

First Contact with Complainants: A Human Rights Based Approach to Triage and Referrals by NHRIs

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The Wider Project

This report is part of a wider project, funded by the Nuffield Foundation, examining the roles that National Human Rights Institutions (NHRIs) in Europe already play and should play in dispute resolution. The aims of this project were two-fold: first, to understand the role NHRIs in Europe have already played in dispute resolution; and second, to develop a framework for how they should play such a role in the future in line with international human rights law (IHRL). The project therefore focused on three key questions:

- 1) What is the current dispute resolution practice of NHRIs in Europe?
- 2) Should NHRIs play a role in dispute resolution?
- 3) Where they have a dispute resolution role, what should the standards of justice that attend to that process be?

In addition to this report, the outputs of the project include:

- An executive summary of the project and its findings;

- A mapping report of the roles NHRIs in Europe play in dispute resolution, focusing in particular on agreement-based dispute resolution, investigations and the issuance of recommendations on individual complaints and quasi-judicial tribunals.
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- Three further outputs are being prepared and will be available in due course.

These outputs are available at: <https://www.essex.ac.uk/hrc/practice/access-to-justice.aspx> and in hard copy by request.

The researchers very much welcome any comments, further examples of best practice or suggestions on the content or next steps on this project, particularly in relation to how to further promote the development of bespoke standards of justice for NHRIs with a dispute resolution function and for disputes with a human rights dimension. The contact details for the team are: Lorna McGregor (lmcgreg@essex.ac.uk); Shirley Shipman (sshipman@brookes.ac.uk) and Rachel Murray (Rachel.Murray@bristol.ac.uk)

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It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation. More information is available at www.nuffieldfoundation.org

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Introduction

The United Nations (UN) Principles Relating to the Status of National Institutions (the 'Paris Principles') recognise a role for National Human Rights Institutions (NHRIs) in complaints-handling.¹ The adoption of the 2008 Nairobi Declaration by the Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights promotes this role further.²

'Complaints-handling' is an amorphous term that can encompass a range of processes. It can simply refer to the receipt of enquiries from individuals alleging that their human rights have been violated or seeking information on where to lodge a complaint. It can also refer to a more formal process. For example, complaints-handling may involve the provision of formal legal advice and assistance including through advice lines and legal clinics. It can also refer to the representation of complainants. The way in which an NHRI represents individuals or represents the public interest may be on an individual, case-by-case basis or on a strategic basis, meaning that it only takes up complaints that raise a wider issue that, if successfully challenged, would lead to a change in law, policy or practice and thus benefit a wider group within society. In addition, some NHRIs have a dispute resolution function. This can involve agreement-based dispute resolution such as settlement negotiations, mediation and conciliation and/or the ability to make binding and non-binding determinations as is the case with the many NHRIs within Europe that act as ombudspersons and/or equality bodies.³

Given the range of processes covered by the term 'complaints-handling', the ways in which NHRIs handle complaints vary considerably and they do not always have a mandate over all types of human rights complaints. For example, where NHRIs are also national equality bodies, they typically have a formal complaints-handling mandate. However, it may only relate to its mandate as an equality body and thus focus on forms of discrimination rather than human rights more generally. Other NHRIs do not have a formal complaints-handling mandate at all, particularly where they are not also a national equality body or ombudsperson. This may be because of resource limitations and/or that policymakers or the NHRI consider that other

¹ 'Principles Relating to the Status of National Institutions' UNGA Res 48/134, UN Doc.A/RES/48/134 (1993); see also, International Coordinating Committee Of National Institutions For the Promotion And Protection Of Human Rights, ICC SCA General Observations as adopted in Geneva in May 2013, <http://nhri.ohchr.org/EN/AboutUs/Governance/Documents/ICC%20SCA%20General%20Observations.pdf>

² The Nairobi Declaration, Ninth International Conference of National Institutions for the Promotion and Protection of Human Rights Nairobi, Kenya, 21-24 October 2008. Accessed at: <http://www.ohchr.org/Documents/Countries/NairobiDeclarationEn.pdf> at para 33.

