaint mechanism to children?**
 - ▶ How many complaints on children's rights are submitted to the NHRI? Has there been an evolution (increase/decrease)?
 - ▶ How many, and what proportion of, complaints are directly submitted by children? Has there been an evolution (increase/decrease)?
 - ▶ What are the trends in terms of complainants by age, gender, geographic origin and any other relevant characteristic?
 - ▶ What proportion of the complaints involves cases of marginalized children, submitted by them or by someone on their behalf? Are some groups underrepresented?
 - ▶ Are there dedicated tools for communicating with children about the mechanism?
 - ▶ Are children aware of the existence of the mechanism?
 - ▶ Which channels do children use to submit complaints?
 - ▶ Which partnerships has the NHRI entered into and how do they promote accessibility?
- **How effective is the mechanism at handling complaints in a child-friendly manner?**
 - ▶ How many cases were fully investigated during the year? How many were dealt with by a referral to another body?
 - ▶ What is the average and median time required to resolve a complaint?
 - ▶ Do staff receive specific training on interacting with children?
 - ▶ Are there protocols on complaints handling for cases involving children? Do they reflect the key components of child-friendliness?
 - ▶ Are there protocols to determine the child's best interests in particularly complex situations?
 - ▶ How many times during the process is the child informed of progress? How is the information communicated to the child?
 - ▶ Has a referral system been established?
 - ▶ How many recommendations made by the NHRI in relation to complaints have been fully implemented/partially implemented/not implemented?
- **What are the outcomes of the complaint mechanism?**
 - ▶ Were child complainants satisfied with the support provided and the process?
 - ▶ Has any policy change occurred following the handling of an individual complaint and subsequent advocacy?
 - ▶ Is data on complaints received shared with relevant actors?

Northern Ireland

Self-evaluation: successful resolution of complaints

In 2016-17 the Office of the Northern Ireland Commissioner for Children and Young People dealt with a total of 314 cases, and closed 219 cases in which the matters were resolved.

Evaluations from clients showed that 100 per cent of those within the remit were happy or very happy with the service provided by the Office.

Comments from clients included:

- *"I was helped and advised well."*
- *"Informative and easy to engage with."*
- *"Very helpful, efficient service as had short time frame to deal with matter."*

7. RESOURCES AND SOURCES

This section provides additional resources, including examples of good practice, toolkits and any relevant analytical material.

Children's Commissioner (2012), *Why are they going to listen to me? Young people's perspectives on the complaints system in the youth justice system and secure estate*, at https://www.childrenscommissioner.gov.uk/wpcontent/uploads/2017/07/Why_are_they_going_to_listen_to_me.pdf

Children's Commissioner (2012), *"It takes a lot of courage" – Children and young people's experiences of complaints procedures in services for mental health and sexual health including those provided by GPs*, at https://www.childrenscommissioner.gov.uk/wpcontent/uploads/2017/07/It_takes_a_lot_of_courage.pdf

Children's Commissioner (2013), *Child-friendly Complaints Processes in Health Services: Principles, Pledges and Progress*, at http://www.partnersinpaediatrics.org/documents/OCC_Complaints_Full-Report.pdf

Children's Commissioner for Wales (2005), *Children don't complain*, at <https://www.childcomwales.org.uk/wp-content/uploads/2016/04/Children-Dont-Complain.pdf>

Commissioner for Children and Young People (Western Australia) (2013), *Child-focused complaints system for students at residential colleges* (2013) via www.cyp.wa.gov.au

Committee on the Rights of the Child (2003), *General Comment No 5: General measures of implementation of the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/5, via www.ohchr.org

Committee on the Rights of the Child (2009), *General Comment No 12: The child's right to be heard*, UN Doc. CRC/C/GC/12 via www.ohchr.org

Committee on the Rights of the Child (2013), *General Comment No. 14: The right of the child to have his or her best interests taken as a primary consideration*, UN Doc. CRC/C/GC/14 via www.ohchr.org

Council of Europe (2011), *Recommendation CM/Rec (2011)12 of the Committee of Ministers to member states on children's rights and social services friendly to children and families*, (Adopted by the Committee of Ministers on 16 November 2011 at the 1126th meeting of the Ministers' Deputies) www.coe.int/en/web/children/childfriendly-social-services

Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies), at www.coe.int/en/web/children/child-friendly-justice

Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly health care* (Adopted by the Committee of Ministers on 21 September 2011 at the 1121st meeting of the Ministers' Deputies), at www.coe.int/en/web/children/child-friendly-healthcare

Human Rights Council (2013), *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/25/35, via www.ohchr.org

NSW Ombudsman (2008), *Guidelines for dealing with youth complaints*, at https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0008/4013/YouthGuidelinesBooklet.pdf

