

Children's rights behind bars

Human rights of children deprived of liberty: Improving monitoring mechanisms

National Report ITALY

Operatore
28/08/2014

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1. Introduction

1.1 List of abbreviations

ASL	Local Health Board <i>Azienda Sanitaria Locale</i>
CGM	Juvenile Justice Centers <i>Centri per la Giustizia Minorile</i>
CPA	First Reception Center <i>Centri di Prima Accoglienza</i>
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DPR	Presidential Decree <i>Decreto del Presidente della Repubblica</i>
ECHR	European Court of Human Rights
EU	European Union
IPM	Juvenile Detention Center <i>Istituto Penale Minorile</i>
NGO	Non-Governmental Organization
NPM	National Preventive Mechanism
OP	Prison Rules Act <i>Ordinamento Penitenziario</i>
OPCAT	Optional Protocol to the Convention against Torture
SPT	Subcommittee on Prevention of Torture and other Cruel or Degrading Treatment or Punishment
UN	United Nations
USSM	Offices of Youth Social Services <i>Uffici di Servizio Sociale per i Minorenni</i>

1.2 Partner and researcher

Defence for Children International Italy, in connection with its International network and the International Secretariat, focuses its actions on activities concerning juvenile justice and children in conflict with the law, migration, and child protection from trafficking and exploitation phenomena.

Defence for Children Italy main activities consists in: Analysis and research, to understand which are the elements that determine the violation of the human rights of the child; Information, sensitization, training: to create awareness, understanding and improve skills; Report of violations in order to immediately put a stop to abuse and take on the responsibilities for a change; Promotion of proposals to orient policies, laws and strategies; Development of pilot projects for the identification of good practices that can be replicated.

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1.3 Methodology

The main objective of the present national report is to provide an overview of the capacity of the Italian Juvenile Justice System to ensure the safeguarding of human rights in different places where children may be deprived of personal liberty in Italy. More specifically, the report aims at analysing the extent to which the respect of children's rights within these places is monitored and the ways through which children can enforce their rights in case of violation. The national research has attempted to assess the existence, efficiency and utility of both monitoring mechanisms of the conditions of children deprived of personal liberty and the complaint mechanisms available to them in the different types of facilities present in Italy within the Juvenile Justice System. By comparing the existing mechanisms recognized by law with their practical implementation, the report identifies a series of weaknesses and structural inconsistencies that question the system's capacity to put in place effective protective mechanisms. On the other hand, the report highlights the importance of informal mechanisms in Italy as a fundamental resource and as an effective mechanism for the prevention of children's rights violations and the promotion of a prison system compliant with human rights standards.

The national research has followed a common research protocol elaborated by the project coordinator and shared with all the projects' partners during the kick-off meeting in Brussels. It basically contains the main issues to be addressed as well as the methodological requirements concerning both the documentary and the field research.

The present report is the result of a desk review of relevant existing literature, legislation, policies and statistical data combined with a field research through qualitative semi-structured interviews with relevant informants inside and outside the places of deprivation of liberty. The study is also based on secondary data and on existing work developed by experts on the field of juvenile justice in Italy and aims at contributing to a system that increasingly incorporates in a systemic manner the principles and rules of the CRC.

The interviews were conducted following a common questionnaire as a guideline. However the questionnaire has been adapted in order to properly respond to the national requirements and contextual specificities. For this first version of the report a total of 11 referents were consulted including representatives from institutional agencies, members of independent monitoring bodies and civil society organisations, volunteers, experts and staff working in the facilities.

The findings and analysis that resulted from these processes are presented in this national report, which is articulated around three main pillars: the international framework, the national framework and the analysis of their practical implementation.

This report together with those elaborated by the other partners of the project will provide examples of good practices in the implementation of monitoring and complaint mechanisms as well as obstacles and difficulties that need to be avoided. These elements will be gathered in a common report aimed at inspiring the *Practical Guide for Professionals*, which intends to be a tool for all subjects responsible for ensuring the monitoring of places where children may be deprived of personal liberty as well as for those dealing with children's complaints.

1.4 Limitations

The present report has been conceived to provide the project with the information requested in order to draw up a general overview on the monitoring and complaint mechanisms of places of deprivation of liberty of children in Italy. It should be considered as a starting point from which a more in-depth systemic analysis addressing the concrete and complex issues that may derive from it could be developed¹.

The research is limited in three ways due to the constraints deriving from the project's limitations mainly related to the limited available timeframe (24 days) and the limited economic resources: first of all territorially since it aims at covering the legislation and practical implementation concerning the subjects under study in Italy. Even if the report provides a general overview of the national situation, it must be said that it has prevalently had direct access to Northern and Centre realities² above all vis-à-vis the third pillar of the research, "the analysis of the practical implementation". Therefore the territorial contexts that are represented in the report are not exhaustive of the Italian reality, which is *per se* very varied. Nonetheless a representative sample has been attempted within the limits.

Secondly the report is limited in terms of the scope of the research. It includes the places of deprivation of liberty within the juvenile justice system in Italy: Juvenile Detention Centres, First Reception Centres and Residential Care Facilities. Therefore the Centres of Identification and Expulsion, the therapeutic facilities and children of mothers in detention – the later was commonly agreed with all the project partners - do not fall within the scope of the research. The short time available together with the limited length of the report could have compromised the quality of the contents and of the results. Actually, DCI team considers that the monitoring of children's rights in the Centres of Identification and Expulsion – that constitutes a big issue in Italy - would deserve a specific independent research. With regards to the police custody cells, it has been considered that they do not represent a place of deprivation of liberty to be specifically examined in the present research according to the scope and limitations of the project. As stated in the report³ the Italian legislation does not foresee the permanence in police custody cells for minors save in exceptional cases in which children can be kept in police stations for 12 hours at most.

All these exclusions result from a logic that seeks to make the most effective use of time available in order to achieve results relevant for the project.

Finally, the research is methodologically limited because the consultations were held with those relevant actors operating in the field of juvenile justice that the research team was able to contact taking into account the existing constraints such as long bureaucratic procedures and lack of economic resources to travel within the country. As a consequence, some of the interviews were conducted through Skype or by telephone, while others were conducted personally. Moreover, some of the specific authorizations sent to the Administration for accessing detention facilities have not received any response within the deadline of the national report (31st July). This implies that the information resulting from these visits will be included in the report in a further stage of the project.

¹ Each section of the report concludes with a list of issues that would require further study. A further systemic analysis could be based on a set of qualitative variables that have already been identified and tested in previous research projects in which DCI Italy has participated. The set of intertwined qualitative variables include **level of inclusion/exclusion** of the system; **appropriateness** and relevance of the system in responding to the needs and rights of children; **compliance** with principles and provisions derived from a child rights and human rights perspective; and **effectiveness** of the system in protecting children's rights.

² The research team managed to get in contact with territorial realities of the following regions: Lombardy, Tuscany, Liguria and Lazio. However several references were made with regard to the rest of the Italian territory.

³ See page 20 of the present report.

2. The international framework

2.1 Ratification status of treaties/conventions

	Signature/Date	Ratification/Date	Reserve(s)
* CRC	26/01/1990	05/09/1991	
* CRC-P3	28/02/2012		
CAT	04/02/1985	12/01/1989	"Article 21: hereby declares, in accordance with article 21, paragraph 1, of the Convention, that it recognizes the competence of the Committee against torture to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention; "Article 22: hereby declares, in accordance with article 22, paragraph 1, of the Convention, that it recognizes the competence of the Committee against torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of violations by a State Party of the provisions of the Convention."
* OPCAT	20/08/2003	03/04/2013	
* CPT	26/11/1987	29/12/1988	
* European Social Charter (Art. 17)	03/05/1996	05/07/1999	

2.2 International recommendations specifically related to the detention of minors, the monitoring of places of deprivation of liberty and the complaint mechanisms available to minors

UN Committee on the Rights of the Child; Fifty-eighth session, 19 September - 7 October 2011: Concluding observations⁴

Independent monitoring (page 4)

The committee recommended that "the State party ensure that the new office of the National Ombudsperson for Children and Adolescents is promptly established and that it is provided with sufficient human, technical and financial resources to guarantee its independence and efficacy, in accordance with the Committee's general comment No. 2 (2002) on the role of independent human rights institutions in the promotion and protection of the rights of the child". It further recommended that "the State party ensure uniform and efficient protection and promotion of child rights in all regions, which includes assistance to and coordination of existing regional Children's Ombudspersons by the National Ombudsperson for Children and Adolescents". The Committee urged Italy to "swiftly advance the process of establishing and operationalizing an

⁴ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ITA/CO/3-4&Lang=Sp

independent national human rights mechanism, in full accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), to ensure comprehensive and systematic monitoring of human rights, including children's rights".

Training (page 5)

"The Committee reiterates its recommendation to ensure systematic, mandatory and ongoing training on child rights for all professionals working with and for children, in particular law enforcement officers, Carabinieri, judges and penitentiary staff".

Unaccompanied children (page 17)

"The Committee recommends that the State party introduce comprehensive legislation ensuring the assistance and protection of unaccompanied children, drawing upon the principles set out in general comment No. 6. In particular, the Committee recommends that the State party establish a specific and permanent national authority to oversee the condition of unaccompanied children, identify their needs and address challenges in the current system, and to develop operational guidelines on unaccompanied children, including on reception, identification, needs assessment and protection strategy. The Committee recommends that the State party adopt a unified age-assessment procedure for unaccompanied children that is multidisciplinary and fully upholds the principle of the benefit of the doubt."

Administration of Juvenile Justice (page 20)

"The Committee recommends that the State party bring its juvenile justice system fully into line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. In particular, the Committee urges the State party to:

- (a) Adopt the bill on the juvenile prison system without undue delay;
- (b) Allocate adequate human, technical and financial resources to the juvenile justice system to ensure continued focus on diversion and other alternative measures to deprivation of liberty, as recommended by the Working Group on Arbitrary Detention (A/HRC/10/21/Add.5, paras. 116 and 122);
- (c) Conduct a thorough analysis of the overrepresentation of foreign and Roma children in the juvenile justice system;
- (d) Establish an independent monitoring mechanism to undertake regular visits to places where children are deprived of their liberty."

UN Committee against Torture (CAT); *Thirty-eighth session, 30 April to 18 May 2007: Conclusions and recommendations*⁵

Definition of torture/introduction of a crime of torture

"The Committee reiterates its previous recommendation (A/54/44, para. 169(a)) that the State party proceed to incorporate into domestic law the crime of torture and adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should also ensure that these offences are punished by appropriate penalties which take into account their grave nature, as set out in article 4, para. 2 of the Convention."

Preventive detention

"The State party should urgently take appropriate measures to considerably reduce the length of preventive detention and restrict such detention to those cases, where it is deemed to be strictly necessary. Furthermore, the Committee encourages the State party to apply alternative non-custodial measures."

National human rights institution

"The State party should proceed with the establishment of an independent national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection

⁵ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrcLgPII26jRu6si7MAAE4hThDM%2feEBEWCTJaQy6ZC3qd252oDsER3M16c8m8ujUC9b6X1JuOT3ORFs6c%2bzSv7y1qz%2fBDtDA07C6HBzgmaGw>

of human rights (the Paris Principles), annexed to General Assembly resolution 48/134. In this respect, the State party is encouraged to promptly adopt the necessary legislation.”

Detention of asylum-seekers and non-citizens

“The State party should take effective measures to ensure that detention of asylum-seekers and other non-citizens is used only in exceptional circumstances or as a measure of last resort, and then only for the shortest possible time.”

Training

“The State party should further develop and implement educational programmes to ensure that:

- a) All law enforcement officials, border guards and personnel working in the CPTs and CPTAs are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted; and
- b) All law enforcement officers are adequately equipped and trained to employ non-violent means and only resort to the use of force and firearms when strictly necessary and proportionate.”

“Furthermore, the Committee recommends that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment and that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) become an integral part of the training provided to physicians. In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on the reduction of cases of torture and ill-treatment.”

Conditions of detention

“The State party should take effective measures to further improve living conditions in the immigration centres and ensure that a system of systematic monitoring be set up. In this respect, the Committee recommends that an independent body should monitor the management of these centres, respect for the human rights of the people held there and the health, psychological and legal assistance provided.”

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT has carried out a total of 10 visits to Italy: six periodic visits (1992, 1995, 2000, 2004, 2008 and 2012) and four ad hoc visits (1996, 2006, 2009 and 2010). The CPT has primarily visited adult detention facilities. Only in 1995, 2000 and 2009⁶, during the third ad hoc visit, the CPT delegation visited penal institutions or residential care facilities for minors. As a consequence, the recommendations included in the most recent CPT reports are not particularly related to children in detention.

The last CPT report on the visit to Italy in 2012⁷ includes the following relevant recommendations:

- “To redouble their efforts to introduce as soon as possible the crime of torture into the Penal Code and to take the necessary steps to ensure that the crime of torture is never subject to a statute of limitations.” (paragraph 6)
- “Law enforcement officials throughout Italy to be reminded, at regular intervals, that all forms of ill-treatment (including verbal abuse) of persons deprived of their liberty are not acceptable and will be punished accordingly.” (paragraph 9)
- “The Committee recommends that steps be taken by all relevant authorities to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned. If necessary, the relevant legal provisions should be amended accordingly.” (paragraph 12)

⁶ As stated in the CPT report, the main purpose of this ad hoc visit was to look into the new policy – including the implementation of the policy – of the Italian authorities to intercept, at sea, migrants approaching Italy’s Southern Mediterranean maritime border and to send them back to Libya or other non-European States. The content of the report, including recommendations, is not relevant for the research purposes.

⁷ <http://www.cpt.coe.int/documents/ita/2013-32-inf-eng.htm>

- “The CPT reiterates its recommendation that steps be taken by the relevant authorities to ensure that, in all law enforcement agencies (including all municipal police services), persons who have been deprived of their liberty – for whatever reason – are fully informed of their rights as from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with a law enforcement official). This should be ensured by provision of clear verbal information at the very outset, to be supplemented by provision of the above-mentioned information sheet immediately upon arrival at a law enforcement establishment. Further, the persons concerned should be requested to sign a statement attesting that they have been informed of their rights in a language which they understand.” (paragraph 14)
- “The CPT calls upon the Italian authorities to take immediate steps to ensure that in all law enforcement establishments (including those of municipal police services), all medical examinations of detained persons are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of law enforcement officials. (paragraph 17)
- “The CPT once again calls upon the Italian authorities to take immediate steps to ensure that in all law enforcement establishments, persons detained overnight are provided with a clean mattress and clean blankets.” (paragraph 23)

“Further, the Committee recommends that the Italian authorities review the conditions of detention in all law enforcement establishments in Italy where persons may be held for 24 hours or more, in order to ensure that:

- custody cells have adequate access to natural light;
- the persons concerned are offered outdoor exercise every day”. (paragraph 24)

Human Rights Council-Universal Periodic Review (2010)

Minors detained with a view to their expulsion

“The Committee on the Rights of the Child had denounced the ill-treatment of foreign children by security forces and had raised questions regarding the conditions of the detention and ill treatment of migrants. Nicaragua observed the existence of deficiencies in procedures, in particular regarding the detention of asylum seekers, which could result in long detention periods”. (Concluding Observations)

Staff formation

“Provide obligatory human rights education and training to police, prison and detention staff and judiciary, and ensure their accountability for any human rights violations (Czech Republic)” (Concluding observations)

OPCAT

“Working group's recommendations: To ratify the Optional Protocol to the Convention against Torture , in order to permit the Subcommittee for Prevention to conduct visits to places of detention, including reclusion centres for migrants and asylum-seekers, as well as those with the populations originating in national minorities in order to help the Government improve conditions in these centres (Mexico); to ratify the Optional Protocol to the Convention against Torture (Azerbaijan, Czech Republic); to ratify the Optional Protocol to the Convention against Torture and take the measures necessary to comply with its provisions (United Kingdom of Great Britain and Northern Ireland)”

2.3 Jurisprudence of the ECHR in the framework of decisions relating to children's deprivation of liberty

There have been few cases of the ECHR in which Italy has been involved in relation to children deprived of personal liberty. A very important case – considered as pilot judgment by the Court - in 2013⁸ concerned the issue of overcrowding in Italian prisons. But it was related with adult detainees' conditions of detention. However, it has brought with it relevant consequences at national level that resulted in new measures for the improvement of the conditions of detention and increased compliance with International standards.