³ Lorna McGregor, Rachel Murray, Shirley Shipman, Hélène Tyrrell, *National Human Rights Institutions in Europe and Dispute Resolution: A Mapping* (April 2017) available at: <https://www.essex.ac.uk/hrc/practice/access-to-justice.aspx>.

bodies exist that are better placed to represent individuals or resolve their disputes. It may also be because the NHRI is required to prioritise the type of work it undertakes to promote and protect human rights in its jurisdiction and thus focuses on other forms of interventions.

The question of whether to vest an NHRI with a complaints-handling mandate and in what way is complex. In our view, NHRIs should not be required to have a formal complaints-handling function although where they do, they may positively contribute to the access to justice landscape.

Regardless of whether NHRIs play a formal role in complaints-handling, all NHRIs are likely to be approached by individuals seeking advice or support in resolving their complaint. For example, the German Institute for Human Rights does not have a mandate to provide advice, assistance, representation or resolve individual complaints through a dispute resolution process. However, when individuals approach the Institute, it refers them ‘to specific help lines and special services’.⁴

This short paper focuses on how NHRIs deal with the first point of contact with a complainant and how they triage and refer complaints to other institutions in situations in which they do not have a mandate or capacity to deal with the complaint. The Paris Principles and the accompanying General Observations of the Sub-Committee on Accreditation⁵ do not provide guidance on the approach an NHRI should take at this stage of the complaints-handling process. However, the manner in which the NHRI handles an initial enquiry matters in order to enable the complainant to access justice. It is also important in ensuring that the individual is treated with dignity and respect and to prevent the abandonment of the complaint, particularly where a complainant has already been sent to different institutions with no success and may therefore be suffering from ‘complainant fatigue’ regardless of the strength of the complaint.⁶ Complaints can also provide a source of information and evidence on challenges and shortcomings in the access to justice landscape as well as indicating wider human rights issues that need to be addressed. Therefore, even if an NHRI does not have a formal complaints-handling mandate, analysis of the types of enquiries it receives may support the fulfilment of other parts of its mandate.

⁴ German Institute for Human Rights, FAQs available at: <http://www.institut-fuer-menschenrechte.de/en/about-us/faqs/> (last accessed 29 January 2017).

⁵ The General Observations reached by the Sub-Committee on Accreditation are available at: <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/SCAGeneralObservations.aspx> (last visited 3 January 2017).

⁶ Project Interviewee 62.

This paper addresses the key principles underpinning complaints-handling; how the substance of the complaint at the point of first contact should be analysed; the type of information that should be provided to the complainant; how referrals should be made; and how the NHRI can connect initial complaints to its wider strategic work.

A. A Human Rights Based Approach to Complaints-Handling

The first issue that arises when considering an NHRI's approach to first contact with a complainant is the key principles that should underpin its engagement and treatment of the complainant. In this paper, we endorse the view of the Northern Ireland Public Services Ombudsman and the Northern Irish Human Rights Commission that have recently promoted a human rights based approach (HRBA) to complaints-handling which applies from the first point of contact with a complainant.⁷ These two bodies provide a succinct definition of an HRBA to complaints-handling as 'a process that adheres to both the values which underpin human rights law as well as their substantive content'.⁸ The Scottish Human Rights Commission identifies these underpinning values as the PANEL principles, standing for participation, accountability, non-discrimination, empowerment and legality.⁹ Thus, an HRBA to complaints-handling requires that the underlying complaint is analysed and assessed from a human rights perspective. However, it also provides a framework for how the complainant is treated and engaged with even where the NHRI does not enjoy a formal complaints-handling mandate, guided by principles such as dignity, respect, non-discrimination and equality, empowerment in claiming rights, and transparency.

Adopting an HRBA to complaints-handling suggests that there should be appropriate training for frontline staff in order to ensure that they have the necessary expertise to deal with these issues. Participation also reflects a key principle for complaints-handling meaning that, as the UN Office of the High Commissioner for Human Rights points out, the procedures and process of making a complaint (and in our view initial enquiry) should be 'appropriate given literacy

⁷ Northern Ireland Public Services Ombudsman and Northern Ireland Human Rights Commission, *Human Rights Manual* (2016) available at: <https://nipso.org.uk/nipso/publications/how-we-make-decisions/>

⁸ *Id.* at 5.

