



PRACTICAL GUIDE

*Monitoring places
where children are
deprived of liberty*

DEFENCE FOR CHILDREN INTERNATIONAL (DCI) - Belgium

CHILDREN'S RIGHTS BEHIND BARS:

HUMAN RIGHTS OF CHILDREN DEPRIVED OF LIBERTY; IMPROVING MONITORING MECHANISMS

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AUTHORS & PROJECT

This Practical Guide was written by **Sarah Grandfils** under the supervision of **Benoît Van Keirsbilck**, Director of Defence for Children International (DCI) - Belgium and president of DCI-International. The redaction was moreover supported by the expertise of the **14 partners and associated partners** from across Europe and the multidisciplinary team of **11 high level international experts** of the EU funded project “**Children’s Rights Behind Bars**”. Members of the team of DCI - Belgium have also strongly contributed to the conception and the elaboration of this Guide, in particular **Andrea Salcedo Caja** and **Pierre-Yves Rosset**.

Defence for Children International (DCI) - Belgium is the lead partner of this project. The purpose behind the work of DCI-Belgium is to protect and defend children’s rights in Belgium as well as in other countries working together with the national sections comprised of a network of 47 partners through-out the world and other associated members. DCI main actions include: training, education and awareness raising; taking action when children’s rights are being infringed and provide oversight and monitoring on Belgium’s respect for the fundamental rights of children. Their main fields of intervention are: juvenile justice and children’s access to justice; children’s deprivation of liberty; rights of children on the move; children’s right to participation and to freedom of expression.

This Guide is the main outcome of **the project “Children’s Rights Behind Bars”**. The origin of this project derived from the statement that monitoring mechanisms that carry out visits to the different kind of places where children are deprived of their liberty (in Europe), had no child specific Guidelines that could be used as a particular reference in the preparation, implementation and follow up of their monitoring visits. The project therefore aims to provide monitoring professionals with a practical and methodological tool that is specific to children and to places where they are deprived of their liberty. In order to conceive this Guide in the most pragmatic manner possible, the project was designed so that it began with field research conducted in parallel in 13 EU countries and in Serbia to get an overview of practices and functioning of existing monitoring and complaint mechanisms. This research study resulted in 14 national reports as well as a European overview summary thereof. The Guide is therefore based on these achievements and on the expertise, multidisciplinary competences, reflections, and work carried out jointly by the whole project team at three international seminars and through numerous exchanges between partners and the contributions of experts throughout the project.

All outcomes of this project are available on the website:

www.childrensrightsbehindbars.eu

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FOREWORD

From the CPT's experience during its more than 25 years of visits to detention places throughout Europe, we can say that children deprived of their liberty are often at higher risk than adults of becoming victims of ill-treatment.

Regrettably, the CPT has all too often come across situations where minors are abused; from a "pedagogical" slap to being punched, kicked and struck with a truncheon by police officers or custodial staff. We have also found juveniles subjected to violence by other prisoners, especially in dormitory settings and juveniles placed in prison cells with adult inmates without any regard being made to their specific needs. In many cases, juveniles are treated by police as adults and legal safeguards appropriate for their age are not implemented in practice by law enforcement agencies. In the immigration detention setting, children may be subjected to harsh conditions with no access to education or sports activities and no guardian safeguarding their rights. In psychiatric institutions and social care homes, we have found children restrained to their beds for long periods or placed in seclusion. Such practices are totally unacceptable.

The CPT has, through its visits, attempted to complement the standards set out in international instruments, notably the 1989 UN Convention on the Rights of the child and the 2008 European Rules for young offenders. In 1998, it set out a number of safeguards which should be offered to all juveniles deprived of their liberty under criminal legislation. These standards were updated and expanded upon in the CPT's 2014 General Report, identifying the safeguards that should be in place and outlining the type of establishment in which they should be held, and the particular care with which they should be provided by well-trained and dedicated staff.

Protecting children deprived of their liberty from torture, inhuman or degrading treatment is a collective effort. It requires the involvement not only of national and international preventive mechanisms but also of human rights institutions such as Children Ombudsmen, members of Parliament, members of the judiciary, civil society actors and researchers.

