

What are the synergies between complaints and the NPM's preventive mandate?

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Complaints raised to NPMs can feed the NPM's preventive work in a number of different ways. They constitute important indicators of systemic problems and a valuable source of information for NPMs' work. Therefore, it is important that NPMs are able to keep record and systematise all complaints received, to be able to identify patterns and integrate them in the NPMs' overall strategy.

Complaints could help NPMs identifying priority issues to be addressed through legislative and policy reforms. They could also be used in the preparation and conduct of visits to places of detention, as they can help NPMs to determine which places of detention and which issues to prioritise in their programme of visits. Complaints are also useful for the preparation and realisation of visits to a place of detention, as they may help NPMs to select which issues to focus on during the visit and, therefore, the specific expertise required within the monitoring team, and whom to interview during the visit. Furthermore, complaints often constitute one of the main criteria for the NPM to decide whether to carry out ad hoc visits, to further investigating issues of particular concern, or exceptionally reactive visits, to inquire into specific and individual allegations.

Although complaints may be an important source of information, they should not be considered by the NPM as the only criteria to decide on its priorities and actions. A lack of complaints does not equal a lack of problems. On the contrary, the absence of complaints can also be a sign of problems. For instance, some persons, especially those in situations of vulnerability, may not be able or willing to complain about their treatment or conditions. Furthermore, in many cases persons deprived of liberty do not complain due to fear of reprisals by the authorities or by their peers.

Complaints could also be used by NPMs as evidence to illustrate the problems identified in the course of their activities. In their reports and regular meetings/contacts with authorities, many NPMs use to refer to the complaints received, without naming the concerned person, in order to reinforce their findings and recommendations and, in some cases, also to follow-up on issues raised in series of complaints.

Finally, when NPMs receive complaints related to places of detention and/or issues already addressed in previous recommendations, those complaints can constitute important indicators for the lack of implementation of NPMs' recommendations, and can thus be integrated in the NPM's follow-up strategies.

What internal procedures should NPMs put in place to receive and handle complaints?

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It is important to develop clear guidelines and procedures for receiving and handling complaints. When the NPM is part of a larger institution, it is recommended to develop these guidelines in coordination with the rest of the institution.

NPMs may need to consider and clarify the following aspects:

Internal organisation: Most existing Ombuds Institutions and National Human Rights Commissions designated as NPMs have a complaint or investigation department, which is a distinct structure from the NPM, with separate personnel and record keeping system. The NPM and the complaint or investigation department could hold regular meetings and share a common database for complaints, to ensure synergies. Specialised institutions created to perform only the NPM's tasks may decide to designate a focal point or create a specific unit in charge of dealing with complaints.

Receipt, analysis and classification: In developing guidelines on complaints, NPMs need to be clear about the means through which they can receive them. NPMs also need to decide how to acknowledge receipt, especially in case of written complaints. NPMs may need to clarify who, within the team, is in charge of recording, classifying and, eventually, following-up on complaints. It may be useful for NPMs to determine criteria based on which they would classify the complaints and decide on the actions to take (for example, the seriousness or urgency of the complaint), particularly for NPMs that are not part of larger institutions with a mandate to handle individual complaints.

Recording and systematisation: To allow NPMs to identify patterns and use complaints in their preventive work, it is important to adequately record all complaints received. Whatever the tool chosen, it is useful for NPMs to record the following information upon receipt:

The type of complaint

Name of the person/s concerned (if relevant)

The theme which the complaint is about

The institution which the complaint refers to

The action taken by the NPM in response to the complaint

NPMs could also record data on follow-up and outcome of most relevant complaints.

Confidentiality, consent and protection of data: The protection of the persons who have been in contact with the NPM, either in writing or during interviews should always be an absolute priority for NPMs (in accordance with the principle of “do no harm”).

In this regard, NPMs have a duty of confidentiality, as defined in Article 21 of the OPCAT and in the SPT’s advice^[1], which provide that personal data should not be published without the express and informed consent of the concerned person. This obligation is the general rule for NPMs. However, in exceptional circumstances, the “do no harm” principle may require NPMs to carefully consider sharing some personal information gathered in their work with other responsible and independent bodies (such as the medical service or the Public Prosecutor’s Office), even without the consent of the concerned person.

Exceptional circumstances could include situations indicating cases of torture or other serious human rights violations, where seeking consent from the detainee would increase the risk of reprisals. Other circumstances could include cases where a person is not in a position to give express and informed consent. In such cases, the NPM should make all efforts to gather and emphasise correlating information from other sources than the detainee, such as accounts by staff members and documents.

NPMs should also take measures to protect sensitive information in their possession, for example by storing it on a secured software and/or locked cabinet.

Protection against reprisals: NPMs should strive to take measures to prevent possible reprisals against the detained persons concerned. These measures may include, for instance, interviewing a large group of persons deprived of liberty, in order to prevent custody staff from identifying the interviewed detainees, reviewing a large number of individual files, and carry out follow-up visits to directly ensure that no reprisals are being taken against those who have communicated with the NPM.

Depending on the nature of the concern and the management of the place of detention, the NPM may also wish to consider informing directly the management while respecting the confidentiality, for instance by generally referring to indications of harassment from particular staff members towards detainees. If the NPMs considers that the situation of a person deprived of liberty is particularly worrisome, it may also decide to leave its contact information with the detainee.

^[1] SPT, *Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms*, in SPT’s Ninth Annual Report, UN Doc. CAT/C/57/4, 22 March 2016, pages 19-20, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/57/4&Lang=>

How should NPMs react externally to complaints?