⁹ Scottish Human Rights Commission, *PANEL Principles* available at: <http://www.scottishhumanrights.com/in-practice/human-rights-based-approach/> (last visited 31 January 2017). Other formulations include: ATPi (Accountability, Transparency, Participation and Inclusion): T Carothers & S Brechenmacher 'Accountability, Transparency, Participation and Inclusion: A New Development Consensus' at <http://carnegieendowment.org/2014/10/20/accountability-transparency-participation-and-inclusion-new-development-consensus> (last visited on 10 February 2017) and PANTHER (Participation, Accountability, Non-Discrimination, Transparency, Human Dignity, Empowerment and Rule of Law): 'Human Rights Principles: PANTHER' at <http://www.fao.org/righttofood/about-right-to-food/human-right-principles-panther/en/> (last visited on 10 January 2017).

levels, cultural traditions and accessibility’ and they should avoid ‘impos[ing] unnecessary inconvenience on victims’ including significant travel.¹⁰ Measures should also be in place to ensure the availability of ‘translators, sign-language interpreters or other forms of assistance – for persons with disabilities, speakers of minority languages or other groups’.¹¹

B. Analysis of the Substance of the Complaint at First Point of Contact

The assessment of the nature and substance of a complaint at the first point of contact is particularly important in order to determine whether the NHRI can offer its services and, where it cannot, to identify the appropriate institution(s) to which to refer the complaint. This can be a complex task, particularly where more than one institution exists that could potentially deal with all or certain aspects of the complaint.

Where an NHRI has a formal complaints-handling mandate over all or some aspects of human rights, it will have to assess whether the complaint falls within its subject-matter jurisdiction or that of another institution(s). How an NHRI makes such a determination can prove difficult.¹² Interviewees within our research observed that many complaints either have human rights at their core or a human rights dimension to them, with ‘human rights touch[ing] upon so many issues and so many different terrains of policy’¹³. One interviewee (an NHRI) pointed out that its front office spends a significant amount of time separating the cases that have a human rights dimension to them from those which do not.¹⁴

Where an NHRI does not have a formal complaints-handling mandate, the complaint will still require a level of analysis in order to determine the appropriate institution(s) to which to refer the complaint. Accurate analysis of the complaint is particularly important in jurisdictions with multiple complaints-handling bodies in order to ensure that the complainant is referred to the correct agency and does not suffer from ‘complainant-fatigue’ as the result of an inaccurate or multiple referrals.¹⁵

¹⁰ National Human Rights Institutions: History, Principles, Roles and Responsibilities (United Nations OHCHR Professional Training Series No 4 2010) at 83.

¹¹ *Id.*

¹² The Northern Ireland Public Services Ombudsman and Human Rights Commission provide a screening tool in their handbook to assist in identifying human rights issues within complaints, *supra* note 9 at 101.

¹³ Project Interviewees 80 and 81.

¹⁴ Project Interviewee 65.

¹⁵ Project Interviewee 62.

Given these challenges, as already noted, it is important that NHRIs have staff trained in communicating with complainants. These staff members should be able to make a basic assessment of the nature of the complaint or request for advice, bearing in mind that individuals are unlikely to frame the complaint in human rights language or may try to but do so inaccurately.¹⁶ They may also provide incomplete information, requiring follow-up. A number of participants at an expert meeting we held as part of our project noted that some institutions may assume that the most junior staff should deal with initial enquiries and complaints. However, in their view, it may be more appropriate for experienced staff to assess complaints, particularly where the exact nature of a complaint is difficult to extrapolate from the initial communication. Involving experienced staff protects against referring complainants to another agency unable to deal with the complaint or overlooking important human rights issues.¹⁷ Experienced staff will also be able to ensure that complaints that require urgent attention and prioritisation are identified. One participant at our expert meeting recommended introducing a system of rotation of senior staff in the assessment of initial complaints in order to ensure staff retention.¹⁸

C. Identifying the Appropriate Institution for Referral

Where an NHRI does not have a formal complaints-handling role or where it does, but decides that the complaint falls outside of its mandate or it otherwise cannot take on the case, it may have to refer the complaint to another institution unless it is very clear that the claim is frivolous or without substance or merit. This requires identification of the appropriate institution, agency or organisation to which to refer the complaint. Even once a complaint has been referred to another organisation, the NHRI may still play a residual role in tracking how it is being handled. A participant in the expert meeting held by our project noted that retaining this overview can ensure that the complaint is dealt with expeditiously and does not get lost in the system or sent back and forth between different institutions.¹⁹

In referring a complaint, the NHRI will have to have a strong understanding of the access to justice landscape. Some jurisdictions are moving towards a single access point for complaints.²⁰ This is in recognition of the challenges that can arise where multiple institutions within a

¹⁶ Project Interviewee 61.

