

The right of children deprived of their liberty to make complaints



1. Introduction

Children who have been deprived of their liberty have the right to complain about their conditions, treatment and care through mechanisms that are safe, child-sensitive, effective and easily accessible. Upholding the right to complain is very important for giving a voice to children in detention and for ensuring that their other human rights are protected. Such complaints may concern issues of daily routine such as provision of adequate food and water, access to education and access to recreation or contact visits. They can also concern allegations of ill-treatment such as torture, violence, abuse and exploitation by police, detention employees or other detainees.

Often, many minor complaints can be dealt with efficiently and effectively through informal mechanisms, such as mediation. However, children also need to have access to formal systems of complaint for serious violations of their rights or when informal mechanisms have been exhausted.

Effective complaints procedures can be seen as part of the treatment of children in conflict with the law which contributes to reinforcing their respect for human rights and fundamental freedoms. Both formal and informal complaints mechanisms can ensure that detention facilities are transparent and accountable for realising the rights of children in their care. They can act as a deterrent to violations of children's rights, assist with reintegration and bring information about serious abuses against children into the public domain. Furthermore, when authorities systematically analyse complaints that have been made, this can help them to identify challenges and changes needed in policy, practice and legislation. Detention facilities which have an effective complaints procedure also give the public confidence that institutions are working to ensure children are being rehabilitated and are consequently less likely to offend in future.

2. Who can children complain to?

Complaints mechanisms can take many different forms and children should have access to avenues of complaint both within and outside the child justice system. They should be able to make complaints to internal bodies which have responsibility for the police station or facility where the child is detained¹

as well as to external independent bodies such as ombudspersons,² National Human Rights Institutions, independent prison monitoring bodies and judicial bodies. There is an important link between complaints procedures and monitoring bodies and children should also have the right to speak in confidence to inspectors of detention facilities from such bodies, which should have powers to act upon their complaints.

Children should also have access to make complaints to international human rights bodies such as the UN Committee against Torture, the UN Human Rights Committee and the UN Committee on the Rights of the Child (once the Optional Protocol on a Communications Procedure is in force³) as well as to regional bodies such as the African Committee of Experts on the Rights and Welfare of the Child, the Special Rapporteur on Prisons and Conditions of Detention in Africa, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Court of Human Rights, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

3. Relevant international and regional human rights norms and standards

- [*UN Convention on the Rights of the Child \(CRC\)*](#)

Children in detention retain all of their rights under the CRC with the exception that they have been deprived of their liberty – under Article 12 they have the right to be heard and for their views to be taken into account, and Article 40 states that a child accused or proven guilty of breaking the law must be treated with dignity and respect. The right to redress or remedies is not explicitly mentioned in the CRC but the UN Committee on the Rights of the Child has elaborated on the importance of remedy for effective implementation of the CRC and stated that: 'For rights to have meaning, effective remedies must be available to redress violations'.⁴

In 2007, the UN Committee on the Rights of the Child produced a [*General Comment*](#) on how children in conflict with the law should be treated which states that: 'Every child should have the right to make

requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms'.⁵

- [Standard Minimum Rules for the Treatment of Prisoners](#)

Rule 35 states that prisoners should be provided with written information about how to make a complaint. Rule 36 explains further that:

- '(1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorised to represent him.
- (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present....
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay'.

- [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#)

Article 13 of the Convention against Torture states that 'each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given'.

- [UN Rules for the Protection of Juveniles Deprived of their Liberty \(Havana Rules\)](#)

The Havana Rules make extensive provisions for complaints mechanisms for children. Every child in detention should have the opportunity to make requests or complaints to the director of the detention facility⁶ as well as to the central administration, the judicial authority or other proper authorities through approved channels. The substance and content of the complaint should not be restricted or censored. Children should also be free to talk in confidence to independent inspectors of facilities. They should be informed of the response to any complaints without delay.⁷ Efforts should be made to establish an independent office such as an ombudsperson to receive and investigate complaints made by children deprived of their liberty and to assist in the achievement of equitable

settlements.⁸ All children should be able to obtain help from their families, legal counsellors or others in order to make a complaint and children who have difficulties with reading and writing should be provided with additional assistance if they require it.⁹

- [UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#)

In 2010, the Bangkok Rules were adopted to address how women and girls deprived of their liberty differ in their needs from men and boys. They stress the importance of protecting women and girls who make complaints from retaliation and specify that they should be provided with immediate protection, support and counselling, and their claims should be investigated by competent and independent authorities, with full respect for the principle of confidentiality.