In the field of child protection, the case *Scozzari and Giunta v. Italy*⁹ of July 2000 that concerned the issue of minors in care could be highlighted:

Case: *Scozzari and Giunta v. Italy* (Application nos 39221/98 and 41963/98)

Date of judgment: 13.07.2000 (Grand Chamber)

Violation: Article 8 – Right to respect for private and family life

Summary of facts: In September 1997 the applicants' two sons/grandsons, born in 1987 and 1994, were placed by court order in the "Il Forteto" children's home, where – as the national court was aware – two of the principal leaders and co-founders had been convicted of sexual abuse of three handicapped people in their care. Prior to his placement in the home, the eldest boy had been a victim of sexual abuse by a pedophile social worker.

Conclusion: The Court held, notably, that there had been a violation of Article 8 (right to respect for family life) of the Convention, concerning the uninterrupted placement of the boys in "Il Forteto". It noted in particular that the absence of any time - limit on the care order, the negative influence of the people responsible for the children at "Il Forteto", coupled with the attitude and conduct of social services, were in the process of driving the first applicant's children towards an irreversible separation from their mother and long-term integration within "Il Forteto"¹⁰.

⁸ *Torreggiani and Others v. Italy* (application no. 43517/09), available at: [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4212710-5000451#{%22itemid%22:\[%22003-4212710-5000451%22\]}](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4212710-5000451#{%22itemid%22:[%22003-4212710-5000451%22]})

⁹ [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-68485-68953#{%22itemid%22:\[%22003-68485-68953%22\]}](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-68485-68953#{%22itemid%22:[%22003-68485-68953%22]})

¹⁰ http://www.echr.coe.int/Documents/FS_Minors_ENG.pdf

3. The national framework

3.1 Legal and regulatory framework for the detention of children

From a legislative point of view, Italy constitutes a good example of transposition of international standards and gives rise to a system that safeguards the right of the child to growth and develop his capacities.

In this sense, the offence committed is firstly considered as an expression of unease or discomfort, of a difficulty in the psychophysical development, and therefore a starting point for an educational process. On paper, the principle of the best interest of the child (art. 2 CRC) appears to be the basis of the Italian juvenile justice system. In fact, the system is based on the concept of imputability¹¹ (recognized in art. 98 of the Civil Code) according to which a child can be criminally prosecuted only if he is imputable. This concept implies the capacity to understand and discern as a precondition to be recognized as guilty. The system is also compliant with the principle of “minimum intervention”, according to which judicial interventions are reduced to the minimum, especially those of coercive and restrictive nature (Pesarin, 2009).

This legal philosophy is very influenced by the Constitutional Court, which in various sentences has reiterated that the best interest of the child and his reintegration into the society should always be considered before the punitive power of the state. In other words, the State may refrain from using its punitive power in order to safeguard the best interest of the child and his educational process.

The juvenile justice system in Italy is regulated by a set of laws and provisions and is managed separately from the adult justice system. The legislative framework is mainly structured in line with the following provisions:

- **Law n° 835 of 27th May 1935**, still partially in force, which establishes the Juvenile Court as a specialized body and represents the starting point for the juvenile justice system's structure. This Law regulates the institution and functioning of the Juvenile Court and of the Rehabilitation Centres for minors, which provide for the execution of the civil and administrative measures of the Juvenile Court. Subsequently, the execution of these measures was transferred to the Social Services of the local authorities through the approval of the Presidential Decree n° 616 of 24th July 1977. The Juvenile Court has full competences on administrative, civil and penal matters.
- **Presidential Decree n° 448 of 22nd September 1988** that institutes the Criminal Juvenile Procedure Code. This Code regulates the provisions on criminal proceedings of juvenile offenders, including police custody and personal liberty. With this Decree a specialized code for children which is different from that for adults was established. The principles upon which the criminal juvenile procedure is based are contained in the Decree and generally aim at determining the minimum intervention of the process through the activation of all the necessary interventions for a rapid way out from the criminal circuit without interrupting the educational processes under way; the appropriateness of the process in order to be compliant with educational and empowering ends; and the residual use of detention both for precautionary measures and for the execution of the sentence (Pesarin, 2009).
Is worth mentioning that the Presidential Decree represents the shift towards a more child-friendly juvenile justice system that respects the Standard Minimum Rules for the Administration of Juvenile Justice, the so-called “Beijing Rules”, approved by the United Nations on 28 November 1988¹², and introduces the precautionary measures that foresee imprisonment as a measure of last resort.

¹¹ The term imputability (in Italian *imputabilità*) refers to the recognition of the criminal liability of an offender.

¹² The Decree expressly recognizes the right to be notified of the criminal charges; the right to receive legal assistance; the right to counsel; the right to be heard and informed about the charges, process and the possible sentences; and the right to privacy, among others.

- **Legislative Decree 272 of 28 July 1989** entitled “Implementation, coordination and transitional provisions upon the Presidential Decree n° 448 of 22 September 1988, bearing rules on criminal proceedings against young offenders”.
- **Decree Law n° 12 of 14th January 1991** establishing supplementary and corrective provisions on the criminal procedure and its related rules.

Finally, the **Prison System approved by Law n° 354 of 26 July 1975 foresees in article 79** the temporary application of its provisions for children until the adoption of a specific legislation. However, no specific regulations on juvenile prison law have yet been approved, despite the general claim for a new law¹³ and the indications made by international organisations including the Council of Europe in November 2010¹⁴. Therefore, the provisions established in the Prison Rules Act for adults are currently being applied for children. This fact hinders the possibility for the Italian Juvenile Justice to be fully compliant with the international standards on child-friendly justice. This legislative vacuum has been partially addressed by the jurisprudence of the Constitutional Court, which through declarations of unconstitutionality has reaffirmed the specific adaptation and flexibility of the treatment offered to a detained child as well as the need for rehabilitation and re-socialisation of young offenders recognized by articles 2, 27, 30 and 31 of the Italian Constitution (AIMMF, 2010). Nonetheless as reiterated by several relevant actors from different disciplines such as the CRC Group¹⁵ as well as all those interviewed in this research, it emerges the necessity for the adoption of a juvenile prison rules act that is coherent with the function attributed to the sentence by the Italian code in the juvenile field. The new juvenile prison system should be aimed at reducing imprisonment and at changing the role and functioning of the juvenile detention centres (Gruppo CRC, 2014).

“The main lack of the juvenile justice system is the lack of a juvenile penitentiary system codified in the legislation. Because article 75 of the ordinary Prison Rules Act contains a transitional rule according to which the ordinary prison system is applied also to minors until the legislator will adopt a specific juvenile prison rules act, which has never been adopted. A juvenile system cannot be regulated in the same way as an adult system because the necessities differ a lot, it cannot work. We need to focus on school; we need to have a differentiated disciplinary system...” (Member of a civil society organization)

The deficiencies in the regulations and the dis-articulation of the existing legislation reflect the need to harmonize the juvenile justice legal framework in Italy.

The Juvenile Court has exclusive jurisdiction in proceedings related to juvenile offenders indicted for criminal offences who are at least 14 years old and it is also responsible for preventive measures regarding socially dangerous juvenile offenders (DCI Italy, 2013). It has also civil and administrative competences. The Juvenile Court is a specialized and multidisciplinary judicial body composed of a magistrate of the Court of Appeal, a magistrate of the Court of Justice and two meritorious citizens –the so-called honorary judges - who have contributed to social assistance, a man and a woman, chosen among experts of biology, psychiatry, criminal anthropology, pedagogy, psychology, and who have already turned 30 years¹⁶. The main powers of the Juvenile Court concerning criminal justice include the jurisdiction for the crimes committed by persons under the age of 18 years and the exercise of their competences until the young offender that has committed the crime when he was minor turns 25 years.

The Ministry of Justice and more concretely the Department of Juvenile Justice, is the competent authority for the execution of the criminal measures issued by the Juvenile Court as well as for the legal protection of children hosted in the juvenile institutes. The execution of the criminal measures is done through a set of

¹³ Some legislative proposals have been presented in the Parliament and different institutions have addressed proposals to the Ministry of Justice.

¹⁴ Please see the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice available at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec%282010%291098/10.2abc&Language=lanEnglish&Ver=app6&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>

¹⁵ The Italian NGO Group for the CRC is a network currently composed by almost 86 NGOs and associations that have been working for a long time for the promotion and protection of children’s rights in Italy. It was established in December 2000 to guarantee an independent, permanent and up-to-date monitoring system on CRC implementation, agreed upon by all members, and to implement relevant advocacy actions. Among its main activities, the CRC Group drafts a Yearly Follow-up Report on priority issues identified and highlighted in the Concluding Observations of the UN CRC Committee.

¹⁶ Royal Decree Law 20 July 1934, n° 1404

specific decentralized structures that depend on the Ministry of Justice around which the Department of Juvenile Justice is articulated. The administrative bodies are called Centres for Juvenile Justice (CGM) and are territorial administrative bodies whose jurisdiction usually covers the area of several regions and districts of the Courts of Appeal. Their main functions are technical and economic programming as well as control and monitoring of the Juvenile Services operating thereunder.

The Juvenile Services are:

- **Offices of Youth Social Service (USSM):** there are a total of 29 offices of the USSM in Italy. Their function is to provide young offenders with assistance at any stage and level of the criminal proceeding and to gather information about them for the personality assessment under request of the Public Ministry. They also provide concrete project's processes and contribute to the decisions of the juvenile legal authority. These offices are activated once a child is drawn into the penal circuit and accompany the young perpetrator during the whole criminal path, from the beginning to the end (Department of Juvenile Justice).
- **Juvenile Detention Centres (IPM):** there are currently 17 IPMs active in the Italian territory hosting minors or offenders under the age of 21 years when the crime was committed before turning 18. Their function is to ensure the enforcement of the measures issued by the legal authority such as pre-trial detention or conviction sentences addressed to juvenile offenders. In this context the young offender is granted the right not to interrupt his educational, physical and psychological development. To encourage their personal accountability processes and the attainment of maturity, educational, training, cultural, sport and recreational activities such as theatre are organized in the IPMs. (DCI Italy, 2013). According to article 5 of the Presidential Decree 230/00, the Surveillance Magistrate who is part of the competent Juvenile Court should monitor and supervise the development of the IPM services and the treatment that detainees receive.
- **First Reception Centres (CPA):** are the structures that host arrested children, both retained or accompanied, until the validation hearing that needs to be held within 96 hours as stated by law. According to the Presidential Decree 448/88 these centres should guarantee the custody of the children but should not be established as penitentiary structures. The CPA are mainly aimed at providing to the competent judicial authority with the first information about children; support and inform minors; collaborate with the other juvenile services; and establish immediate contacts with the families.
- **Residential care facilities:** act by law both to ensure the enforcement of non-custodial measures and to help reintegrating young offenders in their social environment. A personalized educational program is developed taking into account the child's personal and familiar resources as well as the opportunities offered by the local agencies, with the aim of starting a process of personal accountability by the young offender (DCI Italy, 2013).
- **Day care centers** offer day services for precautionary, substitutive and alternative measures.

According to article 97 of the Penal Code, the age of criminal responsibility is 14 years and therefore a child under this age cannot be criminally charged. In addition, article 98 establishes that "is imputable a minor that, in the moment in which he committed the crime, was already 14 years but not yet 18, and if he had the capacity to understand and discern". Therefore, as previously mentioned, the concept of imputability that is on the basis of the Italian juvenile justice approach constitutes a further qualitative criterion to determine the criminal responsibility of a young offender. To this purpose the capacity to understand and discern of a child with regards to the offence committed has to be always assessed, while for adults this capacity is presumed. When the age of the offender is unclear, the judge orders an age assessment and in case of doubts after the assessment, the minority of age is presumed according to the Presidential Decree 448/88.

Those minors who are not criminally charged are exempted from being sentenced and convicted. Like those under the age of 14 years, these minors may be subject to security measures such as placement in a reformatory or probation only if they are deemed to be *socially dangerous* (Flora and Tonini, 2002). It is also foreseen the possibility to apply administrative measures to minors who are not criminally charged in order to prevent and rehabilitate them in case of problems of conduct or behavior.

The criminal measures applicable to children by the judicial authority need to be considered taking into consideration the logic and principles that inspired the current Italian juvenile justice system as embodied in the Presidential Decree 448/88. As stated in this law “all the measures are applied adequately according to the personality and the educational needs of the minor¹⁷”. In this line, the negative consequences that the judicial proceeding can have on child’s development are always taken into consideration by the judicial authorities, that assess case by case the opportunity to continue the process or to interrupt it according to educational scopes. In fact, the main scope of the juvenile criminal proceedings is the educational and social development and rehabilitation. To this purpose, imprisonment in the juvenile area seems to be frowned upon due to the negative consequences that it may entail for the child’s reintegration process. It is indeed generally assumed that a juvenile crime grows from an unfavorable social context determined by structural deficiencies also in educational terms and the penitentiary institutions do not help at repairing the consequences of a lack of positive reference points¹⁸. Law allows the judge choosing the more appropriate sentence for a young offender among a plurality of sanctions. Moreover, the sentence is imposed within a flexible system in which the possible exit mechanisms can be activated as recognition of an acquired level of maturity by the minor (AIMMF, 2010).

Despite the progressive reduction of the use of restrictive measures, the juvenile justice system applies the following criminal measures of restriction of personal liberty applicable to young offenders:

- **Conviction sentences** can be ordered following a definitive sentence¹⁹ or in cases of pre-trial detention for offences punished by over 9 years in prison and if there are concerns about suppression of evidences, danger of flight or of re-offending. Imprisonment is served in an IPM in which educational and training activities are developed in coherence with the educational ends of the sentence. Children under the age of 18 can benefit from a reduction of the committed offence’s sentence by a half and those under 16 years by two thirds.
- **Placement in a residential care facility** can be ordered by the judge as a precautionary measure (article 22 of DPR 448/88) and constitutes the more restrictive precautionary measure after the pre-trial detention. A young offender may also be sent to a residential care facility under articles 18, 36 and 37 of the DPR 448/88 concerning respectively accompaniment after arrest, execution of security measures and provisional application (Mastropasqua, 2008). Finally, during the criminal execution a minor may be hosted in a residential care facility as an alternative measure to detention (probation in the Social Services, home confinement, day-release) following the definitive sentence (CNCA, 2009).
- **Home confinement** is the sentence ordered by a judge according to which the minor should remain at home or in another private residence or public healthcare establishment. The judge may also order to limit or forbid the communication of the minor with people other than those living with or assisting him.