¹⁷ Expert Meeting on the Role of National Human Rights Institutions in Providing Access to Justice, 21 September 2015, Wivenhoe House Hotel, University of Essex.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ For example, in Wales there is a platform called 'complaints-Wales' which 'a telephone and web based signposting service offering advice on how to complain about a public service' available at; <https://www.complaintswales.org.uk/>.

jurisdiction can handle a complaint. One interviewee within the course of our research noted that this is a particular problem in Europe.²¹

Where a single point of access for complaints is not available within the jurisdiction, making effective referrals requires accurate and up-to-date knowledge of state agencies and non-governmental organisations that can provide formal advice and assistance both in relation to lodging complaints in court and different forms of dispute resolution such as settlement negotiations, mediation, conciliation and ombudsperson-style investigations or quasi-judicial bodies.

NHRIs that have a formal complaints-handling function that is limited to particular types of claims provide illustration of best practice in triage and referral. For example, in Bosnia and Herzegovina, the NHRI (an ombudsperson) is mandated to receive individual complaints related to discrimination. The office is contacted by a significant number of individuals in relation to a range of issues (around 12-13,000 per year), of which approximately a quarter might fall within the direct competence of the Ombudsman. Each day a lawyer acts as the duty officer, receiving calls, meeting with individuals and taking complaints in writing. The complaints are then filtered into those that fall within the competency of the NHRI (these are forwarded to the relevant department internally) and those that do not. Where they fall into the latter category they are redirected to other relevant agencies usually by a letter to the complainant or agency, or both.²²

Similarly, the front office of the Netherlands Institute of Human Rights (NIHR) responds to telephone calls and emails containing queries and complaints on a daily basis. It sifts these complaints to assess whether the NIHR is able to give an opinion (for equal treatment cases) and where the issues raised fall outside of its competency, the staff direct the complainants to other relevant organisations that can help them.²³ The Polish NHRI (an ombudsperson) also has a department which filters complaints and forwards them to one of several departments responsible for handling complaints. Where complaints fall outside its mandate, the Ombudsman 'always either sends them to another competent body or inform[s] [the relevant public authority] that action is necessary'.²⁴

²¹ Interview 9; a participant at the expert meeting *supra* note 19 made a similar point.

²² Interview with the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.

²³ Interview with the Netherlands NHRI, the College Voor de Rechten Van de Mens.

²⁴ Interview with the Office of the Human Rights Defender.

To facilitate referrals, a best practice may include reaching agreement with other service providers. For example, the Croatian Ombudswoman and the special Ombudswomen for Children, Gender Equality and Disability, have an agreement to refer complaints to each other where appropriate.²⁵ Memoranda of understanding provide a further way to strengthen the referral process.²⁶ This may be particularly helpful in the European context, given the multiplicity of complaint-handling bodies that often exist, in order to ensure that the correct organisation receives the complaint and that complaints do not get lost in the system.

This system may also be important where an NHRI is part of a wider umbrella organisation that may include an equality body, an ombudsperson and the National Preventive Mechanism²⁷. National Preventive Mechanisms (NPM) are established to monitor places of detention in line with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the course of monitoring places of detention, detainees may make complaints about their treatment in prison (including issues such as quality of food) or other issues such as contact with family, divorce proceedings or financial issues to the NPM. The NPM will not be able to formally handle these complaints but if it is part of a hybrid body that also houses an ombudsperson, it may be able to pass any complaints received through monitoring of places of detention to the ombudsperson. The ombudsperson would then have to decide if it can investigate the matter, whether it needs to forward the complaint to the police or prosecutor, if it relates to allegations of torture or other criminal behaviour, or if it can remain seized of the matter while the prosecuting authorities investigate.²⁸ In this situation, an agreement between the different bodies operating within a hybrid institution would be helpful. This should cover issues such as firewalls, confidentiality and the specifics and limitations of the respective roles.