- [European Rules for juvenile offenders subject to sanctions or measures](#)

The European Rules stress that children and their parents or guardians should have ample opportunity to make complaints to authorities, procedures should be simple and effective and complaints should be resolved through mediation and restoration where possible. If a complaint is rejected then reasons should be given and there should be a right to appeal in such circumstances. Children should be heard in person as well as in writing and should never be punished for making a complaint.¹⁰

In addition to these rules and standards, a number of UN reports have highlighted the importance of complaints mechanisms in ensuring the rights of children deprived of their liberty. In 2006, the [UN Secretary-General's Study on Violence against Children](#) noted the high level of physical violence and punishment experienced by children in detention and recommended that there be 'well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children...All children, including those in care and justice institutions, should be aware of the existence of mechanisms of complaint. Mechanisms such as telephone help lines, through which children can report abuse, speak to a trained counsellor in confidence and ask for support and advice should be established and the creation of other ways of reporting violence through new technologies should be considered.'¹¹ Further, the UN Special Representative of the Secretary-General on Violence against Children published a report on [Safe and child-sensitive counselling, complaint and reporting mechanisms to address violence against children](#) which details the current situation and key challenges in this area.

4. Some challenges

'People don't really think about putting in a complaint, because they think that nothing is going to happen. Nothing does happen. That's the thing. You just have to put up with everything.'

– Male in a Young Offender Institute in the UK

Source: Office of the Children's Commissioner/ User Voice, *Why are they going to listen to me? Young People's Perspectives on the complaints system in the youth justice system and secure estate*, 2012

In practice, children deprived of their liberty can find it very difficult to make complaints either to internal or to external bodies. Children who are accused or convicted of criminal offences are often treated as offenders first and children second. As a consequence they are expected to use complaints procedures that have been developed for use by adults and are not adapted to children's evolving capacity and development, age and degree of vulnerability. Children may be afraid to make a complaint out of fear of negative consequences of complaining against staff with whom they are in contact daily. They may be unaware that they have grounds for complaint and consider, for example, that the use of violence as a form of punishment is common and widespread practice. Perhaps most significantly, they may lack trust and confidence that their complaints will be believed and fairly assessed; this may be the case particularly in cases of sexual exploitation and abuse which can be associated with stigma, shame and secrecy.

Discouraged from making complaints in young offenders institution in Ireland

'In the 12 month period from 1st April 2011 to 31st March 2012 there were 28 complaints made by prisoners in St. Patricks. Of these, 13 related to alleged assaults by officers or serious inappropriate action taken by officers. In the majority of these cases I am satisfied that the investigations carried out were flawed, were incomplete and could not be said to accord with best practice....From my investigations I am satisfied that prisoners are actively discouraged from making complaints and that when they do efforts, mostly successful, are made to get them to withdraw such complaints. I am also satisfied that prisoners feel that to support a complaint as a witness will be to their disadvantage in the prison.'

Source: Office of the Inspector of Prisons, *Report on an Inspection of St. Patrick's Institution by the Inspector of Prisons, Judge Michael Reilly*, 2012, paras 3.37 and 3.41

Accessibility to complaints mechanisms is often difficult and the forms and process of making a complaint can be very reliant on text which means that children with poor educational backgrounds cannot easily use them. Complaints mechanisms themselves are often flawed and can lack confidentiality, independence and a comprehensive policy. They often have insufficient human and financial resources allocated to them resulting in inadequate investigations – criminal prosecutions and disciplinary proceedings arising from children's complaints are rare.

5. Key elements of complaints mechanisms

• Accessibility of complaints procedures

First and foremost children should be informed both orally and in writing about the existence of internal and external complaints mechanisms upon arrival at the police station and/or detention facility. Copies of complaint guidelines should be available upon request to a child's legal advisor, parent or guardian. In addition to being provided with the written guidelines, the process for making a complaint should be explained clearly to a child, in a language of their understanding. Special measures, for example, the use of pictures or drawings, should also be provided. Having posters up can also be useful. Children should have the right to make a complaint on any ground concerning their conditions, treatment and care and these grounds should not be restricted.

