



# SUMMARY REPORT

## ITALY

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## INTRODUCTION TO THE NATIONAL CONTEXT

From a legislative point of view, Italy constitutes a good example of transposition of international standards to the national framework and gives rise to a juvenile justice system that recognizes the rights of the child, which need to be fulfilled according to his or her evolving capacities.

In this sense, the offence committed by a minor 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 imputability<sup>1</sup> (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, which are used as a last resort measure.<sup>2</sup>

The juvenile justice system in Italy is regulated by a set of laws and provisions and is managed separately from the adult justice system. It presents itself as a patchwork of different legislative, presidential Decrees and laws, scattered throughout the Italian legal framework, the most noteworthy of which is the Presidential Decree 448/88 establishing the Juvenile Criminal Procedure Code. Despite the pressing need, an independent and adequate juvenile penitentiary system is still to be codified as such. Until recently, the ordinary penitentiary system was the one to be applied to minors, by analogy. In 2018 a legislative reform of the justice system took place and some provisions specifically addressed to children in detention have been adopted. However, the shortcomings in the regulations and the dis-articulation of the existing legislation reflect the need to further harmonize the juvenile justice legal framework in Italy. A significant example is the fact that isolation up to 15 days is still allowed inside the Juvenile Detention Centres, which contravenes the prohibition of isolation of children deprived of liberty stated in the CRC General Comment No. 10 (2007).

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 by the competent authority, while for adults this capacity is presumed.

The Juvenile Court has exclusive jurisdiction in proceedings related to juvenile offenders

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<sup>1</sup> The term imputability (in Italian *imputabilità*) refers to the recognition of the criminal liability of an offender.

<sup>2</sup> Defence for Children International Italia, ‘Children’s rights behind bars. Human rights of children deprived of liberty: Improving monitoring mechanisms. National Report Italy’ (DCI 2014).

indicted for criminal offences committed under the age of 18 years.<sup>3</sup> In addition, it exercises its surveillance competences until the young offender turns 25 years.<sup>4</sup>

The Department for Juvenile Justice and Community is a branch of the Italian Ministry of Justice and has jurisdiction over all juvenile matters, including child judicial protection as well as the prevention and treatment of juvenile delinquency. It enforces custodial and non-custodial measures regarding minors involved in criminal proceedings, issues guidelines, monitors statistics and coordinates initiatives on the national territory. Moreover, through the territorial Juvenile Justice Centres it runs all peripheral services of juvenile justice such as Juvenile Detention Centres (*I.P.M.*), Juvenile Classification Homes (*C.P.A.*), Youth Welfare Offices (*U.S.S.M.*) and Residential Communities.<sup>5</sup>

The criminal measures applicable to children by the judicial authority need to be considered taking into account 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 minor".<sup>6</sup> 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 criminal proceeding 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.<sup>7</sup> The Italian juvenile justice system also provides a range of alternative measures, making it possible for children to promptly leave the formal criminal justice system, such as prescription, judicial pardon, suspended sentences with probation ("messa alla prova"), acquittal for incapacity to understand and discern or irrelevance of the fact. Despite the progressive reduction of restrictive responses, there are three types of custodial measures, which foresee the restriction of personal liberty of young offenders: 1) imprisonment, to be served in a Juvenile Detention Centre; 2) placement in a residential care facility which has educational or therapeutic purposes; or 3) home confinement.

With regards to the living conditions in Juvenile Detention Centres, even though the last known case of self-inflicted death in custody was in 2009, there are still situations of self-harm which need to be closely and carefully analysed and monitored. Psychological support needs to be provided having in mind the personal background and, when necessary, in conjunction with cultural mediation.

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<sup>3</sup> D.P.R 448/88 Article 2(1) c) and 3(1).

<sup>4</sup> *ibid* Article 3(2).

<sup>5</sup> Orlando Iannace, 'Italian Juvenile Justice System' (2018).

<sup>6</sup> DPR 448/88 Article 9 and 19.

<sup>7</sup> Defence for Children International Italia n(2), DPR 448/88

# THE JUVENILE JUSTICE CUSTODIAL SERVICES IN ITALY

ON OCTOBER 2018

## Map of the institutions of deprivation of liberty run by the juvenile justice services in Italy



Source: Department of Juvenile Justice, 2018

### Total numbers:

- 24 C.P.A.
- 17 I.P.M. (Juvenile Detention Centres)
- 10 Ministerial Residential Care Facilities and Multifunctional day centres

## WHAT WE HAVE DONE

The activities in Italy were conducted by Defence for Children International Italia in coordination with the Department of Juvenile and Community Justice – Ministry of Justice involving the Turin and Bari Juvenile Detention Centres.