A relationship between the NHRI and the body to which the referral is made may also strengthen the approach the body takes to handling human rights complaints. A strong example in this respect is the proactive collaboration between the Northern Ireland Human Rights Commission (which does not have a dispute resolution mandate) and the Northern Ireland Public Services Ombudsman. The Ombudsman explained, that

²⁵ Interviews with the offices of the Croatia Ombudswoman, the Children's Ombudswoman, the Gender Equality Ombudswoman and the Disability Ombudswoman.

²⁶ Interview 23.

²⁷ Crowther and O'Cinneide, 'Bridging The Divide? Integrating The Functions Of National Equality Bodies and National Human Rights Institutions in The European Union' (UCL October 2013).

²⁸ Interview 53.

'the project was created initially to ensure that as Ombudsman my staff and I were aware of our human rights obligations but also that staff were sufficiently equipped with knowledge of human rights law, both nationally and internationally, to ensure that they could investigate complaints of maladministration from members of the public or by referral from the NIHRC that raised human rights issues. The project started as a training project for NIHRC to train my staff and extended through the use of an NIHRC secondee to the development of a Human Rights Manual to ensure my staff use a HRBA [a human rights based approach]. This approach to complaints that engage human rights issues, particularly in the area of health, social care, education and prisons, has resulted in a wider range of issues being investigated by the Ombudsman through the lens of HRBA. NIPSO staff are now more confident in identifying human rights issues and also in testing public bodies as to how they took account of the human rights of the individual complainant. The manual is now published and has much international interest with support from the International Ombudsman Institute (IOI) and will be supported by a casebook that the Ombudsman and NIHRC are developing. The partnership relationship is continuing between both organisations.'²⁹

D. Provisional Information on the Process

Throughout our research, interviewees emphasised the importance of providing complainants with initial advice at the point of first contact. This was the case both in relation to NHRIs with formal complaints-handling powers and NHRIs without such powers and aligns with how complainants are treated as part of an HRBA to complaints-handling as discussed above.

1. Provisional Advice where the NHRI Enjoys a Formal Complaints-Handling Mandate

Where an NHRI enjoys a formal-complaints handling mandate, information about the process is typically set out in legislation and/or the rules of procedure of the organisation. It should also be set out in simple and understandable language on its website and other publicly available materials.³⁰ While this appears an obvious point, in the course of our research, it was sometimes difficult to identify the precise nature of the complaints-handling powers of an NHRI from its website.

²⁹ Email exchange with the Ombudsman.

³⁰ Project Interviewee 54.

In addition to information on the process, best practice includes making sure that complainants are fully aware of the types of outcomes that may be expected from the particular complaints-handling process at the outset. For example, if the NHRI handles complaints as an ombudsperson, it should provide the complainant with clear advice on the legal significance of its investigations and any recommendations issued; whether it pursues other ways in which to resolve a dispute such as settlement negotiations; and the impact any action it takes may have on other legal avenues potentially available. Where it issues recommendations, it should indicate what recommendations typically cover; whether they are intended to provide a remedy for the complainant if complied with or whether they are aimed at addressing wider policies or practices; how they differ from court judgments; and whether it can take any action to try to get its recommendations or decisions implemented. Conversely, where the respondent is willing to comply with the recommendations of the NHRI, it is also important that the complainant understands that this may mean the loss of victim status and the inability to pursue the complaint further in litigation.

The NHRI should also advise the complainant of any applicable limitation periods. Again, this is particularly relevant where the NHRI is an ombudsperson or a quasi-judicial body that issues non-binding recommendations. In most states, the limitation period runs while the NHRI is dealing with the complaint. In this case, some NHRIs explain to the complainant that he or she may have to choose between the NHRI and the courts and set out the advantages and disadvantages of each choice.³¹ They may also advise the complainant of the time they have in which to lodge a complaint before a court. In other states the NHRI may investigate a complaint at the same time as a case is before the courts. For example, in the Netherlands, an individual may present a complaint to the Netherlands Institute of Human Rights (NIHR) at the same time as he or she brings an equal treatment claim before the courts.³²

³¹ This is, for example, the practice of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina.