Children should be provided with appropriate assistance and/or legal aid in order to allow them to submit complaints in compliance with the regulations and guidelines. Any child in detention should have the right to bring a complaint but there may be instances where it is in their best interests for family members, or legal representatives, to do so on their behalf; such as when children are illiterate. Civil society organisations can make an enormous contribution to ensuring that complaints mechanisms are known, accessible, effective and child-friendly and they should be encouraged to assist children in preparing their complaints. Such organisations should also have the right to file an internal complaint on behalf of a child or group of children provided they have their informed consent.

There are a number of strategies that can be used to extend access to complaints, such as systems of locked boxes where children can 'post' complaints and providing access to child help lines and to writing materials. Complaints procedures do not have to be formally written to be effective. Another point to consider is whether staff or mentors are assigned for the specific purpose of responding to more informal verbal complaints from children. Children should

be able to communicate their complaint in their own language with the assistance of interpreters if required. Children should be able to inquire at any time about their complaint to the person in charge of handling it.

- *Safety of complaints procedures*

‘Applications, complaints and letters sent to the Public Defender by persons held in police custody, pre-trial detention or in other places of restriction of liberty shall be confidential and shall be mailed without opening, examination or censorship. Any such correspondence shall be delivered to the Public Defender without delay.’

Article 15 of the Organic Law of Georgia on the Public Defender of Georgia

Children should have the right to confidentiality when filing a complaint and in the course of the complaint procedure, although this is often not observed in practice. It can be achieved through having a locked box for complaints to be placed in, situated in an accessible location that is not under constant supervision by staff, and with clear provisions regarding who can open the boxes and when. There should be provision for complaints to be filed anonymously. In England, for example, Young Offenders’ Institutions operate a confidential access system using a sealed envelope, with the complaint going directly to the governor when it concerns a particularly serious or sensitive matter, such as ill-treatment, the conduct of a staff member or a sensitive medical issue.

- *Effectiveness of complaints procedures*

In order for complaints procedures to be meaningful and effective, any complaint should be dealt with without delay. For internal complaints, the maximum length of the procedure should be set out in written guidance and children should be aware of the timeframe within which they can expect a response. A complaint should trigger an effective investigative procedure: for internal complaints, this might involve a review of documents by detention authorities, hearing from the child or children concerned as well as other witnesses including detention employees, hearing from medical and other experts and requesting information from other authorities. Good practice would involve site visits to detention facilities by the head of the institution particularly where the allegation requires immediate intervention, for example with a complaint of violence or abuse. For external complaints mechanisms, investigative and procedural processes are not always clear or

well regulated. At a minimum they should include the right of the child or children to be heard in person in compliance with Article 12 of the CRC. External complaints mechanisms should also call witnesses and request expert opinions, allow children to be legally represented and have access to relevant case files.

Bodies hearing children’s complaints should have the power to take appropriate legal or other action, such as compensating the victim for damages suffered and/or initiating disciplinary or civil proceedings against officials, with the consent of the child and/or his or her parents. When necessary, the complaint committee should refer the complaint to the prosecutor for criminal investigation and prosecution. In practice, many Ombudspersons can often only issue recommendations to detention authorities and this can be an ineffective form of remedy if these recommendations are not then considered and implemented.

Professionals who work with children deprived of their liberty need to be well-trained about the role that complaints mechanisms can play in creating an orderly, safe and transparent institution and their value in initiating mediation, which can contribute to preventing more serious complaints and violations of children’s rights arising. A comprehensive complaints policy should also reassure staff that investigations into complaints will be impartial and fair.

There should be a formal, transparent and accessible procedure for children to use to complain of torture or cruel, inhuman or degrading treatment. They must be able to access this procedure without fear of recrimination and with access to an independent authority. Such allegations should be referred, without delay, to a prosecuting body which is independent from those implicated in the events.