The Italian juvenile justice system also provides a range of non-custodial penalties, making it possible for children to promptly leave the formal criminal justice system, such as prescription, judicial pardon, suspended sentences with probation, acquittal for incapacity to understand and discern or irrelevance of the fact (DCI Italy, 2013). Among them, probation deserves a special mention. Unlike the Anglo-Saxon tradition, probation in Italy is applied during the criminal proceeding and not only after the sentence. The judge can order the suspension of the proceeding for a variable period not exceeding three years depending on the seriousness of the offence when he considers it necessary to assess the personality of the child following the probation. During this period an intervention project is developed in collaboration with the Juvenile Services of the Ministry of Justice. This project includes the involvement of the child, his family and his social environment, the supervision of commitments accepted by the child, the participation of the social educators of the Juvenile Services and of the local authorities, to repair the consequences of the offence and the conciliation with the offended person. The success of the probation period implies the extinction of the offence. (Pesarin, 2009) This measure besides reducing the permanence of the child in the criminal circuit,

¹⁷ Article 9 and article 19 of the DPR 448/88 make explicit references to these principles.

¹⁸ The difficulties related to rehabilitation processes faced by children in conflict with the law were particularly detected and addressed in a DCI Italy project called Tom-tom. This project aimed at reaching children during and after criminal proceedings in order to increase their chances of successful reintegration through the establishment of a group of volunteers that supported and connected children with local resources, to orient them in order to access professional and educational opportunities available in the surrounding context.

¹⁹ The judge can make use of imprisonment only when there are evidences of the non-suitability of the other measures.

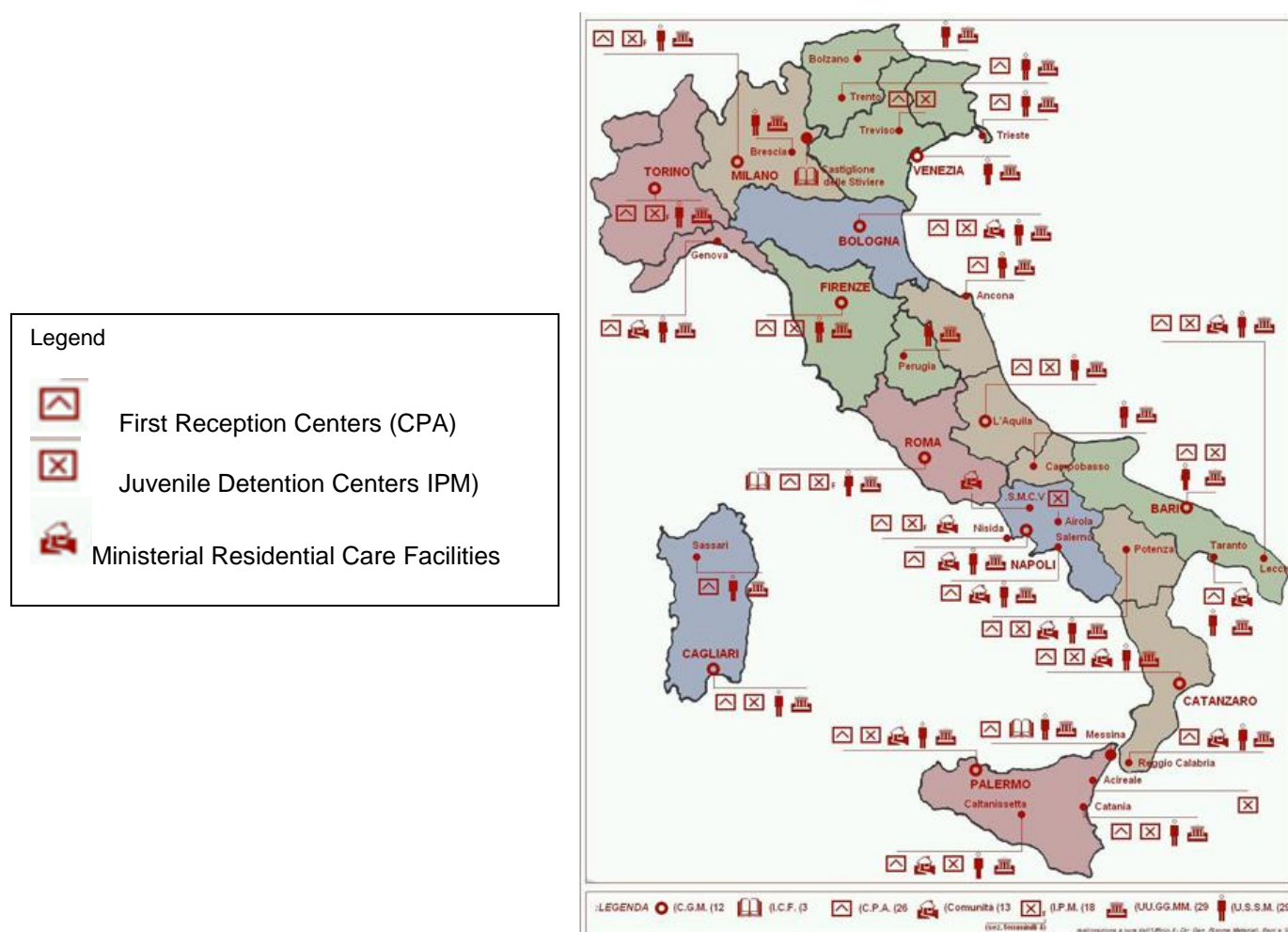
may contribute at activating positive personal resources that are conducive to a constructive rehabilitation process.

3.2 Mapping of detention facilities for children

The places in which children can be deprived of liberty within the juvenile justice system in Italy include the following residential structures: juvenile detention centers (IPM), first reception centers (CPA) and residential care facilities with educational or therapeutic purposes. All these structures are managed by the Juvenile Justice Centers (CGM), which at the same time depend on the Juvenile Justice Department. There are a total of 12 CGM in Italy²⁰ with competences in more than one region. These administrative bodies operate in the territory through the Juvenile Services of Justice. Figure 1 shows the placement of the Juvenile Justice Services in the Italian territory²¹.

The juvenile criminal procedure specifically requires the collaboration between the ministerial and the local services for the purpose of guaranteeing a continued and effective assistance to children.

Figure 1 Map of the Juvenile Social Services Headquarters



Source: Department of Juvenile Justice

²⁰ The 12 CGM are placed in the following Italian cities: Torino, Milano, Venice, Bologna, Firenze, L'Aquila, Roma, Cagliari, Napoli, Catanzaro, Bari e Palermo. Territorial offices of the CGM can be found in other cities such as in Genoa whose competent CGM is the one based in Torino.

²¹ Private residential care facilities do not appear in Figure 1 since they are not part of the public Juvenile Justice Services but are managed by private cooperatives that have signed an authorization arrangement with the concerned local institutional agencies. Private facilities are widely present in the Italian territory.

The specific details of each type of structure of deprivation of personal liberty within the Juvenile Services of Justice are addressed below, including their configuration, characteristics, regime and functions.

There are 19 **IPM** ensuring the execution of the measures issued by the legal authority concerning the pre-trial detention and the serving of the detention sentence of the young offenders. Currently the 17 IPM active in Italy are placed in the following cities: Acireola, Airola, Bari, Bologna, Cagliari, Caltanissetta, Catania, Catanzaro, Firenze, Milano, Nisida (Naples), Palermo, Pontremoli, Potenza, Rome, Turin, Treviso.

In 2006 a norm – an “*administrative circular*” - that regulates the organization and the technical management of the IPM was approved. This document was elaborated to redefine the organizational and functional model of the Institutes in order to verify their level of appropriateness in relation to the European legislation and to the recent changes above all in terms of users and demands (Ministry of Justice, 2006)²². In these regards is worth highlighting that the main principle that should inspire the organization of the IPM is to guarantee to the detainees and the staff a physical and relational environment characterized by the respect for the dignity of the person, his rights and his needs. Under this approach, the capacity of the context to orient the quality of the relational life and to represent an indispensable point to start processes of change is recognized. In addition the document states that given the preeminence of the re-educational function of the sentence addressed to children and taking into account the necessity to allow their rapid exit from the criminal circuit, the conditions that ensure the respect for children rights should be implemented. This includes the right to health and to a harmonic growth; the right to education, to work, to socialization and to leisure activities; the right not to interrupt the current educational processes; the right to religious freedom; the right to affective and psychological assistance; or the right to respectful environments for the human dignity and hygiene secure.

In organizational terms, every IPM is divided into four functional areas:

- The technical area that includes social workers, psychologists, cultural mediators, teachers, trainers, volunteers, etc. This area is coordinated by the most competent educator;
- the security area composed of the penitentiary Police and coordinated by the commander of the unit;
- the management area coordinated by the most competent administrative officer;
- and the accounting area coordinated by the most competent accountant officer.

The *Circular* also addresses the characteristics of the health and psychological services. The direction of the Institute is in charge of the coordination among the above mentioned areas. A programming and supervision team meets monthly with the aim of organizing, managing and verifying all the activities developed within the whole structure.

Regarding the operational dimension, the main aspects to be highlighted are the minimum standards in the relation between children and social workers each social worker may be responsible for a maximum of 8 children in order to ensure profile education; the different activities planned for the children that should engage them from 6 to 8 hours per day; and the collaboration with external entities such as voluntary initiatives in order to foster links with the territorial resources for a rapid process of reintegration in the social context.

As previously mentioned the IPM hosts children in pre-trial detention, children serving a custodial sentence and youngsters over 18 years that remain in charge of the juvenile justice until they turn 21 years for offences committed before the age of majority (Pennisi, 2012).

²² The *Circular* is also aimed at addressing the lack of a Prison Rules Act for children and at constituting a common referral framework for all the juvenile detention centers operating in the Italian territory. The document contains the principles, institutional ends, organization, strategies and methodologies of intervention that every IPM should meet.

The IPMs have a total capacity of 594 places and according to the latest data available as of 8 May 2014 the current occupancy reaches 364. Table 1 reports the capacity and the current presence in each one of the 17 active juvenile detention centers.

Table 1 Capacity and occupancy of the IPM by gender

Center	Capacity			Occupancy (8 May 2014)		
	M	F	M+F	M	F	M+F
ACIREALE	20	-	20	21	0	21
AIROLA	42	-	42	26	0	26
BARI	35	-	35	15	0	15
BOLOGNA	44	-	44	13	0	13
CALTANISSETTA	12	-	12	10	0	10
CATANIA	52	-	52	47	0	47
CATANZARO	17	-	17	19	0	19
FIRENZE	12	-	12	9	0	9
MILANO	50	-	50	48	0	48
NISIDA-NAPOLI	73	19	92	28	4	32
PALERMO	40	-	40	33	0	33
PONTREMOLI	0	16	16	0	10	10
POTENZA	12	-	12	5	0	5
CAGLIARI	9	-	9	5	0	5
ROME	57	24	81	31	6	37
TURIN	48	-	48	23	0	23
TREVISIO	12	-	12	11	0	11
Total	535	59	594	344	20	364

Source: Department of Juvenile Justice

The first element emerging from the available data is that the numbers of juvenile detainees in Italy are very low, which seems to confirm the general belief according to which the current juvenile criminal procedure code has succeed in reducing the use of juvenile detention up to the extent that it has become a residual measure.

As we can see from *Table 1* the occupancy rates of the majority of centers are lower than their total hosting capacity. Only the IPM placed in Acireale exceeds its capacity in one detainee and the one in Catanzaro in two²³. Therefore it can be derived that, unlike adult prisons, problems of overcrowding do not particularly affect juvenile detention centers in Italy. Another conclusion that can be drawn from the data is that the presence of feminine gender users is lower than the male. In fact, there are just 20 female detainees versus 344 male detainees. Girls have represented over time a percentage between the 17 and the 15% of children denounced in the Public Prosecutor, while in prison represent around 6% (Antigone, 2013). In Italy, there are three juvenile detention centers with a feminine section: Pontremoli, Nisida and Rome.

Another interesting observation concerns the country of origin of the juvenile detainees. The presence of foreign detainees in the IPM in comparison with the presence of Italians is higher if we take into account the number of allegations presented to the Public Prosecutor. In other words, the percentage of reported juvenile foreigners that end up in prison is higher than the percentage of juvenile Italians denounced that do so. However, as shown by *Table 2*, the absolute figures indicate that there has been a progressive decrease in the number of foreigners entering prisons probably due to the economic crisis²⁴ and to the consistent presence of children from new EU members²⁵. Despite this reduction, the foreign presence in juvenile detention centers is still overrepresented and constitutes an indicator of the capacity of inclusion/exclusion of the Italian juvenile justice system that could be further addressed. While the number of Italians that entered prison in 2013 was higher than in 2006.

²³ For a more detailed report on the conditions in each one of the IPM please see the online report published by Antigone Association available at: <http://www.associazioneantigone.it/Index3.htm>

²⁴ In some Italian contexts immigrants are returning to their countries of origin. However an in-depth analysis on the consequences of the economic crisis and its effects on the juvenile immigrant population would require further study and data collection.

²⁵ There is a significant number of children within the Italian Juvenile Justice coming from countries that recently joined the European Union, particularly Romania.

Table 2 – Number of young offenders entering juvenile detention centers from 2006 to 2013 by nationality and gender.

Years	Italians			Foreigners			Total		
	m	f	mf	m	f	mf	m	f	mf
2006	551	30	581	625	156	781	1.176	186	1.362
2007	609	36	645	536	156	692	1.145	192	1.337
2008	657	37	694	524	129	653	1.181	166	1.347
2009	666	33	699	414	109	523	1.080	142	1.222
2010	689	24	713	355	104	459	1.044	128	1.172
2011	714	21	735	409	102	511	1.123	123	1.246
2012	649	18	667	466	119	585	1.115	137	1.252
2013	634	19	653	422	126	548	1.056	145	1.201

Source: Department of Juvenile Justice

It is also interesting to examine the presence of foreigners in geographical terms, which is superior in the northern part of Italy. In the first semester of 2012 the presence of foreigners reached the 57% in the IPM of the North-Western part of Italy; the 70% in the IPM of the North-East; the 66% in the IPM of the Center; the 23% in the IPM of the insular area; and the 25% in the Southern part of Italy (Antigone, 2013).

Lastly, the following table regarding the juvenile offenders entering prison by age shows that the majority of detainees are young adults, which means that they are in detention for crimes committed during the minority of age. On June 2014, the 17 years old detainees together with the young adults entering prison represented almost half of the detained juvenile population.

Table 3 – Number of young offenders entering juvenile detention centers in 2014 by age. Situation on 30 June 2014.

Age	Italians			Foreigners			Total		
	m	f	mf	m	f	Mf	m	f	mf
14 years	8	1	9	9	6	15	17	7	24
15 years	31	1	32	26	10	36	57	11	68
16 years	46	-	46	44	10	54	90	10	100
17 years	66	4	70	51	11	62	117	15	132
Young adults	81	5	86	43	16	59	124	21	145
Total	232	11	243	173	53	226	405	64	469

Source: Department of Juvenile Justice

The **First Reception Centers (CPA)** are the structures that host children under arrest until the validation hearing, which has to take place within 96 hours, ensuring the permanence but without being characterized as imprisonment structures. These structures also have a role of immediate mediation between legal requirements, educational needs and intervention. They provide to the judicial authority with the first information about the child including his personal, familiar and social situation and give the first indications on the possible project of intervention for the child.