Office of the Ombudsman (New Zealand) (2012), *Good complaints-handling by school Boards of Trustees*, at http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/533/original/good_complaints_handling_by_school_boards_of_trustees.pdf?1358988178

Ombudsman for Children in Ireland (2018), *A Guide to Child-Centred Complaints Handling*, at https://www.oco.ie/app/uploads/2018/02/14433_OCO_child-centred-complaints_covers_WEB-1.pdf

Ombudsperson for British Columbia & Representative for Children and Youth (2010), *Hearing the Voices of Children and Youth: A Child Centred Approach to Complaint Resolution*, at <https://www.bcombudsperson.ca/sites/default/files/Joint%20Special%20Report%20Hearing%20the%20Voices%20of%20Children%20and%20YouthOffice%20of%20the%20Representative%20for%20Children%20and%20Youth.pdf>

Western Australian Commissioner for Children and Young People (2013), *Are you listening? Guidelines for making complaint systems accessible and responsive to children and young people*, at <https://www.cryp.wa.gov.au/media/1414/report-are-you-listening-guidelines-for-making-complaints-systems-accessible-and-responsive-to-children-and-young-people-june-2013.pdf>

APPENDIX 1. ADDITIONAL EXAMPLES OF CHILD-FRIENDLY COMPLAINT MECHANISMS

These additional examples of activities undertaken by NHRIs to promote children's participation in their work are clustered in accordance with the three different approaches for NHRIs in working with children.¹ It is important to recognize, however, that many activities cut across these approaches. For example, involving children in consultative activities to inform the work of the NHRI can also serve to educate and build capacity. Monitoring processes can contribute to governmental change in recognition of the need to strengthen opportunities for children to be heard.

Principles for child-friendly complaint mechanisms – Reference frameworks

Council of Europe: Child-friendly justice is justice that is:

- accessible;
- age appropriate;
- speedy;
- diligent;
- adapted to and focused on the needs of the child;
- respecting the right to due process;
- respecting the right to participate in and to understand the proceedings;
- respecting the right to private and family life; and
- respecting the right to integrity and dignity.

Australia (Western Australian Commissioner for Children and Young People): In 2009, the Western Australian Commissioner for Children and Young People developed a resource for complaint bodies called "*Are you listening? Guidelines for making complaint systems accessible and responsive to children and young people*".

These guidelines identify six key elements of a child-friendly complaint system:

1. *Focus on children and young people:* Ensure children and young people are acknowledged as service users in agency policy and procedures.
2. *Visibility:* Publicize through a range of communication methods suitable for children and young people, for example SMS, online, by email, postcards and apps.
3. *Accessibility:* Ensure that children know who to make a complaint to and how, and that a variety of methods exist to make complaints, including the opportunity to talk to someone face-to-face (and to use an advocate). Make a set of child-friendly complaints publications that clearly explain the process in 'plain language'. These materials should also be made available for children from culturally diverse backgrounds.

¹ These examples are, variously, drawn from: *Championing Children's Rights: A Global Study of Independent Human Rights Institutions for Children*, 2012, Florence, UNICEF; *Children's Rights in National Human Rights Institutions: A Mapping Exercise*, 2018, GANHRI/UNICEF; Hodgkin, Rachel and Newell P, *The role and mandate of children's ombudspersons in Europe: Safeguarding and promoting children's rights and ensuring children's views are taken seriously*, ENOC survey, 2010, Strasbourg; and UNICEF ECARO's mapping exercise of NHRIs, 2017.

4. *Responsiveness*: Respond as soon as possible, even if just to acknowledge receipt of the complaint. It is a great action for a child to make the effort to lodge a complaint, so it is really important to validate this action. Ensure policies are in place to make sure that any concerns about safety are dealt with as a matter of urgency. Make sure that the person dealing with the complaint has experience in working with children and young people, as much as possible understands child development, and is helpful, understanding and responsive. Check to ensure that the child or young person understands the information provided and invite that person to ask questions. Give children the option to choose how they will be kept informed about the investigation.
5. *Confidentiality and consent*: Ensure that suitable policies and procedures are in place for dealing with confidentiality and consent issues. Ensure that the boundaries of confidentiality are clearly explained to children and young people regularly and at appropriate times throughout the process.
6. *Accountability and continuous improvement*: Ensure that the children involved understand the outcome of the process and how their perspectives have informed the outcome. Keep appropriate data to enable reporting and monitoring of complaints involving children (for accountability and to enable further improvement). This might include conducting exit interviews on the child's experience of the process.

Ireland: The Ombudsman for Children's Office has developed a **Guide to Child-Centred Complaints Handling**, which sets out core principles of good practice for dealing with complaints made by or on behalf of children.² This applies to ombudspersons and NHRIs but also to other bodies and organizations wishing to set up or strengthen a complaint mechanism for children.