Given the importance of their role in the prevention of ill-treatment, bodies carrying out monitoring tasks must do so professionally. This requires a proper visiting methodology, knowledge of the standards, and an understanding of the issues affecting children, as well as the necessary skills, sensitivity and awareness to interview children about their experiences.

Hence the importance of this Guide. It has been developed taking into account the practical experience of a number of national and international bodies and drawing on the experience of experts working in the field. The Guide aims to assist and strengthen the capability of monitoring bodies to effectively carry out a visit to an establishment holding children, elaborating a step by step approach with practical tools providing direction on the way in which a visit should be organised and which issues should be examined.

In my opinion, this Guide should be part of the toolkit of every organisation intending to undertake an effective monitoring visit of any establishment detaining children.

Mykola GNATOVSKYY

*President of the European Committee
for the Prevention of Torture (CPT)*

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ACRONYMS & ABBREVIATIONS

BOP	The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
CAT	The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment The UN Committee Against Torture
CCTV	Closed-circuit television
CoE	The Council of Europe
CPT	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	The UN Convention on the Rights of the Child The UN Committee on the Rights of the Child
ECHR	The European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	The European Court of Human Rights
EPR	The European Prison Rules
ERJO	The European Rules for juvenile offenders subject to sanctions and measures
EU	The European Union
GCFJ	The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice
GC N°. 10	The General Comment N°. 10 of the Committee on the Rights of the Child: Children's Rights in Juvenile Justice
GPJD	The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
ICRC	The International Committee of the Red Cross
NGOs	Non-Governmental Organisation(s)
NHRIs	National Human Rights Institution(s)
NPMs	National Preventive Mechanism(s)
OPCAT	The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RAJJ	The UN Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
RNCM	The UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
RPJDL	The UN Rules for the Protection of Juvenile Deprived of their Liberty (The Havana Rules)
RTWP	The UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (The Bangkok Rules)
SMR	The UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)
SPT	The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	The United Nations

1. INTRODUCTION



“Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child’s psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.

The unique vulnerability of children deprived of their liberty requires higher standards and broader safeguards for the prevention of torture and ill-treatment. Specific practices and issues, such as segregation, the organization and administration of detention facilities, disciplinary sanctions, opportunities for rehabilitation, the training of specially qualified personnel, family support and visits, the availability of alternative measures, and adequate monitoring and oversight, require specific attention and modified standards.”

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/28/68 / 5 March 2015

Children’s needs and rights are specific and differ from those of adults. The acknowledged and well-known harmful effects of the deprivation of liberty on children imply that the recourse to that measure should be used only as a last resort. The use of alternative measures to detention should always be given priority. When deprivation of liberty is imposed as the measure of last resort, it should be only in exceptional cases; in the best interest of the child, and for the shortest appropriate period of time. It should aim at educating, rehabilitating and preparing for the reintegration of children into society. These key principles, enshrined in the international law, are the prerequisites for any deprivation of liberty of children.

When deprived of their liberty, children are still entitled to all the other rights under the Convention on the Rights of the Child (CRC) recognised to them. However, the conditions of and treatment they receive in the places where they are deprived of liberty do not always fulfill the specific needs and particular rights of children. This includes access to appropriate education, contact with family and the outside world, the need for privacy, physical exercises, leisure activities and recreation, right to health, and access to justice.

On the contrary, because of their age, level of maturity and psychological fragility, and due to the long term damaging effects of detention on their well-being and development, children are one of the most vulnerable group of persons deprived of liberty. Furthermore, deprivation of liberty frequently intensifies children's vulnerability to discrimination, abuse, and violence, in too often non-adequate living conditions where accommodation, hygiene, health care and nutrition conditions are not always respectful of human dignity.

In this context, the **regular and independent monitoring of places where children are deprived of their liberty is essential**. The aim of monitoring is both to ensure the proactive respect of the fundamental rights of children by reducing the risk of torture, violence, abuse or any violation of children's rights (**preventive role**) and to ensure that all the required safeguards – including the right to complain – are effective to guarantee the enforcement of their rights (**protective / investigative role**).