Whenever possible they are close to the juvenile judicial offices and they cannot be placed inside the penitentiary institutions. The main purpose of the CPA is thus to avoid the first impact with penitentiary structures because it could entail negative consequences for children. There are 27 CPA in the Italian territory²⁶.

The *Circular* about the organizational, operational and structural model of the First Reception Centers was issued by the Department of the Juvenile Justice in 2006. According to it, CPA's objectives are to guarantee the centrality of the child, to ensure the communication with the juvenile judicial authorities and promote the activation of the local services that should provide the child with individualized responses (Department of Juvenile Justice, 2006).

As mentioned, CPA cannot be configured as prisons or penitentiary structures and therefore the internal organization of the spaces should be inspired in the criteria used for civil apartments. In this way, a friendly

²⁶ The CPAs are placed in Ancon, Bari, Bologna, Cagliari, Caltanissetta, Catania, Catanzaro, Florence, Genoa, L'Aquila, Lecce, Messina, Milano, Naples, Nisida, Palermo, Potenza, Reggio Calabria, Rome, Salerno, Sassari, Taranto, Turin, Trento, Treviso and Trieste.

but functional environment should be created as well as proper conditions for the development of the different daily activities.

The CPA are managed by a multidisciplinary team composed of social educators, psychologists, agents of the penitentiary police, accountants, administrative officers, etc. They perform the actions of the CPA in an integrated and complementary way. These actions can be divided into three stages: the reception of the child that includes the first reception, the identification of the minor, a first interview with the child, the medical assessment, the interview with the defendant, collaboration with other services, and cultural mediation; the management of the permanence in which several activities are organized; and the individualized educational intervention on the child that may include also special services for minors with drug addictions or with psychiatric problems. However given the short time that each child spends in the CPA, we could state that the main role of the team is to elaborate a first report on the psychological and social situation of the minor and on the available territorial resources in order to provide the authorities with the elements that could allow the identification of the most appropriate measure.

CPA's users are children who have committed serious offences: non-intentional crimes for which the law establishes the life-time sentence or the imprisonment of not below a maximum of 9 years; offences of sexual abuse; and young offenders caught while committing a non-culpable crime for which the law establishes imprisonment sentence of not below a maximum of 5 years.

In general terms, there has been a substantial decrease in the number of young offenders entering CPA from 2006. As table 4 shows, around a thousand of foreign juveniles less entered CPA in 2013 than in 2006. The trend is confirmed also with regards to Italian juveniles that have also decreased over time.

In terms of gender, it is interesting to see how female foreigners are much more present in the CPA than the Italian girls. However, the figures regarding the latter have remained quite constant, instead the number of foreign girls entering CPA shows a substantial reduction from 563 enters in 2006 to 312 in 2013.

Table 4 Number of young offenders entering first reception centers from 2006 to 2013 by nationality and gender.

Years	Italians			Foreigners			Total		
	m	f	mf	m	f	mf	m	f	mf
2006	1.404	76	1.480	1.462	563	2.025	2.866	639	3.505
2007	1.469	76	1.545	1.236	604	1.840	2.705	680	3.385
2008	1.462	85	1.547	1.021	340	1.361	2.483	425	2.908
2009	1.443	51	1.494	704	224	928	2.147	275	2.422
2010	1.355	68	1.423	616	214	830	1.971	282	2.253
2011	1.337	75	1.412	696	235	931	2.033	310	2.343
2012	1.191	65	1.256	668	269	937	1.859	334	2.193
2013	951	67	1.018	690	312	1.002	1.641	379	2.020

Source: Department of Juvenile Justice

For what concerns the **residential care facilities** it must be distinguished the difference between the Ministerial facilities that depend on the Ministry of Justice and the residential care facilities authorized by the local authorities.

According with article 10 of the DPR 448/88, the management and organization of all the facilities should meet the following criteria:

- family-type organizational structure that includes also the presence of children who are not subject to criminal proceedings and with a capacity not exceeding 10 unities in order to guarantee significant educational processes;
- presence of professionals from different disciplines;
- and collaboration with all the relevant territorial institutions and resources.

The main aim of the residential care facilities is to develop an individualized educational program with the child by taking into account his personal and familiar resources as well as the opportunities offered by the context. In this way the so-called "process of accountability" is activated.

There are a total of 12 ministerial residential care facilities in Italy²⁷ that ensure the execution of the measures issued by the legal authority. The *Circular* on the “organization and technical management of the ministerial facilities” sets the common criteria of the functioning of these structures. According to this document, the facilities of the public Administration primarily host children subject to the measure of placement in a residential care facility for the execution of precautionary measures, whose preconditions are: existence of serious evidences of guilty and existence of precautionary requirements.

Public residential care facilities meet the characteristics of short/medium times of permanence, little capacity to select users and attention to the support and control needs of children.

Given the educational scopes of the permanence in a residential care facility, these facilities have multidisciplinary staff composed at least of 1 Director, 9 educators, 1 psychologist, 1 social assistant, 1 administrative officer, 1 computer specialist, 10 professionals with assistance and supervision roles, 1 cooker, 1 cultural mediator and volunteers. Furthermore, the minimum requirements for the configuration of the ministerial facilities include family-type spaces without elements of coercive nature, being placed in urbanized areas easily accessible by public transport, and having spaces addressed at collective and social activities different from the bedrooms. The typical users hosted in the ministerial facilities are children over the age of 15 years; children with psychiatric diseases, chronic pathologies or drug addictions; and children subject to security measures.

The private residential care facilities are managed by associations or cooperatives working in the juvenile field and need to be recognized by the territorial competent region or municipality²⁸. These private centers need to be accredited by public authorities at a local level and therefore have to meet qualitative and quantitative standards in order to be officially recognized²⁹. In terms of physical configuration private facilities are similar to the public ones. Actually a great part of them succeed in recreating a “house” environment. As emerged during the field research, *“the associations or cooperatives managing a residential care facility tend to adopt a more flexible and opened approach if compared with the facilities ruled by the public administration”* (Volunteer). Another consideration regarding the conditions in private facilities refer to the fact that even if they need to be recognized and therefore an initial qualitative assessment is made by the authorities, the treatment and services offered by the facilities can worsen over time. Thus the Public Administration may conduct unannounced visits in order to verify the conditions of children.

As Table 5 shows the trend of the numbers concerning the users of residential care facilities is slightly different from the ones examined previously because their evolution since 2006 has been more constant. Actually the total number of placements in facilities for the year 2013 slightly exceeds the placements in 2006. This could be partly explained by the fact that the Italian juvenile justice system tends to prioritize this measure over imprisonment.

For what concerns the nationality in 2013 the majority of placements in residential care facilities affected Italian national persons. The general believe is that foreign children have more difficulty in benefiting from this measure because of their personal and familiar context. Unlike Italians, the lack of familiar and social links that could support their rehabilitation process hinders the possibility for them to benefit in general terms from alternative measures to detention. As stated by an interviewed member of an independent monitoring body *“from a statistical point of view, this system that has substantially worked, works better if you are “protected” by a certain social context. If you see the children reported to the judicial authorities, the 35% are foreigners. But then their presence in prisons represent almost the 50%. So Italian children more easily succeed in better benefiting from the alternatives measures offered by the administration.”*

Table 5 – Placements in community from 2006 to 2013 by nationality and gender.

Years	Italians			Foreigners			Total		
	m	f	mf	m	f	mf	m	f	mf
2006	924	44	968	681	123	804	1.605	167	1.772
2007	1.056	46	1.102	667	127	794	1.723	173	1.896
2008	1.130	65	1.195	651	119	770	1.781	184	1.965

²⁷ The Ministerial residential care facilities are placed in the following Italian cities: Bologna, Caltanissetta, Catanzaro, Genoa, Lecce, Naples, Nisida, Palermo, Potenza, Reggio Calabria, Santa Maria Capua Vetere and Salerno.

²⁸ Article 10 of Legislative Decree 272 of 28 July 1989.

²⁹ In March 2013 the Ministry of Justice issued an operational Vademecum for private residential care facilities called “Practical Handbook for the management of subject to the criminal measure of placement in a residential care facility”, available at: http://www.flpgiustizia.it/images/DOCUMENTI/UFFICIO%20STAMPA%20FLP/2013/INFORMATIVA%20N.%2086_2013_ALL.%205_VADEMECUM%20%20comunita%20privato%20sociale.pdf

2009	1.160	52	1.212	542	71	613	1.702	123	1.825
2010	1.189	59	1.248	490	83	573	1.679	142	1.821
2011	1.222	75	1.297	540	89	629	1.762	164	1.926
2012	1.225	60	1.285	631	122	753	1.856	182	2.038
2013	1.119	70	1.189	594	111	705	1.713	181	1.894

Source: Department of Juvenile Justice

The great part of the placements in residential care facilities for the year 2013 concerns male children. The prevalent age bracket is between the 16 and 17 years. The placement of children below 15 years as well as of young adults is less frequent.

Table 6 – Placements in community in 2014 by age, nationality and gender. Situation as at 30 June 2014.

Age	Italians			Foreigners			Total		
	m	f	mf	m	f	mf	m	f	mf
Minors under the age of 14	2	-	2	1	-	1	3	-	3
14 years	30	1	31	21	18	39	51	19	70
15 years	57	-	57	38	19	57	95	19	114
16 years	119	10	129	70	18	88	189	28	217
17 years	178	9	187	92	10	102	270	19	289
Young adults	86	3	89	51	3	54	137	6	143
Total	472	23	495	273	68	341	745	91	836

Source: Department of Juvenile Justice

ADDITIONAL INFORMATION ON ISSUES REQUESTED BY THE COORDINATOR³⁰

UNACCOMPANIED MINORS

Separated children cannot be detained in administrative detention centers for migrants. They must be placed in child reception facilities according to article 2 of the Presidential Decree n°303/2004. In addition, similarly to the measures envisaged for separated asylum-seeking children, all separated children must be provided with adequate and comprehensible information about their entitlements, the asylum process and relevant services available, as well as, with appropriate legal and interpretation/cultural mediation support³¹. The first contact with the authorities/institutions of the host country is supposed to be one of the most delicate moments for the child, for his well-being, for his safety, for his future plans, etc. Despite this, as reported by non-governmental and civil society organizations, when separated children reach the shores of Italy, sometimes they face the risk of being treated in abusive and traumatizing ways by police and immigration officers, which does not comply with their mandates of protection and safeguarding.

Another critical issue is that very often children are placed in centers for migrants for a long time before being placed in adequate structures, and therefore their situation is not assessed on an individual basis and they receive inadequate information and support.

With regards to the identification procedure, and more particularly age assessment, there is a lack of a common procedure for age determination, which should partly determine the access of children to dedicated services and protections systems. Moreover, pending age assessment, children are often not treated as minors, they may be detained, placed in adult facilities or not provided with any accommodation (DCI Italy, 2013).

YOUNG OFFENDERS WHO SUFFER FROM MENTAL ILLNESS

³⁰ All these issues would require further study. This information is indicative and aimed at providing some contributions to the coordinator's requests, which have been considered relevant for the project but that have been deliberately not included in the Italian research.

³¹ According to directive of 7th December 2006 issued by the Ministry of Interior and the Ministry of Justice.

If mental illness is detected in children in detention they can be placed in a therapeutic facility or can be in the care of the territorial health care services.

In 2009 the Guidelines for the provision of assistance to minors subjected to criminal proceedings were approved. These Guidelines provide the following benchmark principles:

- Recognition of full parity of treatment for non-detained and detained persons concerning health care matters;
- Inter-institutional collaboration between the national health care services and the Juvenile Justice Administration;
- Health interventions are complementary to interventions aimed at social rehabilitation.

However, as highlighted in section 4.1 of the present report, the Italian juvenile justice system does not seem to provide effective responses to children's needs in relation with mental illness in practice. This critical issue needs to be urgently addressed by the concerned authorities.

POLICE CUSTODY CELLS

According with article 18-bis of the DPR 448/88, police officers and agents may accompany children caught in the act of committing an offence to their offices if the law establishes a sentence of life imprisonment or of not less than 5 years. In these cases, the child will be kept in the police station for the strictly necessary period until he will be handed over to the person responsible for him. In any event, the child may not be kept for more than 12 hours. When the presence of the responsible person is not applicable, the police may immediately inform the Public Prosecutor who will order to send the young offender in a First Reception Center or in a Residential Care Facility.

Issues that would require further study:

- Quality and efficiency of alternative measures to detention.
- Effects of existing –or lack of – regulations on children's protection in practice.
- Trends and changes in composition of juvenile detained population, reasons and consequences.

3.3 National monitoring mechanisms /bodies / persons who carry out visits

The recent establishment of the National Authority for the Rights of Persons Detained and Deprived of Personal Liberty

Italy signed the Optional Protocol to the Convention against Torture (OPCAT) on 20 August 2003, and only in April 2013 ratified it. As stated in article 17 of the optional protocol "each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level".

Almost a year after the ratification of the OPCAT the Italian Parliament approved Law n° 10 of 21 February 2014 that, among other measures, establishes the National Authority (*Garante Nazionale*) for the Rights of Detained Persons or Deprived of Personal Liberty. As communicated by a *Verbal Note*³² issued by the Permanent Mission of Italy to the International Organizations last 28 April 2014, this National Authority will coordinate the net of local Guarantors already put in place in some regions and municipalities which will make recommendations to the Regional Authorities. At the same time, the National Authority will submit

³² The document is downloadable in the website of the Association for the Prevention of Torture and available at: <http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Italy25April2014.pdf>

recommendations to the Central Government, and the whole system will constitute the National Preventive Mechanism required by the OPCAT.

Currently this National Authority is not yet operational. According to the above mentioned *Verbal Note* it will be implemented through a specific regulation of the Ministry of Justice that will be drafted once the members of the National Authority will be appointed. This regulation will provide measures “to guarantee the functional and financial independence of the NPM and the independence of its personnel. It will also ensure the NPM’s faculty to accede all places of detention and relevant information, as well as to have private interviews with persons deprived of their liberty”. This document also states that the law was drafted after several consultations held with civil society organizations, academics and representatives of several institutions. However, some of the actors - including local guarantors - interviewed during the field research affirmed that the law was rushed through. According to them, the contents of the regulation are insufficient, lack seriousness, and do not ensure the future effectiveness of the mechanism. Moreover, the general opinion is that the National Authority will not focus its action on the field of juvenile justice because it is considered that there is much less need than for the adult prison system.

The institution, composition, competences and functions of the National Authority for the Rights of the Detained Persons or Deprived of Personal Liberty are regulated by article 7 of the already cited Law n° 10 of 21 February 2014 about “urgent measures with regard to the protection of the fundamental rights of detainees and to the control reduction of the prison population”. According to the law, the National Authority is established under the Ministry of Justice as a body. It is composed of a president and two members who will be in charge for 5 years that cannot be extended. They will be appointed by the President of the Council of Ministers following a resolution made by the Council of Ministers and having heard the competent Parliamentary Commissions. The 3 members composing the National Authority cannot be employees of the Public Administration and should ensure its independence and competence in the field of human rights protection. They cannot accept institutional or elective posts. Besides these three members, an office composed of employees of the Ministry of Justice is established. Its structure and composition will be determined by a Regulation issued by the Ministry of Justice within three months after the entry into force of the present law.