The Guide identifies seven core principles of good practice for handling complaints made by or on behalf of children:

1. Openness and accessibility
2. The best interests of the child
3. Participation of children
4. Transparency and communications
5. Timeliness
6. Fairness
7. Monitoring and review

Armenia: The Human Rights Defender of Armenia has been reviewing its complaint mechanism with a view to making it accessible to children. The complaint mechanism to receive and respond to complaints on child rights violations is being designed in close consultation with children. An expert working group will develop recommendations for the Human Rights Defender for a child-friendly complaint system. Several focus group discussions have been organized with children to understand the children's expectations and consider the most child-friendly ways to receive and respond to their complaints.

² A Guide to Child-Centred Complaints Handling, at https://www.oco.ie/app/uploads/2018/02/14433_OCO_child-centred-complaints_covers_WEB-1.pdf

Examples of complaint resolution by NHRIs with a child-centred approach

United Kingdom - Children's Commissioner for Wales: The Welsh Commissioner received a letter from pupils on a school council seeking advice on how to ensure that their voices were heard during a consultation process regarding the proposed closure of their local sports centre. In response, the Commissioner contacted the local authority and obtained information about its existing plans for consultations with local children and young people. The authority provided the Commissioner with information about the next stages of consultation and confirmed that the pupils would be granted an opportunity to ask questions and be heard at the public meeting soon to take place. This information was shared with the pupils and they were encouraged to ask for any children's rights impact assessment to be completed as part of the planning process.

The school council attended the meeting and responded to the Commissioner saying: *"Thank you for your reply to our letter in October about the possible closure of the Sports Centre. Our School Council attended the public meeting and, following your advice, asked a question about whether the local authority had completed a children's rights impact assessment on the removal of the Sports Centre. The Director told the meeting that the local authority had not yet completed an assessment but that they would complete one before making a final decision about the centre."*

Serbia: In some cases, the Ombudsman requests the public authority – before the investigation is over - to undertake a certain action or to refrain from certain actions until the investigation is finished. This happens when a response is necessary in order to prevent on-going child rights violations with serious consequences. In 2017, during a direct monitoring visit to a school, the Protector of Citizens' experts were informed that one student had been separated from her mother and placed with a foster family, due to extreme poverty – which, according to international standards and Serbian law, is not a permitted ground for removal. Immediately, the Protector's experts paid a control visit to the respective social service. During the control procedure, experts confirmed that the child had indeed been placed with a foster family because of her mother's financial situation and that the mother was working hard to improve her living conditions as requested by the social services. Experts also found out that the mother had not been given any kind of social or other support from the relevant social service or community. They therefore instructed the social service to act immediately in accordance with the law and provide the support that the mother needed for her child to be reunited with her. Within the next month, the social service had appropriately supported the mother and the child was reunited with her.

Ireland: The mother of a 10-year old girl with a disability contacted the Office of Children's Ombudsman (OCO) because she was concerned about the length of time her family had been on the medical priority housing transfer list, given her daughter's housing needs. She was concerned about the following:

- Her daughter had a number of medical conditions affecting her mobility.
- The family were granted priority transfer on medical grounds; however, there had been no change in their position since September 2014.

The family was also negatively impacted by anti-social behaviour in the area and their daughter was fearful and anxious as a result.

The OCO contacted the local authority to determine the household's current position on the transfer list. The local authority stated that the family were the highest priority on the transfer list for a three-bedroom bungalow or a house with a downstairs bedroom. However, the local authority stated that there was no suitable property available or immediately forthcoming. In order to diminish the impact of the delay on the daughter's health and wellbeing, the OCO requested that the local authority consider whether a safe temporary transfer could be arranged until a suitably adapted home could be identified for Sophie. Within five weeks the local authority had identified a temporary home. At the end of November 2016, the family moved into this two-bedroom bungalow, which was in their area of choice and close to the extended family and school. The local authority confirmed that a permanent specially adapted three-bedroom house had been identified in the same area and would be available for the family to move into in 2017.

Greece: At the beginning of the 2017/18 school year, the Greek Ombudsman received two different complaints submitted by transgender youths, supported by their parents, asking to mediate with their schools in order to eliminate discriminations and offensive treatment by some teachers and to ask the Ministry of Education to issue guidelines to teachers on this issue. The Department of Children's Rights and the Department for Equal Treatment (and tackling discriminations) handled the case jointly. All the communications with the two children, their parents and the headteachers of the schools were undertaken and handled by the Deputy Ombudsman for Children and an investigating social worker from the Department. The Department of Children's Rights organized and led visits to both schools and meetings with teachers' councils. They were followed by investigators specialized in issues of gender discrimination, who attended and informed the teachers on legislative issues. The interventions in the schools were very successful, as there was a positive response to the Ombudsman proposals and satisfaction from the transgender youths. A joint letter was addressed by the two departments both to the two schools' head teachers and to the Ministry of Education. The Ombudsman himself signed the last of these.

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