1.1. Definitions of key vocabulary

Child

“A child means every human being below the age of eighteen (18) years unless under the law applicable to the child, majority is obtained earlier.” (CRC, Article 1)

For the purpose of this Guide, we will refer to the term “**child**” rather than “juvenile”, “minor” or “youngster”, even if a young person of 17 years old will not necessarily recognise him/herself in the term “child”.

Deprivation of liberty

Article 11 of the Havana Rules (RPJDL), Article 4, 2° of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or Punishment (OPCAT) and Rule 21.5 of the European Rules for Juvenile offenders subject to sanctions and measures (ERJO) define deprivation of liberty as ***“Any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other authority”***.

With regards to the extent of this definition when translated into operational practice, the Sub-Committee on the Prevention of Torture and other cruel, inhuman or degrading treatment or Punishment (SPT) has issued a comment stating *“that as expansive an interpretation as possible should be taken in order to maximise the preventive impact of the work of the NPM”* (National Preventive Mechanisms).

“Any place in which a person is deprived of liberty (in the sense of not being free to leave), or where (...) a person might be being deprived of their liberty, should fall within the scope of the OPCAT if it relates to a situation in which the State either exercises, or might be expected to exercise a regulatory function”.¹

Places where children can be deprived of liberty

Any kind of establishment – penal, correctional, educational, protective, social, therapeutic, medical, administrative – public or private – from which a child is not allowed to leave at will.

For the purpose of this Guide, we will refer to the term **“deprivation of liberty”** rather than ‘detention’ in order to broaden the focus of this Guide to include closed establishments that are not necessarily prison-like or that involve incarceration.

The following terms will be used equally throughout the Guide to designate the places where children can be deprived of their liberty: *“facility, institution, centre and establishment”*.

 *See – Section 2.1. – p.23*

Exclusions:

Any place where the child’s right to leave the establishment is not restricted are not covered by the scope of this Guide.

Independent monitoring mechanisms

Bodies that undertake monitoring of facilities where people are deprived of their liberty through on-site (announced or unannounced) visits.

¹ See the SPT’s comment on the scope of the article 4 of the OPCAT

Monitoring involves **the visit** to an establishment that results in an oral and written **report** of the visit; the formulation of **recommendations** to the authorities concerned and to other actors involved in the protection of children deprived of liberty at the national and international level; and the **follow up** regarding the implementation of these recommendations.

The present Guide will refer to the term “**monitors**” when it comes to describe the people in charge of the monitoring visits of places of deprivation of liberty.

Exclusions:

The following types of visits or inspections are not considered as external independent monitoring body for the purpose of this Guide:

- ❶ **Informal scrutiny by civil society**

When the role of the civil society is limited to contact between the community and the place of deprivation of liberty, for example, where cultural, religious or educational groups or individuals work inside the facilities.

- ❷ **Internal administrative inspections by government institutions**

Where the role of administrative bodies is limited to controlling the compliance of staff and procedures with national standards, and administrative Guidelines and regulations. Although their role is very important especially in terms of accountability, it rarely includes a broader approach involving issues such as the dignity and fundamental rights of children deprived of their liberty. Internal inspections and external monitoring must co-exist and develop communication channels creating a strong and complementary networking system of control in places of deprivation of liberty.

☐ See – Section 3.5. – p.40

Complaint Mechanisms

Complaint mechanisms include procedure / processes for requests and /or complaints made by children deprived of their liberty regarding the conditions, treatment and care provided in this context.

They may be addressed to **internal bodies** responsible for the institution depriving children of their liberty as well as to **external independent bodies** (examples: Ombudspersons for children, National Human Rights Institutions, independent monitoring bodies, judicial bodies, civil society organisations or others).