The structure and the resources of the National Authority will be provided by the Ministry of Justice.

The National Authority, besides promoting and fostering collaboration between the territorial guarantors or equivalent figures, performs the following functions:

- to ensure that the execution of the custody of detainees, internees, persons subject to pre-trial detention or other forms of deprivation of personal liberty is applied in conformity with the norms and principles of the Constitution, the international conventions on human rights ratified by Italy, the Italian laws and regulations;
- to visit the penitentiary institutions, judicial psychiatric hospitals and other health structures hosting persons subject to security measures, private or public structures hosting persons subject to alternative measures or precautionary measures of home confinement, juvenile detention centers and residential care facilities for children subject to measures issued by the legal authority without any need for authorization. To visit also the security rooms of the police prior notice and without compromising the ongoing investigation activities, accessing without any restriction all the required spaces;
- to require the provision of all necessary information and documentation to the concerned administrations of the facilities. If no response is given within 30 days, the National Authority shall inform the competent Surveillance Magistrate and can request an order of presentation;
- to verify the compliance with the provisions included in the national legislation³³ with regard to the centers of identification and expulsion, accessing without restrictions in any premise;
- to formulate specific recommendations if violations are verified to the administration concerned, which in case of denial communicates the reasoned disagreement within 30 days;
- to transmit an annual report on the developed activities to the Presidents of the Senate and of the Chamber of Deputies as well as to the Minister of Interior and the Minister of Justice.

³³ Art. 7 of Law n° 10 of 21 February 2014. More concretely, the law refers to articles 20, 21, 22 and 23 of the regulation laid down in the Presidential Decree 31 August 1999 n° 394 on the centers of identification and expulsion foreseen by article 14 laid down in the Legislative Decree 25 July.

Italy has already notified the establishment of the NPM but the appointment of its members and the operability of the mechanism are still pending. In addition, during the several interviews conducted for the field research, a number of critical elements regarding this new figure's characteristics were pointed out:

"Who knows when it will be operational? But besides that, the offices of the national guarantor are made up of those that should be controlled. In other words, the personnel of the national guarantor's office will be composed of members of the ministry of justice and therefore of the administration. Moreover it has limited powers in relation with the penitentiary administrations. There is no possibility to delegate the capacity to interview to other colleagues, which limits the capacity of action. The number of travels is also limited because there is only the possibility for the national guarantor and the other two members of the national authority to perform sixty missions a year, which is insufficient taking into account that in Italy there are 210 adult prisons." (Local guarantor)

With regard to the suitability of this body for the juvenile context:

"The national authority is a body that is not appropriated for children because this guarantor doesn't have a specific expertise on children but deals with all the detainees. And there is also the National Authority for Childhood and Adolescence that could also have some of the competences related to detention of minors. Their competences could converge, but what will happen is that since the juvenile system is considered as quiet and the numbers are low, there is a risk that the national guarantor looks only to the dramatic situations affecting adults, unless very specific situations in the juvenile field occur". (Member of an independent organization)

The last report of the Italian CRC Group issued in June 2014 also addresses the recent establishment of the National Authority expressing concern about the fact that no distinction is made as regards the intervention in the juvenile and in the adult field, making the former subject to the latter in terms of importance. The law, adds the report, does not foresee any coordination between this authority and those of the National Authority for Childhood and Adolescence. The report also recommends these authorities to work with the awareness that the specific problems of the juvenile justice field and children's rights need to be properly addressed.

Other monitoring mechanisms

Before the establishment of the National Authority, in Italy there was not a formal body completely independent from the Judicial Administration at national level with monitoring and inspection powers. From the first experience in Rome in 2004, several independent guarantors of the rights of detainees have been established but just at local level.

Since the NPM is not yet being implemented, the visits in places where people are deprived of their liberty are performed by a combination of formal and informal mechanisms, without specific independent bodies for the monitoring of children's rights in detention. So far, in Italy the monitoring of prison's internal lawfulness falls under the responsibility of the Surveillance Magistrate.

The OP in article 67 lists all the subjects that can visit places of detention - including the juvenile detention centres - without previous authorization:

- a) The President of the Council of Ministers and the president of the Constitutional Court;
- b) The ministers, judges of the Constitutional Court, the Secretaries of the State, the members of the Parliament and the members of the Magistracy superior council;
- c) The president of the Court of Appeal, the Prosecutor General of the Republic, the president of the Court, the District Judge, the Surveillance Magistrates, and any other magistrate for the exercise of its functions;
- d) The Regional Councillors and the Government Commissioner in the Region in their circumscriptions;
- e) The Diocesan Ordinary for the exercise of his ministry;
- f) The Prefect and the chief of police of the province, the provincial doctor;
- g) The director general of the prevention and penal institutions and the magistrates and officers delegated by him;
- h) The general inspectors of the prison administration;
- i) The inspector of the chaplains;

- j) The officials of the custody agents body;
- k) The guarantors of the rights of detainees;
- l) The members of the European Parliament.

Persons accompanying the above mentioned subjects do not need authorization. Officials and judicial police agents can access the institutes for working reasons following authorization of the judicial authority. Ministers of Catholic Church and other religious figures can also access the institutions following authorization of the director of the facility.

Monitoring and inspection mechanisms in National Police stations, *Carabinieri* and Finance Police Offices and assistance and temporary holding facilities were inexistent.

According to *Circular 7 November 2013*³⁴ on the visits in the penitentiary institutes issued by the Ministry of Justice, the main aim of these visits is to verify the conditions of detention of the detainees and internees. The document contains some methodological considerations that would need to be taken into due consideration when visiting penitentiary centers. For example it specifies the subjects that can be addressed during the talks with detainees that exclude the possibility to refer to the ongoing legal proceeding or the fact that all the visits have to be accompanied by the director of the center.

Generally speaking, the visits carried out by the above mentioned subjects could respond to interests other than the safeguarding of human rights in detention places. For example, as an interviewed pointed out concerning the visits conducted by political representatives in penitentiary institutions:

"According to the experience in Tuscany, they do it quite often. Every two months more or less there are visits conducted by elected political representatives that check which is the situation. Also because the local bodies finance projects, so they are interested in having an active role within the centers in order to control the implementation and the results of these projects. But this again depends on their willingness and of their single interest on the issue. So it changes depending on the different local realities. Then in some cases reports are issued or press conferences are organized after the visits, but this is a political mechanism".
(Member of an independent organization)

Among the bodies that are allowed to visit places of deprivation of liberty without the need for authorization, which can be considered as a formal monitoring mechanism *per se*, there are two figures that are specifically mandated to control and verify the conditions of detainees in the Italian system, including children deprived of personal liberty.

First of all, **the territorial Guarantors for the Rights of Persons Deprived of Personal Liberty** – at regional, provincial and local level - are independent formal mechanisms with monitoring and protection roles that are part of the system shaping the recently established NPM.

The territorial Guarantors were given full recognition with amendment of Article 67 of the prison legislation through Law n° 14 of 27 February 2009 that includes Guarantors among the subjects that can visit penitentiary institutions without need for authorization. This law also amended article 18 allowing detainees and internees to have interviews and correspondence with the guarantor³⁵. Before these legislative amendments, the guarantor accessed prisons on the basis of article 17 OP that regulates the participation of external actors such as volunteers in the educational and rehabilitation action under authorization of the Surveillance Magistrate and the consent of the director of the institution.

The territorial guarantors are established on an optional basis through the Regional and Local agencies' autonomous initiative³⁶. The appointment of the guarantors depends on the single local context's specificities. Regional guarantors are established through a regional law, some of them being appointed by the President of the Region while others by the Regional Assembly; the provincial and local guarantors are

³⁴ The full document is available at: https://www.giustizia.it/giustizia/it/mg_1_8_1.wp?previousPage=mg_1_8&contentId=SDC964264

³⁵ According to article 18 of the OP detainees and internees can have interviews and correspondence with territorial guarantors also with the aim of performing legal acts. Interviews should be held in suitable rooms provided and under the visible but not auditory control of the custodial personnel.

³⁶ At present, there are 12 regional guarantors placed in Campania, Emilia Romagna, Lazio, Lombardy, Marche, Piedmont, Puglia, Sardinia, Sicily, Tuscany, Umbria and Valle d'Aosta; 11 provincial guarantors in Avellino, Ferrara, Gorizia, Lodi, Massa e Carrara, Milano, Monza Brianza, Padua, Trapani and Trento; and 31 local guarantors in the municipalities of Bergamo, Bologna, Bolzano, Brescia, Busto Arsizio, Ferrara, Firenze, Ivrea, Livorno, Milano, Nuoro, Parma, Pescara, Piacenza, Pisa, Pistoia, Prato, Reggio Calabria, Rome, Rovigo, San Vigenza.

appointed by Board resolution or, in several cases, by statutory members (Region of Emilia Romagna, 2012). As a consequence, territorial guarantors are not homogeneously present in Italy and lack a normative framework providing a common definition, role and specific effective monitoring tools. In fact, territorial guarantors are currently operating with difficulty only through the means of denounce or mediation with the concerned institutions (Guarantor of the persons deprived of personal liberty of Milano, 2014). According to an interviewed local guarantor:

"It would be necessary to better regulate the mandate and functions of the territorial guarantors as well as the respective procedures because for instance there are no defined criteria to conduct visits. We could therefore affirm that territorial guarantors are a formal monitoring mechanism (that brings legitimacy and authority) but with informal mechanisms at their disposal.

Another important constraint is that the local guarantors were created after the drafting of the OP. Previously they were not officially recognized in Italy and therefore were inexistent. They were included in 2009 in the OP with a main contradiction: the visits under article 67 have to be conducted under the accompaniment of the agents of the center and interviews with detainees cannot be conducted under this article but under article 18. More concretely, visitors can talk with detainees but cannot address specific issues such as the single proceedings. While article 18 authorizes the same guarantors to conduct confidential interviews with persons deprived of personal liberty. Therefore the normative foresees two different procedures for the implementation of this kind of rights safeguarding. So currently the situation is comparable to that of a member of the Parliament that visits a detention center to monitor the conditions of detention. But the guarantors have the role of getting in frequent direct contact with the single persons and address personal needs also related with the penitentiary institutions and its conditions."

In general terms, the territorial guarantors' mandate includes the monitoring of the living conditions and respect for the dignity of the person subject to deprivation of personal liberty, the promotion and exercise of the rights and participation opportunities in the civil life also during detention, as well as the awareness raising among the public opinion and institutions on issues concerning the respect for human rights and the humanization of the penalty (Region of Emilia Romagna, 2012). Mediation aimed at preventing conflicts in places of detention is of particular importance since the presence of a figure with control and monitoring functions constitutes "a priori" a way of protection and safeguarding. However visits are not uniformly conducted and depend on the single capacity, knowledge and resources of the guarantors and are generally conducted in adult prisons, putting juvenile detention centers in the background. After the visits, guarantors may elaborate a report or brief notes upon their own initiative above all in case deficiencies are found. The usefulness of these reports might be questionable given the low level of attention usually paid to them by the penitentiary administration. This is the reason why guarantors often organize press conferences or opt for publishing the results of their inspections in their website. It appears from the interviews that the directors of the facilities usually respond constructively to the visits of guarantors.

"At the beginning subjects that conduct visits were seen as inspectors by the directors of the centers and they seemed suspicious. Nowadays directors have got used to visits and in some cases the directors themselves are who explain the needs to the visitors hoping that it will help at receiving the resources needed for improvements. So guarantors have started to be seen as a figure of help to resolve deficiencies and eventual problems." (Local guarantor)

Likewise, despite the constraints in their capacity of action, informal actors of the juvenile justice system also positively assess the role of guarantors:

"The regional guarantor of the detainees has competences also for children. In relation to this double competence (adults and children), adults receive a large part of the attention, but they deal and respond as well to children's needs. And however the regional guarantor (of Firenze) regularly visits the centers of detention (not monthly but several times a year), is a figure that intervenes actively." (Member of an independent organization.)

The **Surveillance Magistrate** is the judicial body responsible for the monitoring of the penitentiary institutions' internal legal framework. Since a specific Juvenile Prison System has not been yet defined and approved, the Prison System for adults is applied also in relation to children. According to article 79 of the OP concerning children subject to criminal measures and young adults aged over 18 that committed an

offence during the minority age, the functions of supervision and the ones of the Surveillance Magistrate are performed respectively by the Juvenile Court and by the Surveillance Judge of the Juvenile Court.

The Surveillance Judge of the Juvenile Court is a specialized judge whose relevant functions are: to monitor the execution of the criminal and security measures in order to guarantee the legality of the execution of any form of custody; to supervise the organization of the juvenile detention centers (IPM) with regard to custody and treatment programs; and to issue provisions addressed at eliminating possible violations of children's rights in detention. According to DPR 448/88 the Surveillance Magistrate should maintain frequent contacts with the concerned children and exchanges with the team in charge of them, as well as to ensure his presence in the centers on a regular basis.

However, the Surveillance Magistrate as a monitoring body can be considered not to be extremely successful. Is worth highlighting that besides the control and monitoring role, the magistrate has also judicial administrative competences. As noted by several experts³⁷ the main factors explaining the weakness of its control activities are first of all the fact that the presence of the magistrate in the institutes is always less frequent and completely depends on his own willingness and commitment. Moreover given the recent increasing of workload, the inspection activity tends to be left behind. Another factor concerns the institutional nature of this figure that hinders the required independence to develop such a function. Finally the Surveillance Magistrate is increasingly receiving tasks in the field of alternative measures, what conducts him to directly decide on the detainees' lives, which makes the attribution of the role of rights' guarantor to this figure problematic.

These considerations seem to be in line with the opinions of the experts who have been consulted:

"The Surveillance Magistrate will conduct regular visits and will be present in the centers or not depending on his single willingness and commitment. They have a function of juridical safeguarding but there are those that interpret it also as a true monitoring meaning that very often go and attend the centers; and others interpret this as an administrative function that is part of the penal execution concerning individual cases of minors that arrive in the office." (Member of an independent organization)

"The Surveillance Magistrate has always been in charge of the monitoring and safeguarding role of the rights of detainees in Italy. However, it has hardly ever been activated and implemented. Above all in the field of juvenile justice where, unlike in the adult system, detention is a measure of last resort and the sentence responds to an educational and pedagogic work instead of a security or control one". (Local Guarantor)

"The Surveillance Magistrate is authorized to visit the centers but at least in practice he does not act as a defendant of detainees' rights. The Surveillance Magistrate mainly deals with the alternatives to detention: probation, home confinement... And in these cases there is a close relation among the judges and the offenders." (Member of a Juvenile Court)

Besides the above mentioned mechanisms outside the Administration, there are also **internal control mechanisms** regarding different aspects that concern places of deprivation of liberty. Special mention should be made of the CGM and the USSM that have the mandate to coordinate and supervise the activities and functioning of the Juvenile Justice Services and to monitor the rehabilitation process of children.