The reasons for any rejection of a complaint should be explained carefully to a child and there should be avenues for appealing this decision to a different authority within the child justice system or externally to a judicial body. The receiving institutions and other authorities must keep a record of the complaints and the corresponding findings and actions and subject them to routine scrutiny to determine common trends and patterns; for instance, it may be that many of the complaints relate to the same member of staff. To promote transparency and to provide vital data and information to inform policy and planning, the number of cases, the nature of the complaints made by children, and the outcomes should all be published on a regular basis, while protecting the identity and confidentiality of those involved.

Complaints in the Netherlands

The Netherlands have an extensive complaints system for children held in detention institutions, which is established in the Youth Custodial Institutions Act (YCIA):

- Children have the right to request mediation with a member of the supervisory committee who will attempt to resolve a dispute between the child and the officer concerned within six weeks (Article 64, YCIA). Each juvenile institution has a supervisory committee – this is comprised of 6 people appointed by the Ministry of Justice but independent from it. They come from different backgrounds and include lawyers, judges, teachers and behaviour specialists.
- If mediation is not desired or doesn't have a satisfactory outcome, then children can submit a complaint to a 3-person sub-committee formed from the supervisory committee. Their decisions on complaints are not made public. Children are entitled to seek assistance from legal representatives in this process and their family can make complaints on their behalf. The complaint must be written and there is also an oral hearing that the child and the director of the institution attends. The Committee must deliver its judgment within 4 weeks of receiving the complaint and can find it either inadmissible, founded or unfounded. If it is founded then the child/children may be given (financial) compensation.
- A child may lodge an appeal with an Appeals Committee which publishes its decisions anonymously.

Source: Liefwaard, T, *Deprivation of liberty of children in the Netherlands*, 2008

6. Recommendations

- All children deprived of their liberty are entitled to make a complaint regarding their treatment and conditions of care and must be informed of this right.
- Clear information should be given to children, both orally and in writing, about the procedure for making a complaint when they first arrive in any facility where they are deprived of their liberty.
- Children should have an opportunity to submit requests and complaints to the director of the detention centre or his or her representative, the central administration, the judicial authority or other independent authority overseeing the facility, or to an outside body such as the public prosecutor or defender or an Ombudsperson.
- The complaints procedure must be accessible, safe, effective and appropriate and understandable for a child's evolving capacity. Measures must be in place to protect children from reprisals arising from making the complaint.
- All complaints must be dealt with as quickly as possible and investigated. Bodies receiving complaints should be capable of gathering evidence to determine the validity of the complaint and responding effectively with sanctions for breaches of children's rights including criminal, civil and employment law sanctions.
- Children should be able to participate in the complaints process and should be supported by legal representation and/or civil society organisations as required.
- Children should have the right to appeal against any decisions made regarding their complaint.
- States should establish an independent office specifically to receive and investigate complaints made by children deprived of their liberty. Where this is not possible or where the population of children deprived of their liberty is minimal, States should empower and designate specialised staff within existing offices, such as National Human Rights Institutions or Ombudsperson offices, to receive and investigate complaints from children deprived of their liberty. Those responsible for receiving and investigating complaints should be well-trained particularly on children's rights and on how to interview children.

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References

- 1 For example, the director of the detention facility, the central administration and/or the judicial authority.
- 2 For more information on how these work in practice, see the European Network of Ombudspersons for Children (ENOC) www.crin.org/enoc
- 3 The Optional Protocol of a Communications Procedure will allow children of countries who have ratified it to make complaints to the Committee on the Rights of the Child. Therefore, it is imperative that all States are urged to ratify the Optional Protocol at the earliest opportunity to increase the protection of children's rights.
- 4 Committee on the Rights of the Child, *General Comment No. 5: General Measure of Implementation of the Convention on the Rights of the Child*, 2003, para 7
- 5 Committee on the Rights of the Child, *General Comment No. 10: Children's Rights in Juvenile Justice*, 2007, para 89
- 6 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 75
- 7 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 76
- 8 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 77
- 9 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 78
- 10 European Rules for juvenile offenders subject to sanctions or measures, Rule 121
- 11 *Report of the Independent Expert for the United Nations Study on Violence against Children*, A/61/299, August 29, 2006, para 104

Penal Reform International
First Floor
60–62 Commercial Street
London E1 6LT
United Kingdom
Tel: +44 (0) 20 7247 6515
Fax: +44 (0) 20 7377 8711
Email: publications@penalreform.org
www.penalreform.org

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