Three coordination meetings with the Department of Juvenile and Community Justice referees took place in Rome to schedule the different activities taking place during the different workstreams. In the framework of the **Workstream 1 (Training)** there was a two-day introductory meeting in Rome with the delegations of the two Juvenile Detention Centres involved. Following this first workshop, four training sessions in Bari and four in Turin were held and two final meetings were organised at the end of the process to share the outcomes and present the first draft of the self-assessment tool. Using a highly participatory methodology based on participants' life experiences, the purpose of the training was three-fold. Firstly, share a child-rights based approach in the juvenile justice system. Secondly, identify opportunities, challenges, obstacles, resources and practices to apply children's rights in particular in the detention centres. Thirdly, develop tools for cooperation and support aimed at improving the detention contexts and helping the rehabilitation scope of the juvenile justice system. Following the training process, a set of recommendations was brought to the central department of juvenile justice on the main issues identified and a self assessment tool was developed to be used by all professionals working in the juvenile detention centres.

The **Workstream 2 (Participation)** invited the youth to reflect on their personal experience (past), to highlight some issues that can improve the actual situation (present) and to think about the future possibilities and perspectives (future). A 5-days HIP-HOP workshop was proposed on a voluntary basis to the youths in the Bari and Turin juvenile detention centres. HIP-HOP was used as a suitable tool and language to express their views. A professional rapper was recruited to co-conduct the workshops and support the creation of the final deliverables. In each one of the detention centres a song was written by the boys and the respective video-clip was professionally produced and recorded. By using masks, children's participation was ensured in the video production which was managed by an experienced video-maker. The whole process has been documented through a video-documentary that shows how the workshops were built and collects views of children, youths and professionals.

**Workstream 3 (Reintegration)** was implemented in the regions which relate to the juvenile detention centres included in the project, respectively the regions of Piemonte, Valle D'Aosta, Liguria and Massa Carrara province for the Juvenile Justice Centre of Turin and the regions of Bari and Basilicata for the Juvenile Justice Centre of Bari. All the relevant stakeholders from the regions outlined above were invited to attend inter-agency seminars aimed at reinforcing collaboration between them and the IPMs in order to improve reintegration opportunities. Along with the presentation of the results of the activities carried out with the youth of the Juvenile Detention Centres of Turin and Bari, the self-assessment tool was presented to be used. Lastly DCI Italy presented the video documentary in Rome to all the IPM directors and police commanders.

For the **Workstream 4 (Reporting and evaluation)** we have uploaded all the required documents and information in order to inform the evaluation process that has been successfully concluded with an external evaluation report.

## WHAT THE PROFESSIONALS TAUGHT US

The participatory methodology and experience-based learning of the workshops facilitated the systematisation of a broad range of strengths, weaknesses and improvement proposals, not only in what regards these particular IPMs, but also the juvenile justice system in general.

The professionals working in the Juvenile Justice System in Italy seem committed to fulfil the rights of the detained children. However, there are some weaknesses that seem to be influencing the effectiveness of the whole system and consequently the lives of children and youths. These include the lack of specialised training and resources or the cleavage between professionals and the young detainees. Even if the majority of the rights are fulfilled inside the Juvenile Detention Centres and custody is one of the areas where professionals are most trained, there is still a great dispersion of energy due to lack of coordination and ongoing information exchange between the different departments and intervention areas.

Generally, even if it seems that the four areas of intervention covered by the CRC - survival, development, protection and participation - are upheld inside the Juvenile Detention Centres, the areas of development and participation remain greatly overlooked. On the one hand, the

educational continuity foreseen in the juvenile penitentiary system is not entirely assured, constituting a serious damage to the youth development and the possibility of re-integration. On the other, the exit from the justice system remains a great challenge that still presents itself as an abyss to the youths. There is a relevant gap between the detention experience and the exit from the system and this fragmentation is many times a reason for the failure of the criminal measures.

**“Rights are enshrined in the law. Besides, rights are in fact a social construction because those rights become reality in the moment when the necessary conditions to fulfil them are ensured. Everything depends on the extent to which those enshrined rights are guaranteed by the conditions in the different contexts.”**

**Cira Stefanelli, Director of staff training for non-custodial measures and juvenile justice**

**“What is in fact the scope of the juvenile justice system: to punish or to re-educate?”**

Professional working in a Juvenile Detention Center, Bari

Given the complexity of the juvenile justice system and of the IPMs in particular, there is the necessity to ensure that all professionals have access to special ongoing training using a multidisciplinary and children rights-based approach. Such training

opportunities could be conceived as part of a still non-existent monitoring mechanism.