Very recently the Department of Juvenile Justice has promoted an initiative at national level that consists in the creation of the so-called **"monitoring groups of the residential care facilities"**. These working groups are composed of CGM and USSM members with the aim of visiting private facilities in order to verify the living conditions of children. During these monitoring visits, the teams should assess the level of compliance with the standards of quality; the appropriateness of the setting, food, clothes, hygienic conditions, and other basic needs offered to children; the multidisciplinary composition of the staff; and the adequateness of the interventions, among other aspects. The procedure includes the visits of all the spaces of the facility, an interview with the direction, during which specific information regarding the staff or the educational projects is

³⁷ See Franco Della Casa available at: <http://www.ristretti.it/areestudio/territorio/opera/documenti/esecuzione/casa.htm> ; Luigi Manconi ; or the Report on the figure of the National Ombudsman of persons deprived of personal liberty in European countries available at: <http://www.ristretti.it/areestudio/giuridici/garante/agis.pdf>.

requested, as well as interviews with children and their families. The visits can be done without notice but according to an interviewed, some working groups use to notify it in order to avoid a police-way kind of control. Besides this, the regular interviews USSM professionals conduct with the staff of the residential care facilities or with hosted children also allow seeing and assessing the conditions in the different places. If serious deficiencies regarding the safeguard and protection of children emerge, the social assistant must address them to the prosecutor - otherwise reports are made to the CGM that contacts the structure. In addition, regular internal meetings among the USSM professionals are organized during which there is an exchange of information and opinions on the different facilities. This informal mechanism allows understanding the existence of eventual problems and criticalities.

With regards to the administrative official inspections, at least in the case of the private facilities, in particular employment contracts or children's record books are verified rather than the conditions of detention or the safeguarding of children's rights. Municipalities also carry out inspections aimed at verifying that the facility meets the established standards of quality. Generally these inspections seem to be negatively perceived by the responsables of the facilities:

"We perceive them as a persecution in the sense that first of all there are political motivations behind the choice of the facilities to be inspected. Secondly because they are long and bureaucratic inspections from which one cannot learn anything rather than constituting a useful resource for the facility. Likewise, they neither value nor show interest in the quality of some interesting projects or initiatives organized by the facility staff that could be promoted or shared with other realities. There is thus no exchange, no dialogue, which on the other hand could be conducive to fostering synergies and building a constructive relation that positively contributes to the general improvement of children's conditions". (Member of the staff of a private facility)

The hygienic and health conditions as well as the workplace safety requirements both for the penitentiary agents and for the detainees working within the center, are verified every six months by the **Azienda Sanitaria Locale (ASL)**, a local decentralized body responsible for health³⁸. After the visits the inspection team elaborates a report containing required interventions to be made that should be sent by law to the Surveillance Magistrate, the penitentiary administration and the justice and health ministries. But ASL operates at a local level and does not have coercive power upon the penitentiary administration, which depends on the Ministry of Justice. Therefore these reports may remain just at the formal stage. In this sense, an interviewed suggested that it would be important to solicit ASL professionals at compiling in a more rigorous way the reports and at trying to make sure that they will be taken into account in order to increase the effects they may have at improving penitentiary system's conditions.

With regard to specific monitoring bodies for children deprived of the personal liberty, is worth mentioning the role of the **National Authority of Childhood and Adolescence**. The National Authority can request to the concerned administration to access the data and information as well as to carry out visits and inspections in public or private structures where minors are present. This Authority can also visit the places listed in art. 8 of the legislative decree 28 July 1989, n° 272, following authorization of the Surveillance Magistrate for minors or the competent judge³⁹. The places listed in article 8 are the services that are part of the centers for juvenile justice: the juvenile detention centers, first reception centers, residential care facilities, and the services of day-release.

It is important to note that the above-listed monitoring mechanisms in practice are applied to the juvenile detention centers and to the private residential care facilities. The CPA and the ministerial facilities, which are structures directly managed by the Ministry of Justice, do not seem to receive visits of control or

³⁸ The system has recently changed because before the sanitary competences were inside the administration. It was within the ministry of justice that the health monitoring took place. Currently, there is this independent body that monitors above all the hygiene and health conditions, what is indeed its main role in the civil sector. This could have brought advantages first of all because the body has already its internal structure with, for example, a section of health inspection. Moreover, the individual medical visits are carried out by professional doctors that are part of this body. According to persons who were consulted, this is preferable because is performed by a third body.

³⁹ See Law n° 112 of 12 July 2011 that establishes the National Authority for childhood and adolescence available at: <http://www.garanteinfanzia.org/sites/default/files/legge%20112-2011.pdf>

inspection neither from external bodies nor from internal subjects. The law establishes a list of subjects that can visit these places, but in practice it would not occur often⁴⁰.

In addition to the formal monitoring mechanisms and to the internal inspections and control of the Administration, there are also informal independent mechanisms that above all contribute to the transparency of penitentiary institutions and bring them closer to civil society.

Several **voluntary and civil society associations** actively participate through the development of projects in the criminal experience of children deprived of personal liberty. Volunteers can access places of deprivation of liberty under article 17 OP, which can be interpreted as a mechanism to foster transparency. According to it private or public associations willing to contribute to the social rehabilitation of offenders can attend those places following authorization. In fact, the spirit of the law includes this principle of opening the places of detention to civil society also as an instrument of control. Actually the degree of openness of the centers (towards the outside) could constitute an effective indicator of their respective approach, functioning and conditions:

"Beccaria (the IPM placed in Milano) is very opened to civil society, volunteers, research activities, etc. This openness makes juvenile detention centers secondary object of interest for monitoring bodies and the public opinion because they are already known. Some years ago, as a result of a change of director, conditions in the Beccaria changed: it was difficult to enter and the agents had an improper behavior and therefore there were indicators showing deficiencies... Finally there was an inspection of the Public Administration and measures to overcome this situation were taken, including change of staff. Nowadays, it is considered an example of good functioning of a juvenile detention center. The high level of collaboration between relevant formal and informal actors is also conducive to an effective monitoring of the conditions and follow-up."
(Local guarantor)

As a result, an interlinked network of different public and private actors from national and local services create a fairly protective juvenile justice system.

3.4 Complaint mechanisms available to children who are detained

Common child-sensitive complaint mechanisms are not foreseen within the juvenile justice system in Italy at a national level. In general terms it seems that children usually complaint orally to the referral educator of the structure, the director of the centre or the social worker of the USSM. That is, persons who are present in their everyday life and with whom they have a close relationship. Generally the subjects of complaints concern the daily life in the facilities – such as the lack of activities and diets– or aspects linked to typical teenager requests. Therefore the social workers and assistants directly deal with them. However, when serious complaints such as violence or abuse are communicated by children to the above mentioned professionals, they have to report them to the competent authorities who will take care of handling the cases.

Since no particular complaint mechanisms for children are foreseen, the informal complaint procedures differ from one center to the other and depend also on the personal behavior of institutions' management and staff. Although there are no specific complaint mechanisms for children, article 35 of the O.P. provides a general instrument of safeguard aimed at setting the necessary interventions in order to avoid illegitimate actions by the Administration (Napoli, 2007). Under this article detainees, internees and members of their families can address oral or written complaints or instances⁴¹ to a number of actors including the director of the institute, the chief of the penitentiary Administration, the Minister of Justice, the Surveillance Magistrate, the judicial and health authorities visiting the institute, the President of the Region and the Head of State. In addition, complaints may also be sent to international bodies dealing with the protection of human rights. Complaints and instances can be oral or written. The regulation includes provisions aimed at ensuring the accessibility to complaint mechanisms. For oral complaints, the concerned authorities are asked to

⁴⁰ At least in the CPA and ministerial facility placed in Genoa, which have not received any kind of visit within the past 20 years. The monitoring and control of the conditions is completely internal and includes periodical reports to the central state administration agencies.

⁴¹ The complaint (reclamo) aimed at informing about a violation of a subjective position legally relevant; and the instance (istanza) for the purpose of communicating a specific request, irrespective of a rights violation.

frequently visit the places of detention and have interviews with detainees during which complaints can be addressed⁴². Regarding the written procedure, the direction of the centers should facilitate the procedure by letting at the disposal of detainees the necessary material. If preferred for users, complaints may be sent in a sealed envelope⁴³ and if needed the institute may cover the expenses (Napoli, 2007).

The procedures that follow the presentation of a complaint or instance are not defined by law and therefore the powers of the concerned authorities are very limited. In general terms they may act for the removal of the situation of damage or, if they have the capacity, they may intervene directly in the request. The law only includes the obligation for the administrative and judicial authorities to communicate the final decision to the person concerned as quickly as possible. The decision of the judge cannot be appealed to the Surveillance Court or challengeable appealed in cassation.

Recently there have been some changes regarding the complaint mechanisms:

"Being the Penitentiary System one single regulation for adults and children, since little time ago the complaint mechanism was not jurisdictional (excepting for the discipline code and issues of work). For the rest of the issues the complaint mechanism was not jurisdictional and thus you had to turn to the Surveillance Magistrate. But a judicial inquiry was not opened, neither an interrogation. So in most of the cases the procedure ended with a disciplinary report. However even if the judge ordered something (complaint) at the administration and the administration didn't respond to this, nothing would happen. But after the last reforms that resulted from the sentence of the European Court, the detainees have more effective mechanisms to complaint. And it has been also a sentence of the Constitutional Court stating that the administration is obliged to react in front of a request of a magistrate. Everything is very recent but two new elements have been introduced: the complaint to the judge is jurisdictional and the order issued by the magistrate must be understood as peremptory by the administration. And this applies also to children since no specific procedures are set for them. In addition, all children deprived of their liberty can address also to the local and regional guarantors (and now the national) and to the CPT." (Member of an independent organization)

Depending on the subject of the complaint, children address their requests to a subject or another. For issues concerning their criminal proceedings, children usually address to the Surveillance Magistrate, who is mandated for receiving complaints following the above described procedure, or to their lawyer.

For complaints regarding the everyday living conditions or the liberty regime children use to address directly to the director or the professionals of the centre but they also may talk to the concerned social assistant of the USSM they meet regularly. Families can also approach this professional.

Another possible option is to present complaints to the territorial guarantor, who can receive complaints from children deprived of personal liberty, their families or professionals in charge of them about the lack of respect for prison regulations and for the rights of detainees. The person concerned may write to the guarantor, who normally has an institutional box, a website and an effective office. Detainees should be informed of the possibility to make use of it. When the guarantor receives a letter of complaint or a notification, an intervention is opened. Usually the guarantor schedules an interview with the person deprived of liberty in the structure. In case the notification is done by a member of the family, the guarantor examines the case outside the structure and interviews the relative. If the social worker is the person who reports a complaint, the case is dealt directly with him. The guarantor opens a folder for each case. Depending on the case the guarantor contacts different persons. For example, in case of judicial issues, he contacts the judge or the lawyer. And if it is a social claim, the guarantor activates the communications with the social services. In such cases, guarantors address the concerned institutions a request of clarifications or explanations.

However, it must be said that guarantors rarely receive complaints from children. The main reason may be a lack of information. A great part of children do not know about the existence or role of this body.

⁴² Law establishes that "the Surveillance Magistrate, the regional Chief General Manager (*Provveditore*) and the director of the institute should offer the possibility to all detainees to get directly in contact with them", through periodical interviews in which detainees may present oral instances or complaints. The visits and audiences performed by these authorities are registered.

⁴³ In this way, the secrecy and confidentiality of its contents is guaranteed and the fear for reprisals that inhibits the use of such mechanisms could be avoided.

"In most of the cases they don't know "what a guarantor does". There is a lack of information. We organized an informative conference about the Guarantor and since violations of rights are not frequent within the juvenile centers, children did not seem to be excessively interested on the issue of safeguarding their rights or the role of the guarantor. They do not perceive the need." (Local Guarantor)

The adolescents' behavior may also play a role in the low level of use of complaint mechanisms. The level of confidence that the system is able to generate may also determine its own capacity to receive complaints.

"Interviews with minors can be requested weekly by external subjects. And the responses are different depending on the child. Some of them are open and available and explain also the things that don't work. Others identify the "external" as an institutional figure and therefore they mistrust him, as one that is part of the system. But for example, the complaint on the canteen or on the nursery is a classic. The judicial complaint passes always through the lawyer and is addressed to the judges. They can also address to the guarantor but they don't use to do so because there is a lack of information, mistrust towards this figure and a lack of formalization". (Member of an independent organization)

Finally, a mention should be made with regard to child-sensitive complaint mechanisms regarding ill-treatment. The last CRC list of issues expressed concern about this matter⁴⁴. The Italian Government responded⁴⁵ that according to Circular No. 6 of March 23, 2002 the Juvenile Justice system has carried out cultural mediation services in favour of foreign children in collaboration with local private associations, aiming at creating the conditions for the inclusion of foreigners caught up in the penal system and for their following social reintegration. In order to gain and improve these purposes a National Collective Agreement was signed on July 29, 2010 between the Ministry of Justice and trade unions to provide the establishment of the professional role of the "cultural mediator" tasked with facilitating contacts between foreigners included in the criminal circuit and the judicial authorities.

Issues that would require further study:

- Existence and assessment of the relevance and appropriateness of the training offered to professionals working in the juvenile justice system
- Definition and quality of the cultural mediation services
- Compatibility and adequacy of internal administrative regulations with national and international law

⁴⁴ List of issues concerning additional and updated information related to the third and fourth combined periodic report of Italy, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fiTA%2fQ%2f3-4&Lang=en

⁴⁵ Full document of Written replies by the Government of Italy to the list of issues available at: http://www.gruppocrc.net/IMG/pdf/CRC_C_ITA_Q_3-4_Add_1.pdf

4. From theory to practice: Analysis

4.1 The evolution of the main aspects related to the detention of minors identified by the monitoring bodies

The available figures seem to confirm the trend that the introduction of DPR 448/88 has led to a decrease in the use of detention in the Italian juvenile justice system. Since some decades around 500 children are in detention in Italy. The recent reduction of the number of children detained in the IPM in face of an increasing of those placed in residential care facilities as well as the reduction of pre-trial detention measures should be positively welcomed⁴⁶. The elaboration of the DPR 448/88 represented the beginning of a juvenile justice system that should prioritize alternatives measures to detention and the educational scope of the sentence.

“Since alternative measures of detention – above all probation - were included in the legislation, it has worked very well to the extent that now they are planning how to apply them in the adult system. From then, the system, the private and public facilities, all the alternatives to detention, it is seen as a model, a priority. If you visit a detention centre for minors, the staff working there is very present. You can see how the director and the staff perfectly know the children, their names and their stories. This is an individual take of responsibility of children. This allows developing programs adapted to each individual”. (Member of an independent organization)

Therefore it must be said that in general terms the conditions of deprivation of personal liberty in Italy seem to be in line with European standards. However, some criticalities with regard to the conditions of detention concerning both the legislative as well as the practical dimension that have been identified by existing monitoring bodies should be highlighted and would need to be improved.