These mechanisms may be **individual or collective, informal** (for example: oral requests or mediation) or **formal** (through a written complaint form and procedure); **oral** (for example: request to staff) or **written** (for example: letter addressed to the ombudsman of children). ☐ See – Section 6. – p.147

1.2. Children deprived of liberty and the International and European legal Framework

International and regional standards applying to children deprived of their liberty include, but are not limited to:

A. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Legally binding

- ➔ The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- ➔ The UN Convention on the Rights of the Child (CRC), 1989
- ➔ The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2002

Normative

- ➔ The UN Standards Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules or RAJJ), 1985
- ➔ The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP), 1988
- ➔ The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines or GPJD), 1990
- ➔ The UN Rules for the Protection of Juvenile Deprived of their Liberty (The Havana Rules or RPJDL), 1990
- ➔ The UN Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules or RNCM), 1990
- ➔ The General Comment N° 10 of the Committee on the Rights of the Child: Children's Rights in Juvenile Justice (CRC - GC N° 10), 2007
- ➔ The UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (The Bangkok Rules or RTWP), 2010
- ➔ The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) Guidelines on national preventive mechanisms, 2010
- ➔ The UN Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules or SMR), 2015

B. REGIONAL HUMAN RIGHTS INSTRUMENTS

Legally binding

- ➔ The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950
- ➔ The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987
- ➔ The jurisprudence of the European Court of Human Rights (ECtHR)

Normative

- ➔ The European Prison Rules (EPR), adopted by the Committee of Ministers of the Council of Europe, 2006
- ➔ The European Rules for juvenile offenders subject to sanctions and measures (ERJO), adopted by the Committee of Ministers of the Council of Europe, 2008
- ➔ The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (GCFJ), 2010
- ➔ The Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf) revised version, 2015

1.3. Who is it this Guide for?

This practical Guide is designed to be used by a **broad range of professionals**, who are **entitled** - by mandate, by law or upon a specific agreement - **to monitor or visit places where children can be deprived of their liberty**. This includes, but is not limited to:

- ➔ **Experts and Members of International and Regional monitoring bodies** such as the SPT, the CPT and the Council of Europe's Commissioner for Human Rights as well as agencies such as UNICEF, UNHCR or ICRC (for the specific cases of conflict areas);
- ➔ **Members of National Preventive Mechanisms (NPM)** created or designated as such under the OPCAT;
- ➔ **Other statutory monitoring bodies** such as National Human Rights Institutions, Children's Commissioners, Ombudspersons for Children, etc.;
- ➔ **Special monitoring bodies** such as prison monitoring committee, police inspection commission, mental health institution's inspection, etc.;
- ➔ **Juvenile judges;**
- ➔ **Civil society monitors and non-governmental organisations (NGOs);**
- ➔ **National and EU parliamentarians;**
- ➔ **Multi-agency monitoring bodies;**
- ➔ **Lawyers.**

 See – Section 3.5. – p.40

The information gathered in this Guide will also be useful for **authorities, administrations and staff members** of places where children can be deprived of their liberty while implementing their day-to-day tasks, when performing internal inspections and when receiving the visit of a monitoring body.

As the result of an EU project, this Guide has a **European scope**. However, with some adaptations in order to respond to different contexts or national specificities, the methodology and content may well be adapted and replicated to be used when visiting structures depriving children of their liberty in many countries throughout the world.

1.4. Rationale for the Practical Guide

It is well known that regular, external and independent monitoring visits to places of deprivation of liberty are a key instrument to prevent torture and other human rights violations and to protect fundamental rights. However, experience shows that even though a number of national and/or international mechanisms conduct monitoring visits to such places, the research conducted in the framework of the “**Children’s Rights Behind Bars**” project demonstrates that it is rare for them to focus only on children facilities and/or to have a child-rights approach integrated in their monitoring policy and methodology when visiting children’s facilities. In addition, the monitoring bodies that conduct visits to adult detention facilities are frequently the same ones conducting visits to children’s closed institutions. They often lack specific knowledge, competence and training on child issues, on the specific rules, standards and indicators that apply to the deprivation of liberty of children, and on specific principles and (communication) methods to be used when interviewing children. Child-specific and practical tools to the monitoring of such places are also often not available.

This Guide has therefore been designed to address all these concerns by providing **a practical tool** with a **child sensitive and preventive perspective**, taking into account all the particular needs and aspects that make the children even more vulnerable to any violations of their rights when they are deprived of their liberty.

1.5. Objectives of the Practical Guide

A. THE OVERALL OBJECTIVE of this Guide is to enhance the conditions of deprivation of liberty for children by providing monitoring bodies with a practical tool that will contribute to the improvement of their capacity to effectively and adequately prevent any risk and forms of abuse or violations of the rights of children deprived of liberty; and to reinforce the dignity and the respect of the fundamental rights of children deprived of their liberty.