The recent extension of the maximum age of the Juvenile Detention Centres from 21 to 25 years old is, undoubtedly, the major criticism to address in the context of the juvenile prison system. One of the professionals working in the juvenile detention centres highlighted the negative impact of this extension of the legal age and the possible clash with the provisions of the CRC and in particular of the EU Directive 800/2016. This is because, as explained by the professionals, there aren't enough resources, neither structural nor physical, to effectively separate minors from young adults, as required by law. In practice, children (up to 18 years old) and young adults (up

to 25 years old) are separated only at night. Nonetheless, as emphasised by the participants, this is a good opportunity to take into consideration the right of children to be separated from adults and also to consider the necessity of young adults not to be put

**“For us the future was a promise, for them the future is just a threat.”**

Professional working in a Juvenile Detention

in an adult prison. In addition, they voiced their concern regarding the very negative impact that this may have on the lives of the detained children. At this initial moment of application of the reform, young adults many times come from adult detention centres, fact that can put at risk the educational path and individual development of the minors placed in IPMs. It was moreover stressed that currently, the Juvenile Justice System is very standardized and mono-cultural, not taking into due account the specificities and diversity of the youths. There is a pressing need to find common grounds for communication, not only between juveniles and the system, but also among juveniles. Additionally, the Juvenile Justice System should be reformed to better accommodate and respect the specificities of each person, seeing each detained child as a unique human being with specific needs and capacities.

Furthermore, it was mentioned that the practices have become mainly formal, with a lot of bureaucracy. There's a gap between principles and the everyday life, which constitutes a hurdle to the work of professionals. There is a general feeling that many times concerned professionals must work inside determinate legislative paradigms which contravene the CRC or the rights enshrined thereof. All in all, it seems that Juvenile Detention Centres are a context full of contradictions and sometimes seems that there's a lack of awareness, even in the political-institutional context. The professionals emphasised the lack of resources to overcome this absence of responsiveness. On the one hand, there is an urgent need for an enhancement of resources, not only material but also staff wise. On the other, it is essential to create moments of reflection, evaluation and multidisciplinary training, which include all professionals and volunteers working in the juvenile justice system. The participants of the workshops moreover showed their scepticism in regards to the applicability of the juvenile justice law. According to some, many things changed since the enactment of the DPR in 1988, including the social scenario and service users. What is more, as previously said, there is no specific juvenile penitentiary system in Italy, and the applicable framework and proceedings are highly fragmented. This particular fact calls for a special attention on the need for advocating for a juvenile prison system reform (that has already been launched but is now in standby) that puts the best interests of the child at its core.

Lastly, an extensive appraisal on the adequacy of the current juvenile justice system and its link with the principle of the best interests of the child emerged. The participants recalled the discussion of the end of 2000, in which the juvenile detention centres were deemed to disappear. On the contrary, in the last decades, security was chosen in detriment of education. Currently, for a social problem the solution given is strictly criminal, but many times the child is asking to be heard and taken into account. This does not mean ignoring the victim, but rather reflect about the role of the IPMs and their effectiveness on re-education, rehabilitation and social reintegration.

**“Writing these songs makes us write exactly what we think. Things that most of the times we don’t say, either for fear or because we don’t know what would happen if we said them, what repercussions it could have to us. Instead when you write you are free.”**

## WHAT CHILDREN TAUGHT US

Child participation is a crucial even if controversial dimension of Juvenile Detention Centres, which should ensure that the youngsters are listened to and that their opinions are taken into due account. Participation promotes self-confidence and sense of belonging, so it is important to these youths, who seem misfit for the life in society, but also for the life inside a prison. Their stories as they nationalities differ, but the will to be free is common to all. Many are recidivist, coming from families involved in organised crime and locked in a vicious circle that doesn’t allow them to break free and materialise their life project. Some other come from difficult socio-economic situations, where parents face situations of unemployment and job insecurity thus putting the entire family in a situation of poverty and deprivation. Many of them are migrant or belong to families with foreign origin with difficult integration path. Some are minors, while others are up to 25 years old, fact that cannot be overlooked, as it greatly influences the peer relationship dynamics on a daily basis. Generally, there is a feeling of discomfort regarding the fact of being deprived of liberty. These young boys want to be included, want to participate in their educational and rehabilitation project and more than everything they just want to have instruments to have a “normal” life, with a house, a job and a family.