³² Interview with the Netherlands Institute for Human Rights.

2. Provisional Advice where the NHRI Does Not Have a Formal Complaints-Handling Function

Where an NHRI is not able to take up a complaint and therefore plans to refer it, the question arises of how the referral is made. One interviewee suggested that the referral process may require a greater degree of interaction with the complainant than explaining that the NHRI cannot take up the complaint. Rather, the interviewee noted that best practice may be to provide a level of initial advice and explanation of why particular organisations might be best suited to examining the complaint and other organisations to try thereafter.³³ This type of advice could be provided with the caveat that it does not constitute formal or binding legal advice but still offer the complainant a degree of support and focused triage and as a means of preventing the abandonment of complaints.

For example, in Poland, of over 50,000 complaints received by the NHRI (an ombudsperson) each year, around half require only 'legal advice [information]: what are the relevant legal provisions, what does the law say about the case, to which institution should the individual send the case ... which court is competent'.³⁴ The advice is limited to 'in your situation this legal provision should apply ... you should turn to the Consumer Ombudsman' (and similar) – it cannot say 'you should do this'.³⁵

In Norway, the Norwegian National Human Rights Institution does not have a formal dispute resolution mandate. However, it offers general advice on which human rights instruments might be applicable to the complaint; guidance on which other complaints mechanisms the complainant could submit the complaint to, such as the ombudsman, and guidance on how to apply.³⁶

E. Action to Take in the Absence of an Organisation or Agency to which to Refer the Complaint

On considering where to make a referral, an NHRI may find that no agency or organisation exists that can provide advice or assistance; or may find that organisations that exist in theory

³³ Project Interviewee 62.

³⁴ Interview with Office of the Commissioner for Human Rights (Ombudsman).

³⁵ *Id.*

³⁶ Email exchange with the NHRI.

do not provide assistance in practice or the quality or nature of that assistance is inadequate. One interviewee highlighted that a triage and referral function assumes that other organisations exist that will be able to support the complainant. The interviewee pointed out that this assumption carries the risk that complainants are denied access to justice where no other organisation can provide assistance.³⁷ NHRIs may therefore need to consider ways in which to monitor the referrals they make on a periodic basis.

Where an NHRI finds that the bodies to which it refers complaints are inadequate or ineffective, this will require an effective HRBA in explaining to the complainant why it considers a lack of avenues to exist to support his or her claim. Where an NHRI finds that the bodies to which it refers complaints are inadequate or ineffective or do not currently take an HRBA approach to their work, it may need to assess whether it should seek an extension of its own mandate to fill this gap or advocate, through its wider promotional and protection work, that the state address the issue. It may also offer training and developmental support to the institution to which it refers complaints to enable it to identify and deal with complaints raising human rights issues more effectively and in line with national and international human rights law. Where an institution is not handling human rights complaints effectively or does not already take an HRBA to its work, it should not be assumed that a one-off or limited number of trainings will be sufficient but rather a sustained collaboration is likely to be necessary.

F. Connecting Initial Complaints-Handling to the NHRI's Strategic Work

Finally, as noted at the outset, complaints-handling can also benefit the fulfilment of an NHRI's wider work. In order to facilitate the analysis of complaints, a best practice for all NHRIs is to create a database for registering all enquiries and complaints received.³⁸ This plays an important role in tracking the complaints of individuals in addition to developing an evidence base of the types of human rights complaints received and the availability and quality of routes for accessing justice in the jurisdiction. This data can feed into the NHRI's wider strategic work and shape and inform its interventions on wider human rights and access to justice issues.

Key information to register on such a database includes:

³⁷ Interview 43.

³⁸ National Human Rights Institutions: History, Principles, Roles and Responsibilities (United Nations OHCHR Professional Training Series No 4 2010) 185.