The following actions may be taken by the NPM to react to complaints:

Some situations brought to the attention of the NPM during visits can, with the consent of the person concerned, be immediately addressed by informing the management of the institution, in order for it to take the necessary action, including educational or disciplinary measures or replacement of staff, when required.

At the same time, or if the management of the place does not take the required action, the NPM can notify, make recommendations to and follow-up with the responsible authorities (for example, the medical service within the facility, the penitentiary service, the Ministry of Justice, etc.).

In other cases, depending on the seriousness of the issue, NPMs may also decide to carry out ad-hoc or reactive visits. NPMs can also refer complaints to other institutions. For specialised institutions, it is recommended, whenever possible, to refer complaints to a specialised and independent institution other than the NPM, to preserve its focus on the preventive mandate. NPMs would need to clarify to which institutions they can refer complaints, for instance Ombuds Institutions, National Human Rights Commissions or independent complaints mechanisms, and which information they should share, for example whether they will share only their preliminary findings or also concrete evidence and support documentation such as transcription of interviews. When NPMs are part of broader institutions with complaints handling powers, such as Ombuds Institutions and National Human Rights Commissions, they may refer complaints to another department of the institution in charge of investigating complaints. In all cases, it is important for the NPM to be able to follow-up on a few complaints to assess the effectiveness of the existing complaints mechanisms. Finally, NPMs can refer these cases to other specialised institutions with a mandate to handle individual complaints, for example specialised ombuds institutions for children, police, armed forces, etc. In some cases, this may require MoU or other formal agreements.

What is a complaint?

In this toolkit, complaints are defined as requests to the NPM relating to treatment, conditions or other situations in detention. These requests are made mainly by persons deprived of their liberty, but they may also come from someone acting on their behalf, such as family members or lawyers, or from other individuals such as staff members.

Complaints may be raised to the NPM in the context of visits to places of detention, orally or in writing, or outside visits, through different means including mail, telephone and email. Many NPMs that are part of larger institutions may also receive complaints from other departments (see below).

In the presence of complaints, it is important for the NPM to first analyse whether it is the best positioned to respond and, if so, what type of action it may take. This is particularly relevant for NPMs that are not part of broader institutions with a mandate to handle individual complaints, which often feel pressured to handle complaints. Therefore, it is very important to establish criteria to receive and classify the complaints, and decide on the actions to take.

What challenges do complaints raise for the NPM's preventive mandate?

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Most NPMs, if not all, regularly receive complaints in the context of and outside visits. The challenge for NPMs is to decide how to respond to these complaints within their preventive mandate.

The NPM's mandate under the OPCAT is very specific and specialised. It focuses on preventing abuses from occurring by: monitoring the treatment of persons in detention settings, as well as laws, policies and procedures that have an impact on those places and on persons deprived of liberty; identifying patterns and systemic risks of torture and other forms of ill-treatment; and proposing possible measures to reduce the risk of ill-treatment. NPMs' preventive visits usually take place proactively, rather than in response to any specific event or complaint, even when there is no apparent problem. Therefore, NPMs differ from other institutions, both judicial and non-judicial, whose focus is on investigating and solving individual cases and complaints.

In deciding how to handle complaints, it is important for NPMs to consider some of the related challenges, which may also differ depending on the type of NPM.

Demanding task: Experience shows that handling complaints is very demanding in terms of human and financial resources and can easily divert the NPM from its core mandate. The risk is that NPMs only respond to urgent requests and leave aside the preventive actions that should be at the heart of their work. Therefore, it is very important for NPMs to develop clear guidelines or procedures to handle complaints.

Expectations: The more NPMs are known, the more they receive information and complaints, thus feeling pressured to handle them in order to maintain their credibility. Information is key for the NPMs' work, so they should be able to receive information from a variety of sources. However, it is important to clarify what they can or cannot do with such information, to avoid creating expectations that cannot be met and thus damaging their reputation.

Ombuds Institutions and National Human Rights Commissions: When NPMs are part of broader institutions with a mandate to handle individual complaints, it may be easier to create an internal separation of functions and, at the same time, ensure regular exchange of information and synergies. Most of the existing Ombuds Institutions and National Human Rights Commissions designated as NPMs have a complaint or investigation department, which is a distinct structure from the NPM, with separate personnel and record keeping system.

In practice, NPMs that are part of larger institutions can refer the complaints received to the specific department within the institution that is competent for investigating them and doing the specific and individual follow-up. The complaint or investigation department, for its part, can share the complaints related to places of detention to the NPM.

Specialised institutions: Some NPMs that are specialised institutions have the additional function, provided by law, to handle and even investigate complaints. In such cases, it is key to establish clear guidelines and procedures and ensure

that the core of the NPM's mandate remains preventive in essence. The NPM may also decide to adopt a strategic approach to handling complaints and carefully select few emblematic ones to follow-up on in view of contributing to changes beyond the single case.

How could NPMs handle expectations regarding complaints?

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It is very important for NPMs to clarify their preventive mandate as to avoid creating false expectations about their work. They can do so in a number of ways such as: during interviews with persons deprived of liberty; during meetings with the authorities; on their institutional website; in their annual reports; in their information material (brochures, videos).

Interviews with persons deprived of liberty are the cornerstone of almost any visit to a place of detention and they require careful thought and handling. NPMs should therefore pay particular attention to explain their mandate at the start of each interview in a very clear and simple way, to avoid creating the impression that the person's individual situation is going to be handled and improve as a result of the NPM's visit. Clarity about the aim of the interview is also key to create a relationship of trust and credibility with the person to be interviewed.

On closing the interview, NPMs should make sure that persons deprived of their liberty are left with the impression to have made a contribution to the NPM's work aimed at improving the treatment and conditions of detention in general.