**“The rights someone my age should have are firstly the one that shouldn’t be taken from anyone is the one about helping and giving them a possibility. Even if someone makes mistakes (...) there is the need, particularly given our minor age, to help, to support and to listen the**

From the activities carried out during the project a lot has emerged. The boys, maybe for the first time, were given the necessary time and space to reflect about their rights and position in the society. Their testimonies flow from everyday needs to their most profound desires, ambitions and fears. The need to be heard and to be considered as an

individual with specific needs and capacities for development is present and crucial for them. This was an opportunity for these youth to exercise their right to participate and to be heard in what regards a system that is inadequate to accommodate their needs and to fulfil the rights enshrined in the CRC. However, in view of their rather limited cultural references it was decisive to guide them throughout these reflections.

According to the detained minors there should be more respect among everyone, especially in what regards the respect police officers have for the minors. These should be treated and protected according with the rights enshrined with the CRC. Prison agents should promote a culture of mutual respect and be a positive influence for these minors, but instead the latter feel disrespected in several instances of

**“We should get out of here [detention centre] with more instruments and motivation, instead usually we come back. Many times when we finally leave we are worst than we were before. We should leave stronger and more motivated!”**

Boy in detention, I.P.M Turin

their daily-life. In some cases, there is an inadequate treatment when in isolation.

The minors in detention also expressed their views concerning their educational and/or academic path. In the Juvenile Detention Centres only primary and secondary school is available, there is no possibility of proceeding the studies to complete high school. Moreover, there is a common opinion that the training courses should be more practical and focused on gaining skills to be able to work and re-integrate in society when they get out of the IPM. For example, courses to be a plumber, an electrician, a mechanic, a carpenter, a mason, etc. Similarly, the non-academic activities available are very limited, time constrained, and excessively interrupted by contingent needs, making it difficult to concentrate. On the one hand, many times guards do not respect the scheduled timetables for beginning the activities, reducing the available times for each one. On the other hand, more options should be available, namely sports, cultural and artistic activities should be provided and promoted. Also, the youths expressed their disagreement with the fact of their pocket money being seized as a disciplinary measure, leaving them without means for buying the things they want and/or need.

There isn't a continuity and articulation of the educational and the security dimensions inside the IPMs. Many times the attitude of the different professionals is not coherent and consistent, giving contradictory messages and leaving these youths in a state of confusion, which can diminish their trust in the system. This fact, coupled with the absence of a solid educational project can make the whole re-educative process void, rendering the juvenile justice system ineffective and ultimately pointless.

In some contexts, the children feel like their interests and well-being are not taken into consideration, like they are forgotten (which was reflected on the title and lyrics of the Turin IPM's song). For example, in the Turin juvenile detention centre the boys don't have open-air spaces where they can do activities. Although they are told that a new area is being built soon, they continue confined to a small zone, which doesn't allow them the necessary space to move, play or relax. In fact, this issue affects the way they see themselves and their position in the juvenile justice system. They feel that their best interests are not considered, thus feeling double marginalisation – first from the society and now from the juvenile justice system. In addition, there is a lack of adequate spaces and ways allowing the youths to freely express their views, their claims and opinions about a system that concerns them and reflect about their past, present and future. By the same token, the absence of a complaint and review mechanism is heavily felt inside the juvenile justice centres. This furthers their feeling of disregarding and fosters a culture of non participation and lack of accountability which will be reflected on their behaviour in the society.

All in all, there is a feeling that when a child arrives to the juvenile detention centre the priority is ensuring primary needs, related with survival and protection, thus leaving development and participation as secondary and therefore overlooked. Having in mind the lack of aftercare and support to children leaving the juvenile justice system, it is crucial to ensure a robust training and preparation to promote their integration or re-integration in society from the very beginning, allowing these young people to break the pattern of recidivism.

## WHAT OUR PRACTICE TAUGHT US AND WHAT ARE THE CHALLENGES

Children and young people placed in detention centres are subjects of rights. Further, a rights-based logic should be applied above all when it comes to young people deprived of liberty: rights can derive in useful indications and orientations. It is precisely the lack of recognition of the rights of these young people one of the main causes of their imprisonment. However, it is not easy to talk about rights and particularly about participation in a “total institution” which is by nature isolated from the society. This controversy becomes a paradox in the juvenile justice system, the objective of which is to prepare children in conflict with the law to participate correctly to the social contract. But, how is it possible to learn to live in freedom by being closed? This continues to be the main challenge of the IPMs.