First of all the dimensions related with the conditions and opportunities of foreign young offenders within the juvenile justice system. Generally speaking, the Italian trend tends to consider foreign children first as migrants and secondly as minors. As a result of this categorization, the rights they theoretically are entitled to are not properly guaranteed in practice. This finds also expression in the juvenile justice system, and more concretely in the judicial proceedings. Their condition makes often impossible the application of alternative measures to detention, especially probation, that allow Italian minors to promptly leave the criminal circuit. For the non- Italian children who do not attend school, do not work and do not even have the possibility to find a job, the current criminal process introduced by DPR 448/88 gives as only responses the absolution for not being chargeable and the judicial pardon. The only other applicable sentence is the prison sentence. Therefore, the juvenile justice reform instead of offering the same responses for all children regardless of their social context, has established the premises for the creation of a gap that makes the treatment received by minors coming from non EU countries different from that received by Italians (L'altro diritto). As a result, the disparities on proceeding treatments have been confirmed over the last few years giving place to the discrimination of migrants and Roma children, as well as children coming from southern Italy. As highlighted in the last CRC Group report, detention is used above all regarding children of specific disadvantaged social groups. In the IPMs foreign minors and children of non-nationals as well as Roma and Sinti minors are over-represented. It is worth reiterating that the problem firstly comes from the national legislation, the restrictive approach of which entails human rights violations and makes the reinsertion into society much more difficult.

The second element that needs to be highlighted is the situations of violence in places of deprivation of personal liberty which attempt against the right to physical integrity. In the past unaccounted episodes of violence in the IPM have been reported. Currently the situation has improved and physical violence towards children is rare. However the problems in making situations of violence emerge can make overcoming these practices all the more difficult. In fact, the great majority of cases of violence that occurred in the past were probably linked to a lack of complete transparency. Even if the Italian juvenile justice system is composed of several different actors interacting within the criminal facilities, internal prison officers could provide

⁴⁶ The causes, conditions and consequences of these trends would require further analysis for a qualitative assessment under a child rights approach.

inappropriate treatment. Actually it seems that there have been attempts leaded by prison personnel to tighten the conditions of detention in an inappropriate manner, without considering the specific needs and characteristics of adolescents. This underscores the existing risk of a cultural step backwards which is conducive to the already overcome punitive approach. In the meanwhile some actions aimed at fostering the adopted restorative approach have been taken such as the administrative *Circular* issued by the head of the department of juvenile justice that promotes a child-centered approach focused on the consideration of the best interest of the child and on the individualized treatment. Another initiative that could be welcomed is the educational role that the penitentiary police should adopt. Prison police officers do not wear police dresses anymore and specific trainings on several subjects including psychology and pedagogy are offered for agents working in juvenile detention centers. The quality and structuring of the trainings should be verified at national level in order to analyze the appropriateness of penitentiary police in the juvenile justice system.

Particular concerns have been addressed regarding mental health services available in places of deprivation of liberty, in particular for adolescents. The management of psychiatric distresses seems to be neglected within the juvenile justice system. The presence, typology and seriousness of the psychiatric distresses among children deprived of personal liberty are not systematically monitored, which hinders the possibility to put in place adequate action strategies. In addition, criticalities affect also the existence and quality of specific mental health services for children, which are accentuated by the lack of specific training and organization for hosting minors present in the criminal circuit (Gruppo CRC, 2014).

Besides the highlighted aspects directly related to the living conditions of children deprived of personal liberty, there are also structural critical elements of the juvenile justice system that have an effect on their conditions of detention:

- Urgent need for a specific juvenile prison system adapted to the requirements of children, which very much differ from those of adults. The adoption of a specific juvenile Prison Rules Act containing more flexible and diversified provisions would contribute to the social rehabilitation of young offenders and to a more effective safeguarding of their rights.
- Insufficient available and updated data.
- Budgetary cuts that reduce the available economic resources and put the quality of the services at risk. The Italian Government should allocate adequate human, technical and financial resources to the juvenile justice system in order to guarantee substitutive penalties and other alternative measures to deprivation of liberty (CRC Group, 2014). This specific problem was highlighted by a consistent number of interviewed actors:

“With the recent budgetary cuts educational programs have decreased so there is a problem with regard to the right to education of children in detention.” (Member of an independent organisation)

Moreover an additional risk is represented by the turnover of children. Actually, this is a common institutional response to claims concerning the inadequate access to education and training of children in the IPM.

By contrast, right to health seems to be better ensured. According to an interviewed member of an independent monitoring body the health system works much better for children than for adults. The recent reform on the health system that has transferred the management to the territorial services seems to have obtained positive results with regard to children because there have been good synergies and the medical services have improved.

- Political fragmentation that entails differences on the responses given by regional authorities within the juvenile justice system. There is a lack of homogeneity of intervention of the social services at a national level. The different levels of efficiency depending on the region and the lack of coordination between regional bodies have negative consequences especially regarding the right to education and the right to emancipation. Legal responses and the adoption of measures also differ from a region to another in front of the same offences committed. This affects children in detention particularly in relation to the problem of transportation from a prison to another, which occur often for reasons of incompatibility, judicial decisions or family problems. Transportations interrupt the

educational processes undertaken and put the social, family and working links of children at risk. Likewise, the territorial network surrounding the child that allows him to benefit from cultural and leisure activities also differs from one region to another. The same system thus is applied in different ways depending on the local context.

4.2 Control mechanisms: good practices

The Italian Juvenile Justice System has not provided until now independent effective control mechanisms at a national level with regard to the situation of children deprived of personal liberty. The recent establishment of the National Authority for the rights of detainees that, together with the local guarantors, constitute the system shaping the National Preventive Mechanism could represent the starting point for an independent monitoring of detainees' rights. In order for this mechanism to be particularly appropriate for children, specific tools containing child-friendly methodologies and concrete issues to address should be provided to these authorities. However, this lack of attention towards the juvenile justice field could be partially explained by the way in which the system is structured and organised. Within the juvenile system a set of different actors coming from several disciplines interact. Institutions work together with social services, volunteers access places of detention and are in direct contact with detainees, judicial authorities regularly meet social assistants, etc. Such dynamics seem to give place to an integrated system that is protective and constitutes *per se* a mechanism of control.

"When a child is subject to a custody measure, he is in charge of the social services (USSM) that depend on the CGM. But the child is also surrounded by a multidisciplinary team that includes: the social worker, the educator, penitentiary police that has educational functions, the psychologist and so on. Therefore, every child is accompanied by a group of persons from different disciplines that work with him. Because the law establishes that there is the need for psychological, educational, social assessments in order to know the personality of the minor. And this is already a very protective system. There are a lot of eyes that are not part of the same institution watching the situation." (Member of a Juvenile Court)

Within this multidisciplinary system informal actors play a fundamental role and constitute on the one hand effective watchdogs of children's rights since they publically report their conditions, and on the other the bridge that connects children deprived of their liberty with the outside, with the surrounding context.

With regard to volunteers in direct contact with facilities, an interviewed affirms:

"They are a voice that can be heard regarding specific cases of minors in detention as well as regarding the general conditions. They have intervened several times under a collaborative attitude by pointing out things that didn't work out and that needed to improve to the institutions, the civil society through press conferences or to the guarantor. For example, a group of volunteers had the impression that some new police agents that came from an adult prison were trying to implement practices that do not respect children's rights – a sort of military style behaviour. Different associations, cooperatives and the civil society activated some mechanisms in order to denounce this episode by reporting to the ministry what was happening. And actions were taken in order to overcome the situation". (Member of an independent organisation)

It is frequent that volunteers involved in specific qualified projects actively participate in the activities organized within the IPM, which enables the creation of relationships not only with children but also with the staff of the centres.

This is the case of the group of volunteers established by L'altro diritto⁴⁷ that work in the juvenile detention center of Florence. The great part of the children hosted in this IPM comes from non-EU countries, mainly from North Africa (Morocco, Algeria and Tunisia) and from the Balkans (Albania). Sinti and Rom minors constitute a great part of the detainees with Italian citizenship. The volunteers of L'altro diritto attend the IPM with the aim of establishing an interaction with children that are in a situation of particular vulnerability and lack of references not only in juridical terms such as in the case of exclusion from the access to alternative

⁴⁷ L'altro diritto is a documentation centre established in 1996 in the University of Florence. It is actively engaged in theoretical reflection and sociological research in the fields of social marginality, deviance, prison and detention institutions, and makes the most relevant and accomplished results of this activity available to social operators and scholars through its website. For more information please visit: <http://www.altrodiritto.unifi.it/chiamo/index.htm>

measures from detention, but also in human terms due to the lack of “real” contact with the outside world. This lack is even more difficult to face given their young age and considering that an average of a 90% of the detainees of the IPM are in pre-trial detention. This initiative attempts to help these children at finding solutions to specific problems that due to existing obstacles such as language become complex. Detained minors very often find difficulties in identifying a defendant or at getting in contact with the lawyer. The aim of this project is thus to try to minimize problems linked to a lack of support by building a relationship with children based on mutual trust that is conducive to strengthening personal resources.

Beyond the issues linked to the legal condition of the minors, volunteers try also to create occasions in which they can freely express their opinions and feelings, thus fostering their active participation.

As mentioned, generally children are more likely to maintain a trustful relationship and being open to people that they know well and do not represent “institutions” but a third party. In this sense, volunteers, who in addition tend to be young and informal people, are the kind of actors that could more easily approach children and their necessities in an efficient way. These volunteers also assist to weekly meetings with the social workers under initiative of the juvenile detention centre. During these meetings, they share their impressions on the functioning of the centre and assess the treatment that every child receives. The volunteers also point out the aspects that represent a threat for the minors or that are inappropriate and make public campaigns of denounce where no responses are given, which constitutes a pressure mechanism for institutions. These regular meetings that are not mandatory and are implemented in many other IPMs under their own initiative, even if they are not very much structured constitute an effective control mechanism that could be systematized. For this informal mechanism to become a real strength is important that volunteers receive adequate training and collaborate with formal institutions that have the capacity and mandate to address the specific requests identified by the volunteers.

Another independent organisation that constitutes a reference point at national and international level is Antigone. It is the focal point for Italy of the CPT with regard to the promotion of the rights of persons deprived of liberty.

Antigone is an association that works since the eighties for “the rights and safeguards in the criminal system” at national level and is composed of a wide variety of collaborators⁴⁸. Through the national observatory on criminal execution and the conditions of detention, the association monitors and disseminates information on the penitentiary reality. In 1998 the Observatory for minors in detention was established and since 2008, after some prevarications due to legislation changes, Antigone is authorized to visit all the places of detention for minors. As a result, a first report on the conditions of all the Italian juvenile detention centers was published in 2011 and a second one in 2013⁴⁹. The association has also elaborated a tool with specific criteria on how to conduct visits including juvenile detention centers. This work methodology is useful not only for national and local actors that safeguard the rights of people deprived of personal liberty such as the guarantors, but also for transnational organizations. Actually, the first local guarantor established was in Rome and was created by the director of Antigone. They have promoted from the beginning the establishment of the guarantor of the rights of people deprived of liberty.

Antigone’s staff is authorized by the Department of Juvenile Justice to visit each of the IPM. A maximum of three people can visit an institute. The visits use to be implemented as follows: the director of the detention center receives the members of Antigone. They have a first exchange addressing statistical data and talking about the activities and organization of the institute. Afterwards, the visit in the different spaces of the center starts. The visitors may ask the staff of the IPM where they would like to go. The personnel guide the visitors more or less everywhere. After the visit, the visiting team elaborates a reporting sheet of the institute that is published in the website of the association. They do not elaborate recommendations but if they perceive some deficiencies or needs for improve they report it. Because they are not mandated to do that, there is not a formal convention or agreement allowing them this formal role. The IPM are followed over time and if specific issues need to be improved they return to the institute in order to supervise the evolution and progress made.

The responses of the IPM and of the penitentiary administration are usually positive since the reports elaborated by the association are appreciated. However, Antigone is not authorized to interview children during the visits even if they usually manage to get in contact with them. Children generally experience the

⁴⁸ For further information please visit the website of the association: <http://www.osservatorioantigone.it/new/>

⁴⁹ The first report is called *Ragazzi dentro* (2011) and the second one *Non è una giustizia minore* (2013). In addition, Antigone has elaborated an online report about the situation in the juvenile detention centres in Italy with the aim of establishing a monitoring mechanism on a permanent basis. The online report is available at: <http://www.associazioneantigone.it/Index3.htm>

visits as a novelty that breaks the routine but in general terms they do not care that much about it. At least less than adults, who sometimes try to complain or to communicate a message and be listened.

According to a member of the association, the authorizations and relations with the administration of Antigone can be compared in terms of "intention" with the authorizations that art. 67 of the OP grants to the members of the Parliament. In other words, to perform a systemic monitoring role of the functioning of the system. The association applies it in a double sense: research, data and information about the penitentiary system, and preventive role by bringing transparency into prisons and bringing it closer to society, which allows monitoring the respect for human rights.

4.3 Collaboration – formal and informal – between the different monitoring & inspection mechanisms

There is quite a high level of collaboration both among formal monitoring mechanisms and between formal and informal mechanisms within the juvenile justice system in Italy. A further question is the extent to which the channels of collaboration are structured.

The collaborations among formal mechanisms appear to be institutionalized and defined in the provisions of the concerned bodies. As previously stated, the collaboration between the legal and administrative authorities and the social services are defined as an essential requirement⁵⁰. Of special importance is the collaboration between the Surveillance Magistrate, the referent of the USSM social assistants (in constant contact with CGM) and the professionals working in the facilities in order to assess the appropriateness of the measures applied to a child as well as his personal evolution during the criminal experience. Normally the communication sequence follows the same pattern: the Surveillance Magistrate is in contact with the social assistants who at the same time have frequent exchanges with the facilities' staff. Additionally, collaboration between local bodies may be established upon their own initiative. However, there are no common criteria or procedures specifying how collaborations should be structured.

"In Milano there is a sub-commission on the conditions of places of deprivation of liberty that organizes meetings periodically convening the directors of Milano's detention structures (including the IPM Beccaria), the ASL and the guarantor. During these meetings eventual difficulties or problems are analysed and the minutes of these meetings are public and available. This is an initiative of Milano's municipality, the guarantor and of the group of municipal counsellors." (Representative of a local authority)

The territorial guarantors also have their mechanism of collaboration at a formal level. In 2008 was constituted the National Conference of regional Guarantors of the rights of detainees established by law with the aim of coordinating their activities. This body allows planning relevant initiatives at a national level in order to better face issues related with the protection of detainees' fundamental rights, the sentence execution and their social rehabilitation. The Conference is chaired in turn by one of the regional guarantors and the organisation is assigned to the secretary general (Regione Emilia Romagna, 2012). This regional network of guarantors is particularly useful for harmonizing the functioning of the social services and penitentiary institutions available in the different regions and for making problematic issues affecting the overall fragmented system emerge.

The law that recently established the National Authority for the rights of detainees also foresees collaboration between this authority and territorial guarantors. However no mechanisms of collaboration have yet been defined and this could represent an indicator of the apparent weakness of its effective functioning.

"The collaboration between the National Authority and the territorial guarantors is established by law. However no provision includes the obligation to establish a local guarantor, but depends on local initiatives. The national authority is mandated to coordinate the action of the local guarantors, which may not exist because they are not compulsory by law. The status of the local guarantors can be compared to that of the volunteers. And therefore they seem to be constituted under a logic of dispensability that does not contribute

⁵⁰ See page 9 or the description of the different juvenile justice services of the present report.

to the valorization of guarantors' role. While a guarantor should effectively be a human rights defender with a set of defined functions and mechanisms that allow him performing this role accordingly." (Local guarantor)

On the other hand, voluntary and civil society organizations do collaborate with local guarantors. Very often volunteers are those who report to them the conditions in the different facilities and provide valuable information.