- Details of the complainant;
- The details of the person or institution against whom the complaint is made;
- The nature of the complaint, including 'a summary of the allegation or situation, including what happened, when, to whom, by whom, how and in what circumstances'³⁹;
- 'Whether the matter is before, or has been adjudicated by, any other authority or under examination by another competent body'⁴⁰;
- The reasons for referral, if referred, including why the NHRI is not able to act and reasons why the NHRI deemed the institution to which it referred the complaint appropriate;
- If not referred, the reasons why not.

Where there is no service or organisation to which to direct the complainant, this should be logged in the database as it may indicate a gap in the access to justice landscape that the NHRI may then seek to resolve through its mandate to promote and protect human rights.

Examples of initial complaints feeding into the wider strategic work of an NHRI include the Netherlands Institute of Human Rights which enjoys a mandate to formally handle complaints related to equal treatment.⁴¹ Where it becomes aware of a number of complaints in a particular area, this feeds into its wider work. This includes further research and the NIHR may hold 'theme' days on the issue where it invites the media and journalists to attend a discussion between the NIHR and individual complainants in order to generate publicity.⁴²

In other situations, the collection of data and its analysis may trigger the use of own initiative powers, investigations or inquiries and targeted work on underreporting either by the NHRI where it has such a mandate or by another institution with such powers. For example, where an NHRI notices that it is not receiving complaints on a particular issue or from a particular group or sector of society⁴³, it may then be able to carry out further research and outreach to understand the reasons for the underreporting. These might include a lack of information, problems of access to the NHRI or other institutions (particularly where there is a lack of local presence); fear; cultural reasons; a lack of expectation that anything will change by reporting; how legalistic or bureaucratic the reporting procedure is; and/or a lack of trust in specific

³⁹ *Id.* at 83.

⁴⁰ *Id.*

⁴¹ Chapter 2 The Netherlands Institute for Human Rights Act 2011.

⁴² Interview with the Netherlands NHRI, the College Voor de Rechten Van de Mens.

⁴³ Buck, Kirkham and Thompson, *The Ombudsman Enterprise and Administrative Justice* (Ashgate, 2011) at 94 (noting that a 'common observation [in the UK] that comes out of these surveys is that complaints to the ombudsman are disproportionately made by people from older, white, middle-class backgrounds rather than from the poor, young or ethnic minorities').

institutions or more generally. On the basis of such analysis, the NHRI will then be able to try to address the underreporting and the underlying causes of it.⁴⁴ For example, in Canada, the Canadian Human Rights Commission has found that the largest number of complaints do not come from those who are the most vulnerable. In response, it has put together round tables with civil society organisations that represent the most vulnerable, specifically indigenous women, in order to reach out to them to build trust and understanding of the Commission's role, as well as to better understand the barriers people face with the complaints process. This will lead to the implementation of an action plan together with key partners, in order to address these barriers and provide greater access to human rights justice.⁴⁵

Finally, where the NHRI has a formal complaints-handling function, the NHRI should also analyse the progress of the complaint and any withdrawals or abandonments of claims which may occur, in particular with individuals in positions of vulnerability. For example, in Canada, the Commission has found that some individuals in positions of vulnerability abandon their complaints. It is implementing a structure that better supports the individual throughout the process by providing one human rights officer assigned to the file at all stages of intake and investigation.⁴⁶

Developing the linkages between the complaints-handling functions of NHRIs and its other functions is particularly important in feeding into the wider promotion and protection mandate of the NHRI and also to ensuring that complaints-handling serves a dual function of facilitating access to justice for individuals but also informing and shaping the NHRI's strategic work. For this reason, the complaints register should be shared regularly with policy and legal staff within the NHRI and other relevant organisations.

Conclusions and Recommendations

Regardless of whether NHRIs have a formal complaints handling role, as noted in this short report, all NHRIs will be approached by individuals seeking advice or a resolution of their complaint. Depending on the availability, publicity and reputation of other services in the jurisdiction, the number of complaints received will vary and dictate the resources required by an NHRI to commit to effectively assist such individuals, even for the purposes of referral. As an initial paper on this question, the project team would welcome further examples of best practice

⁴⁴ Interview 43.

⁴⁵ Interview with the Canadian Human Rights Commission.

⁴⁶ *Id.*

and reflections on how such systems can be put in place by NHRIs and similar bodies experienced in these issues. Please contact the project team should you wish to discuss these points further.