B. THE SPECIFIC OBJECTIVES ARE:

- **To emphasise the relevant international and regional standards** that relate to the rights of children deprived of their liberty and to independent monitoring of places where they are held for any kind of reasons;
- **To raise awareness** of the different mechanisms regarding the important – preventive and protective / investigative – role they can play in monitoring places where children are deprived of their liberty;
- **To identify the basic principles of monitoring and the practical aspects** of deprivation of liberty of children to focus on when performing the visits;
- **To provide practical and methodological guidance** to effectively prepare, conduct and follow up the monitoring visits of places where children can be deprived of their liberty;
- **To highlight how monitoring reports and effective recommendations** can prevent any form of abuse of children's rights and initiate changes within institutions through a process of constructive dialogue;
- **To promote effective communication and cooperation** between national, regional and international monitoring bodies regarding the monitoring of places of deprivation of liberty of children.

1.6. How to use this Guide?

This Guide has been designed in a way that provides **different levels of practical guidance** depending on the degree of experience and the level of knowledge of users in child rights; deprivation of liberty of children; monitoring process and methodology.

For this purpose, **SECTIONS 2 & 3** of the Guide which relate to **the context of the deprivation of liberty of children and the monitoring mechanisms** are more descriptive and are therefore designed for users who are new to the concept of monitoring children's deprivation of liberty.

SECTION 4 which relates to **the monitoring methodology** is more practice-oriented and is dedicated to support users before, during and after the monitoring process to improve their methods in relation to children and their specific requirements. Pictogram's will help users to identify child specific aspects in particular for preparing, implementing and following up the monitoring process.

SECTION 5 includes all **the most important standards applying to the deprivation of liberty of children and child specific indicators**, detailing the benchmarks to be used by monitors during the monitoring process; identifying the people to be interviewed; indicating the places to look at in particular; the documents and registers to be consulted; what kind of questions should be asked and which specific aspects to pay particular attention to depending on the kind of establishment concerned and the different groups of children deprived of their liberty within these places.

SECTION 6 is dedicated to **the complaint mechanisms** as one of the particular aspects monitoring bodies should look at when performing visits in order to guarantee the effectiveness, accessibility and efficiency of the rights of children to be heard, to participate and to complain.

Finally, users will find – at the end of the Guide – **a simplified version of the CRC (ANNEX 1)**, useful tools including sample policies and guidance (**Ethical Guidelines – ANNEX 2, Child Protection Policy – ANNEX 3**) and the alphabetical **list of relevant decisions of the ECtHR (ANNEX 4)**. The last section of the Guide (**SECTION 7**) refers to our website where **relevant information, further readings and useful materials and documentation** are referenced.



Child specific
aspect



Quote



Question



Important
information

2. DEPRIVATION OF CHILDREN'S LIBERTY – CONTEXT

- WHY ARE CHILDREN DEPRIVED OF LIBERTY?
- WHERE CAN CHILDREN BE DEPRIVED OF THEIR LIBERTY?
- WHO DEPRIVES CHILDREN OF THEIR LIBERTY?

2.1. Context and forms of deprivation of liberty of children

All children without distinction can be deprived of their liberty for a variety of reasons. Consequently, deprivation of liberty can have different forms and can take place in different contexts.

In the context of criminal justice, children can be deprived of their liberty for being suspected, accused or convicted of having committed a criminal offence. These children can be arrested and placed in pre-trial detention; they can also be sentenced to a custodial sentence. Consequently, these children can be held in:

- Police detention facilities including cells in police stations or vehicles;
- Cells in court-houses;
- House arrest;
- Pre-trial detention centres or remand homes;
- Facilities, including prisons, that hold children who have been convicted for an offence.

Closely related to children deprived of their liberty in the context of criminal justice, are children who (allegedly) committed status offences, which would not be criminalised if committed by adults, such as living in the streets, begging, truancy etc. or children who have substance abuse problems. These children can end up being deprived of their liberty in one of the settings mentioned above or in a drug rehabilitation unit.