Juvenile Detention Centres are full of complexities and incoherencies. Everything within these facilities appears to be magnified since, in fact, these places become the world to the people that live inside. Consequently, specific relational dynamics are created involving everyone, from the professional to the detainee, and referring to both the individual and the collective level. In this sense it is worth highlighting the observed difficulties that these contexts seem to have in reconciling these two levels -individual and collective - also from a rights-based point of view.

Our practice with the professionals was an occasion to reflect upon many aspects of the juvenile justice system but, above all, it became a sort of collective monitoring sessions that helped at assessing -individually and collectively – the professionals’ practices but also at giving renewed sense to their daily work. Our practice taught us that there is a huge need for such moments considering the lack of stimuli able to incentive a critical thinking and reflection. In this sense, it was very fruitful to value professionals’ experiences when conducting the training sessions while adopting a constructive attitude to promote improvements in order to connect the day-to-day practices with a rights-based framework of reference. This was a very good way to create common and shared approaches and languages, which is key since the degree of cooperation and integration of the different actors seems to be proportional to the perception of power and thus of action that they have within the system.

Our practice with children and young people was extremely positive, as their feedback confirm. The use of HIP-HOP as a language that enables expression turned out to be a very effective way for them to express their views, their thoughts and, ultimately, to participate. The strength of HIP-HOP is that offers the possibility to access a cultural context that is characteristic of young people and therefore results appropriate and meaningful for them. In this sense, the main lesson learnt from the workshops with young people is the effectiveness of finding a cultural framework that make sense to them and use it as a context to facilitate processes of human growth and development. Another relevant learning was to understand the importance of doing something visible with them (such as the songs or the documentary). All in all, it was great to see how they felt important during the project activities, how they felt that their voice matters and that it can play a role within the society.

## WHAT ARE THE RECOMMENDATIONS

The participatory methodology workshops with the professionals working in the juvenile detention centres and with the detained children and young adults made possible to identify the main concerns and problems in the Italian juvenile justice system and consequently the recommendations to the Department of Juvenile Justice, namely:

- Promote free actions of reparation and accountability processes.<sup>8</sup>
- Promote a continued and systematic working method, connecting the different regions and juvenile justice stakeholders.<sup>9</sup>
- Review and make available the territorial criterion for professional assignment, currently not clear.
- Improve the well-being of the professionals working in the juvenile detention centres, in particular in what concerns their work conditions.<sup>10</sup>
- Set up monitoring mechanisms and supervision processes.<sup>11</sup>
- Set up methods to guarantee trainings and review the competences of the external professionals working with detained minors, including the voluntaries working in the juvenile detention centres.<sup>12</sup>
- Provide instruments which enable personalised interventions, in order to overcome the current ones, which are “mono-cultural” and very standardised and don’t take into consideration the particularities of each detained minor.<sup>13</sup>
- Undertake a cost-benefit analysis of the current juvenile justice system, to assess its efficiency.<sup>14</sup>
- Promote an educational project which is consistent with the past and future perspectives of the child, focusing on practical skills training.
- Create mechanisms to differentiate treatment of the children until the age of 21 from the young adults, from 22 up to 25 years old. A specific circuit to young adults would guarantee tailored interventions and a differentiated treatment.<sup>15</sup>
- Promote and value the work and participation of the youth inside the detention centres with a view of reinforcing their resilience and preparing them for the reintegration phase.
- Proceed with the reform of the criminal justice system by adopting a juvenile prison code which is coherent with the scope of the juvenile justice system and takes into account the relevant international and European standards.

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<sup>8</sup> According with par 2, 4(b) and 13 of the Committee on the Rights of the Child (ComRC) General Comment (GC) n. 10, the CoE Guidelines par 81 and the art. 28(2) of the DPR 448/88.

<sup>9</sup> In light of the par 30 and 31 of the ComRC GC n. 10 and the CoE Guidelines par 16.

<sup>10</sup> According with art. 4 of the CRC and the par 40 of the ComRC GC n. 10.

<sup>11</sup> In line with the par 34 of the ComRC GC n. 10 and the CoE Guidelines par 17.

<sup>12</sup> In accordance with the par 30 and 32 of the ComRC GC n.10 and the CoE Guidelines par 14.

<sup>13</sup> In line with the art. 40(4) CRC, par 28(c) of the ComRC GC n.10, the CoE Guidelines Preamble and par 92 and the art 1(1) DPR 448/88.

<sup>14</sup> According with par 33 of the ComRC GC n. 10 and the Section VI of the CoE Guidelines.

<sup>15</sup> In light of the Art. 37 of the CRC, par 28(c) of the ComRC GC n. 10, Art 12(1) of the EU Directive 2016/800 and the CoE Guidelines par 20, 28(c) and 31.