"For the guarantor is fundamental to have relations with civil society working with detainees. In view of the high workload, guarantors are based on what volunteers in direct contact with detainees report. In fact, volunteers often solicit to guarantors the need for intervention. Associations and volunteers constitute the main source of information for the rest of the actors, above all in the juvenile justice system. They are the actors who maintain a trustful and closed relationship with young offenders." (Local guarantor)

However since these collaborations are not formally regulated and harmonized at national level, they may differ depending on the single willingness and commitment of the guarantors and the other actors. As a member of Antigone reported, with some of them there is more affinity than with others. Moreover Antigone is the appointed interlocutor of the CPT, which always consults the association and asks for its orientation before conducting visits in Italy. In this case collaborations go beyond the national level.

4.4 Main obstacles and difficulties of implementation

The main obstacle for an effective implementation of the monitoring mechanisms in Italy is the common consideration that there is little need for an exhaustive independent control of children's conditions within the juvenile justice system. The efficiency of the system is widely assumed and the existing monitoring mechanisms tend to focus on the adult field. But this seems to be the reason to justify that juvenile justice system should undergo a systematic assessment in order to ensure the continuity of the conditions offered to children and to try to improve them. This general perception of the need for monitoring in the juvenile justice system seems to affect the seriousness and commitment with which the concerned monitoring bodies perform their mandate.

"In general there is less need for these mechanisms in the juvenile justice system. The Surveillance Magistrate has abdicated responsibility in monitoring the rights of those deprived of their liberty. Because of work overload, this judicial figure is not able to perform the jurisdictional safeguarding of the rights on a regular basis. They are few. Instead, he tends to focus in the other part of the work that is the management of the judicial execution rather than on the safeguarding of the rights during the judicial execution." (Member of an independent organisation)

Another obstacle that hinders the capacity of monitoring bodies has to be considered in relation to the cultural dimension. In Italy the stigma and prejudice towards offenders and detainees persists in the society. Even if the juvenile justice system has embodied a reform towards a model of restorative justice, some resistances at different levels may represent a difficulty for monitoring bodies to perform their mission. For example, despite the steps that have been taken to change the punitive and control role of penitentiary agents, some of them seem to continue to act under a "military style approach" given also to the fact that their daily life is constraint by their job and usually have little contact with the outside world.

The excessive bureaucracy is also a big issue in Italy. Bureaucratic procedures need always to be done by all types of subjects: to ask for authorizations, to report to the administration, to solicit interviews with children, to complain, etc. Being the bureaucratic timeframes extremely slow, the responses given by the administration do not correspond to the real exigencies. Moreover, it represents extra work that could be avoided, what would leave further energies and time to use in productive tasks. The bureaucratic requirements entail other restrictions.

As a former member of Antigone says, the main problem of the association regarding the visits in places of detention is the limited number of people authorized to conduct visits. The maximum number of authorisations for each region is three persons, which is insufficient in the largest regions with a high volume of sample. Another member of the association stresses the difficulty to properly understand the functioning having few moments available to visit places. One would need to be more inside the structures in order to become aware of the real functioning.

Generally speaking the responses given by the administration upon requests of authorization to visit places of deprivation of liberty made by civil society organizations are positive. The main difficulty concerns the preparation of some centres prior to these authorized visits. Since the visits have to be always notified even if sometimes at short notice, there have been cases of transportations because some children were deemed “problematic” or because there were problems of overcrowding. The visits are always notified but sometimes in a very short period of time. The level of change may not be excessively relevant but a certain degree of preparation always exists.

But even within the Juvenile Justice Administrative Offices (CGM and USSM) important obstacles hinder the monitoring function of children's conditions. Very often this function is not implemented because of lack of economic resources⁵¹ and of time since social assistants are responsible for the monitoring of all the proceedings of those children reported to judicial authorities.

Within the overall juvenile justice system, specifically with regard to guarantors, the absence of specific tools for implementing the monitoring role constitutes a relevant deficiency. In the case of the guarantors, instruments allowing direct intervention are absent, and a consistent legislative framework able to harmonize practices and increase legitimacy lack. The effectiveness of the action thus depends on the specific relations that each guarantor establishes with the concerned actors, including the directors of the centres. There is a need for rethinking and redefining the functions and position of the local guarantors in order for them to play an effective monitoring role.

Some concerns emerged also with regards to the limits of monitoring mechanisms to access private residential facilities.

“Institutions don't enter very much there and there is the formal control of the judge, which is not exhaustive. The volunteers are unusual since the organization managing the community has its own workers. So the child is in the hands of the facility. There is a lack of transparency in some private shelters.” (Member of an independent organization)

4.5 Complaint mechanisms: good practices

While in the adult field complaints are pivotal in the prison's life of a detainee, children use them through a less formalized procedure, as a fair possibility of expressing possible unrests, unsatisfied needs or requests. The way in which the juvenile justice system is structured may explain why complaints are differently used and conceived. The limited number of minors deprived of liberty in each facility makes it possible to address directly to the responsible of the centre, who should listen to the requests or complaints: the wide network of different actors the child is in contact with gives a wide range of options for the child to be listened; the approach upon which the juvenile system is based ensures the respect at least of the basic rights and needs, and therefore rights violations occur much more rarely than in adult prisons. In this sense, children hardly ever make use of formal mechanisms of complaint. Instead, the channels used are informal oral mechanisms regularly available to children.

“The points of reference for children are the educators that can act directly upon the penitentiary system, what would mean that is an effective mechanism to resolve children's concerns”

Two procedures of informal exchanges with actors participating in the rehabilitation process of children deserve particular attention and can be considered as effective:

The regular meetings that every child deprived of liberty has with the referent social assistant of the USSM represent a common and used mechanism of complaint above all in the residential care facilities. These talks with children can have different aims: provide support and clarifications, redefine the rehabilitation process, re-elaborate the offence committed in order to understand it in accordance with the meaning that the child attributes to the offence. During these moments children can communicate to the social assistant,

⁵¹ By way of example regarding the very recently established monitoring groups of the residential care facilities (please see page 20 of the present report), in the case of Genoa no visits have been yet conducted due to a lack of financial resources. No budget has been allocated for travel expenses. These substantial inconsistencies between the goals set and the available means to reach them evidence the weakness of the system in drawing effective strategies also in terms of resources management.

who is external to the facility, their concerns, complaints, necessities, and deficiencies. It seems that children use this oral mechanism quite a lot.

The other frequent informal complaint mechanism usually used in IPM are the exchanges between children and volunteers attending the centre. Its main strength is that the barrier created by the lack of trust is overcome. Trust is very important when it comes to children, who are not used to explain their concerns to "institutional" figures.

"The specific things that we have come to know all along the years, I mean difficult situations, we have known them through the volunteers. Children trust very much volunteers because they perceive them as a third party, that is not paid, that is young as them and thus does not have a second intention or interest. And the difficulties are to deal with all these issues in order not to damage the children." (Member of an independent organisation)

However there is not a pre-established procedure for volunteers to conduct these exchanges that are mainly determined by a spontaneous relationship consolidated over time. Likewise, no specific procedure is foreseen to deal with the complaint. For example if a volunteer talks with a child and something comes out, he normally tries to persuade the child to talk to his lawyer or present a formal complaint depending on the issue. The main problem is that in some cases children are not willing to make use of formal complaints because of fear of reprisals.

If there is a complaint concerning an issue that affects vulnerable or weak subjects, then the child could be transported in another institution because he is considered as a delinquent or subject to marginalization (problem of discrimination). The difficulty here is that almost always the complaint is issued, but afterwards there are consequences for these children such as transportations or marginalization. Therefore there is a need to work close to the children also to understand their true feelings and views. Because the main issue is that they show a big mistrust towards institutional actors. (Member of an independent organisation)

Finally it seems important to mention that Service Charters of the Juvenile Justice Services have been elaborated at regional level and are available in the different types of facilities. They were conceived from the necessity to elaborate a communication tool with users. These Charters include a complaint form to be used by all those users that are willing to express deficiencies or dysfunctions as well as to propose possible improvements in relation with the services offered. According to the document, the services should examine, assess and respond to any complaint within 30 days from the receipt.

4.6 Main obstacles and difficulties of implementation

The main obstacle for the implementation of the formal mechanisms of complaint appears to be the excessive formalisation of the procedures. Since a specific penitentiary system for children lacks, the complaint procedure for children is the same as for adults. This results in a paradox because the complexity of the procedures – which is completely incoherent with the everyday functioning of the juvenile facilities – constitute by themselves an obstacle to issue complaints, a deterrent.

Another difficulty is represented in the regulation of criminal proceedings mainly in cases of legal complaints. During the penal execution, incidents are always registered in the criminal record and this may have negative consequences for the ongoing proceeding. The fact is that denounces are often followed by counter-denounces and therefore there is the risk of a counter-productive effect that may hinder the possibilities of benefiting from special treatments that result from a positive evolution during the criminal execution.

"The main problem related to formal complaints affects the cases of violence in institutions of detention. Because if a child receives a violent treatment either from a peer or from a member of the staff of the institution and issues a complaint, it begins an extortive mechanism in which the complaint is followed by a counter-complaint issued by the aggressor. And this dynamic has a negative impact in the process of re-socialization and of the way-out process from detention. So the child rather than being under another process of violence prefers not to enter to this dynamic and avoids denouncing because this produces a problem in its own judicial process. And this is a worrying mechanism that is being dealt also at European

level: the judicial complaints to the Procura (Prosecutor) through their lawyers. But children choose not to do this because is counter-productive. If you are counter-denounced for reasons of violence you lose the possibility to benefit from alternative measures (like probation). There is an urgent need to establish that complaints for violence reasons cannot influence the judicial process of the minor. These two offences need to be untied. This is being done in the case of adults. And in front of this problems the formal mechanisms do not offer effective responses, are not useful. The informality of the social workers attempts to compensate this weakness.” (Member of an independent organization)

Finally, the last main obstacle concerns the difficulties to directly activate mechanisms in order to deal with a complaint. Independent actors that are mandated to receive complaint such as the guarantors do not have tools to directly intervene. Guarantors are limited to a mediation role because they do not have mechanisms for a direct intervention.

Issues that would require further study:

- Causes, conditions and consequences of the changes in the use of criminal measures under a child rights approach
- Verification of the quality and structuring of the trainings offered to penitentiary police
- Assessment of the use of available public resources and existence of cost-effective solutions

“The new law for the establishment of the national authority indicates the possibility for local guarantors to receive appeals but the instrument to deal with them lacks. The only thing that can be done is to transmit it to the concerned judicial authority, this is a mediation role.” (Local Guarantor)

From this first structural analysis it emerges the need to further empower these independent actors free from conflict of interest that could enforce the right of children to complaint.

5. Conclusions

A system able to provide efficient independent monitoring and complaint mechanisms in places of deprivation of liberty is a system with capacity to prevent human rights violations and to provide human rights protection. Of particular importance it is to guarantee the system's preventive and protective capacity *vis-à-vis* children deprived of personal liberty. Children's specificities in terms of needs and rights need to be duly taken into consideration when establishing monitoring and complaint mechanisms in order to offer responses useful for their protection and personal development. In Italy the current situation is still far from reaching this goal.

The Italian Juvenile Justice System is apparently in line with international standards on juvenile justice and its practical implementation since the Juvenile Criminal Procedure Code was adopted in 1988 has maintained a positive trend. The reduction in the numbers of children detained in the IPM and the growing number of placements in residential care facilities as well as the reduction in the numbers of pre-trial detentions could represent an indicator to confirm the progressive success of the system.

However existing relevant criticalities already highlighted in the present report need to be overcome, above all the treatment of particular vulnerable groups of children, especially migrants. One of the weaknesses of the Italian juvenile justice system that emerges from this report is the lack of an independent monitoring mechanism as well as the lack of child-sensitive complaint mechanisms specific for children. The formal mechanisms that are in place do not properly respond to the requirements of closeness, listening to children and taking into consideration their best interest, independence, transparency and specific training and competences which are essential for overcoming the current superficial role that these formal mechanisms seem to play with regards to children deprived of personal liberty. Likewise, monitoring bodies such as the guarantors need to be further empowered through adequate law that regulates the definition and competences of this role and provides tools for their direct intervention.

Informal independent mechanisms involving civil society associations do exist and play a fundamental role in safeguarding children's rights in detention. But this is not sufficient. There is a need for systematizing monitoring and complaint mechanisms addressed to children and for harmonizing procedures at national level. Their existence could represent a starting point from which conditions of detention could be substantially improved. The recent establishment of the National Authority for the Rights of Persons Detained and Deprived of Personal Liberty can represent an opportunity to get closer to this purpose. For this to become possible the National Authority should be aware from the beginning of the specificities of children and act accordingly. In this sense an active and close collaboration with the National Authority for Children and Adolescents would be of primary importance and could also reinforce the preventive role of the National Authority.

The study identified serious concerns regarding the appropriateness of the existing formal complaint mechanisms available to children deprived of personal liberty. The excessive formalization of written complaint procedures as well as the negative consequences that they may entail for children's criminal proceedings hinder their effective use. Informal oral complaint mechanisms appear to be almost the only way through which children can express their opinions, concerns and complaints. However the lack of existing intervention tools to provide concrete and valuable responses to them weaken their impact. The definition of common child-sensitive complaint mechanisms could contribute to improve the conditions and empower children deprived of personal liberty by making their voices heard in the political and administrative level.

Further steps should be taken also to move towards the suppression of Juvenile Detention Centers, which do not cease to be total and closed institutions that could hardly benefit children in stage of development.

Some claim that the future trend should be the abolition of the IPM and its replacement by small custodial educational facilities. In view of the reduction in the number of children hosted in IPM, whose dimensions are in many cases out of proportion, the maintenance of such facilities is likely to become unsustainable and needs to be reconsidered. The use of penitentiary institutions may put human dignity at risk, and this degradation of human dignity primarily affects detainees, including detained children, but also those working within the institutions. Therefore there is a need for the systemic monitoring and supervision of the respect of children's needs and rights but also on the conditions of people working daily with them.

The Practical Guide for Professionals conducting monitoring visits in places of deprivation of liberty for children that will result from this project can have a specific value in Italy. Given the lack of specific tools available for those performing a monitoring role, the Practical Guide could provide them with a useful monitoring instrument specific for children that could at the same time constitute a common framework of reference at national level. The Practical guide could not only contribute at supporting and empowering the role of the National Authority with regards to children deprived of liberty from the very beginning, but could also help the other monitoring bodies at performing their role in a more effective and harmonized way.

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Annex: List of interviewees and visited places

Interviewed actors:

Professionals/key actors

- 1 Researcher on children's rights at the University of Florence
- 1 Member of Antigone (independent monitoring organisation)
- 1 Honorary Judge in a Juvenile Court
- 1 Volunteer in the field of juvenile justice

Institutional Representatives

- 1 Local Guarantor
- 1 Official in the Milano's Municipality
- 1 Social assistant in the USSM (Office of Youth Social Services)

Staff of places of deprivation of liberty

- 1 Director of a First Reception Centre and a Public Residential Care Facility
- 1 Director of a Private Residential Care Facility
- 1 Social worker of a Private Residential Care Facility

Visited places of deprivation of liberty for minors:

- First Reception Centre
- Ministerial Residential Care Facility
- Private Residential Care Facility for girls