



Child-friendly Complaints Mechanisms

Nikhil Roy

Programme Development Director

Penal Reform International

www.penalreform.org

@PenalReformInt

International Standards

- The most comprehensive standards are in the JDLs:
 - 75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.
 - 76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.
 - 77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.
 - 78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

International Standards ctd

Recently:

- UN Study on VAC: ‘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.’
- CRC GC No 10 states ‘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.’
- Bangkok Rules elaborates on women/girls: Rule 25 ‘women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.’

Interviewing Children/Children Reporting Complaints during Inspections

- Gives full picture of children's experiences of a detention facility. BUT interviewing children must be done in a sensitive way, in private, and without a risk that a child will face reprisals for speaking to an inspection team.
- Interview should be undertaken by someone with training in communicating with children and the welfare issues that may arise.
- A location should be found with as much privacy as possible and where a child feels safe. The interview should be recorded (either by tape or a secondary interviewer) and the child should be made aware of why it is being recorded and how the recording will be kept confidential.
- The interview should follow a structured pattern: introduction and building rapport; obtaining information; and closure. Whilst obtaining information the child should be asked open ended and not leading questions.
- An important aspect of interviewing a child in detention is the management of their expectations of what the interview will achieve. The interviewer in both the introduction and closure of the interview should explain what the information given will be used for and the limit of what is possible to change with regards to the things the child has informed them of. They should inform them about the procedures that will then ensue.
- It is important not to raise false hopes of what the interview will achieve if the inspection team is not able to instigate proper investigations etc.

Effective complaints mechanisms

- All stages of the justice process – police, pre-trial detention and post-trial detention as well as in diversion measures or community-based sanctions.
- Issues of daily routine (eg provision of adequate food and water, access to contact visits etc) which can often be dealt with effectively through informal mechanisms.
- Need access to formal systems of complaint for serious issues, eg unable to access education, or allegations of torture, ill-treatment, violence, exploitation by police, detention employees or other detainees

- Access to
 - internal bodies with responsibility for the police station or detention facility where the child is detained
 - external independent bodies such as ombudspersons, National Human Rights Institutions and judicial bodies.
 - International and regional human rights bodies, eg UN CAT and UN CRC OP3, ACERWC, Sp.Rapp. on Prisons and Conditions of Detention in Africa, CPT and the Inter-American Commission on Human Rights.
- 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 independent monitoring bodies, which should have powers to act upon their complaints.

What are the 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*

- Complaints procedures developed for use by adults and not adapted to children's age, capacity and vulnerability
- Fear of negative consequences of complaining against staff with whom they are in contact daily
- Unaware that they have grounds for complaint eg if use of violence as punishment is widespread practice
- Accessibility to complaints mechanisms is often difficult and the forms and mechanisms of complaint can be very reliant on text which means that children with poor educational backgrounds cannot easily use them.

- No trust/confidence that their complaints will be believed and fairly assessed; eg particularly in cases of sexual exploitation and abuse which can be associated with stigma, shame and secrecy.
- Complaints mechanisms themselves are often flawed and lack independence. Eg they 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

Example: Discouraged from making complaints in Ireland

‘In the 12 month period 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

Key elements for an effective complaints mechanism

1) Accessibility

- Children must be made aware of the existing internal and external complaints mechanisms upon arrival at the police station/detention facility.
- Complaint guidelines should be given to them.
- Having posters up can also be useful.
- Strategies to extend access to complaints eg, systems of locked boxes where children can 'post' complaints, providing access to child help-lines and to writing materials.
- Complaints procedures do not have to be in a formal written form to be effective - staff or mentors could be assigned for the specific purpose of responding to more informal verbal complaints from children [safety/reprisals concerned must be addressed for this to be effective].

2) Assistance from others

- CSOs can make an important contribution to ensuring complaints mechanisms are known, accessible, effective and child-friendly and they should be encouraged to assist children in preparing their complaints.
- Children should be provided with legal aid to bring complaints. Any child should have the right to bring a complaint but sometimes it may be in their best interests for family members, or legal representatives, to do so on their behalf. Complaints guidelines should be available upon request to a child's legal advisor, parent or guardian

3) Safety

- Confidentiality
- Eg. locked box for complaints to be placed in and clear provisions regarding who can open the boxes and when; eg ensuring provision for filing complaints anonymously
- Measures must be in place to protect children from reprisals arising from making the complaint.

Example: 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.

4) Effectiveness

- **Expedience** - for internal complaints the maximum length of the procedure should be set out in written guidance
- A complaint should trigger an **effective investigative procedure**: eg for internal complaints, a review of documents by detention authorities, hearing from the child concerned and witnesses including employees, medical and other experts and requesting information from other authorities; site visits to facilities by the head of the institution particularly where the allegation requires immediate intervention, eg complaint of violence or abuse.
- External complaints should include **hearing the child in person**, call witnesses, request expert opinions, allow children to be legally represented and have access to relevant case files. Bodies hearing complaints should be able to gather evidence to determine the validity of the complaint and **respond effectively with sanctions** for breaches of children's rights including criminal, civil and employment law sanctions.
- Must be formal, transparent and accessible procedure for children to use to complain of torture or cruel, inhuman or degrading treatment. Such allegations should be referred, without delay, to a prosecuting body which is independent from those implicated in the events.
- **Reasons for a rejection of a complaint should be explained carefully to a child**. There should be avenues for appealing this decision to a different authority within the child justice system or externally to a judicial body.
- A **record of the complaints** and the corresponding findings and actions must be kept. They should be subject to routine scrutiny to determine common trends and patterns; eg. many complaints may relate to the same member of staff.

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