A second important context in which children can be deprived of their liberty concerns the context of **the child protection or child welfare system**. In this context children can be deprived of their liberty for reasons of protection or education, or because children have disabilities or suffer from physical or mental problems. These children can be held in:

- ➔ Educational institutions and rehabilitation centres;
- ➔ Child detention schools;
- ➔ Psychiatric institution;
- ➔ Establishments for disabled children;
- ➔ Facilities where children are placed or hospitalised (voluntarily or not) for their own protection;
- ➔ Youth care institutions;
- ➔ Drug rehabilitation units;
- ➔ Isolation cells/rooms (even in open institutions) where children can be held for their own protection or for security or disciplinary purposes.

Another context in which children can be deprived of their liberty is the context of **migration**. Unaccompanied or separated children, asylum-seeking children, migrant children can be deprived of their liberty alone or together with members of their family because they enter another country or have to leave a specific country. These children on the move can be held in:

- ➔ Reception or deportation centres;
- ➔ Retention centres;
- ➔ Return flights;
- ➔ Any form of administrative detention.

Administrative detention is also used as a general term to cover forms of deprivation of liberty ordered by the administration for a variety of reasons, one of which is detention for public security reasons. Other forms include military detention or detention for committing administrative offences.

This non-exhaustive list of contexts and forms of deprivation of liberty covers a wide range of places in which children find themselves deprived of their fundamental right to liberty. However, the different establishments and contexts should be isolated from one another and may well be strongly interrelated. For example, children in the context of criminal justice may end up in child protection facilities and the other way around.

Administrative detention may also be used to deal with children in conflict with the law. Children may also be moved from one context to the other. This can for example happen for migrant children who end up in the criminal justice system or children who are diverted from the criminal justice system to the child protection system. In addition, there are differences between facilities that have been specifically designed for children and facilities that are not, and between facilities that are run publicly or privately.

The Havana Rules (RPJDL) state that deprivation of liberty can be decided “*by order of any judicial, administrative or other public authority*”. In practice, the deprivation of liberty can be ordered by:

- ➔ Courts or (juvenile) judges or other judicial authorities;
- ➔ Police or law enforcement officials;
- ➔ Public prosecutions services;
- ➔ Administrative authorities, such as immigration services, border police, the military or security forces or private companies designated with public tasks and duties;
- ➔ Medical doctors, psychologists, social workers, child care and protection boards, youth care organisations, special commissions drawn up to decide on placement in educational or rehabilitation centres.

2.2. Context of vulnerability of children deprived of their liberty

The common feature of all of the previously mentioned forms of placement is that they deprive children of their liberty and that the children placed there are not allowed to leave at will. Deprivation of liberty places children in a particular dependent situation of an **imbalance of power** – i.e. children generally stay in institutions that can lack transparency and make them entirely dependent on the regime and administration. This in itself makes children vulnerable.

The age, level of maturity, stage of development, gender, ethnicity, psychological fragility and potential state of trauma, physical or mental disability, substance abuse, level of education, administrative status and family situation of children deprived of liberty added to that context of imbalance of power puts them in a situation that makes them more at risk of abuse and discrimination than adults or their peers in the community.

These risks can be from **staff members or other children, or from the regime of the institution itself**. The time of arrest by the police is, for example, particularly risky: the arrest can be arbitrary, the force can be used excessively as well as verbal abuses and threats, lack of information on their rights and no access to parents, guardians or legal assistance.

In breach of international standards, which state that children should be separated from adults “unless it is considered in the child’s best interest not to do so” (article 37(C) of the CRC), the absence of **separation between children and adults and between children themselves** can also be damaging. They may be more exposed to abuses and this compromises their ability to rehabilitation and reintegration into society. Examples: pre-trial detention alongside with convicted children, deprivation of liberty for immigration purpose in places where children and adults are mixed, deprivation of liberty of girls and women together or of boys and girls without separation, or of younger and older children together, etc.

The excessive use of **discipline and security measures** and of a punishing approach can also be at the origin of violence and anger, of reinforced psychological disorder, trauma and depression that can lead to violent behaviour, self-harm or suicide.

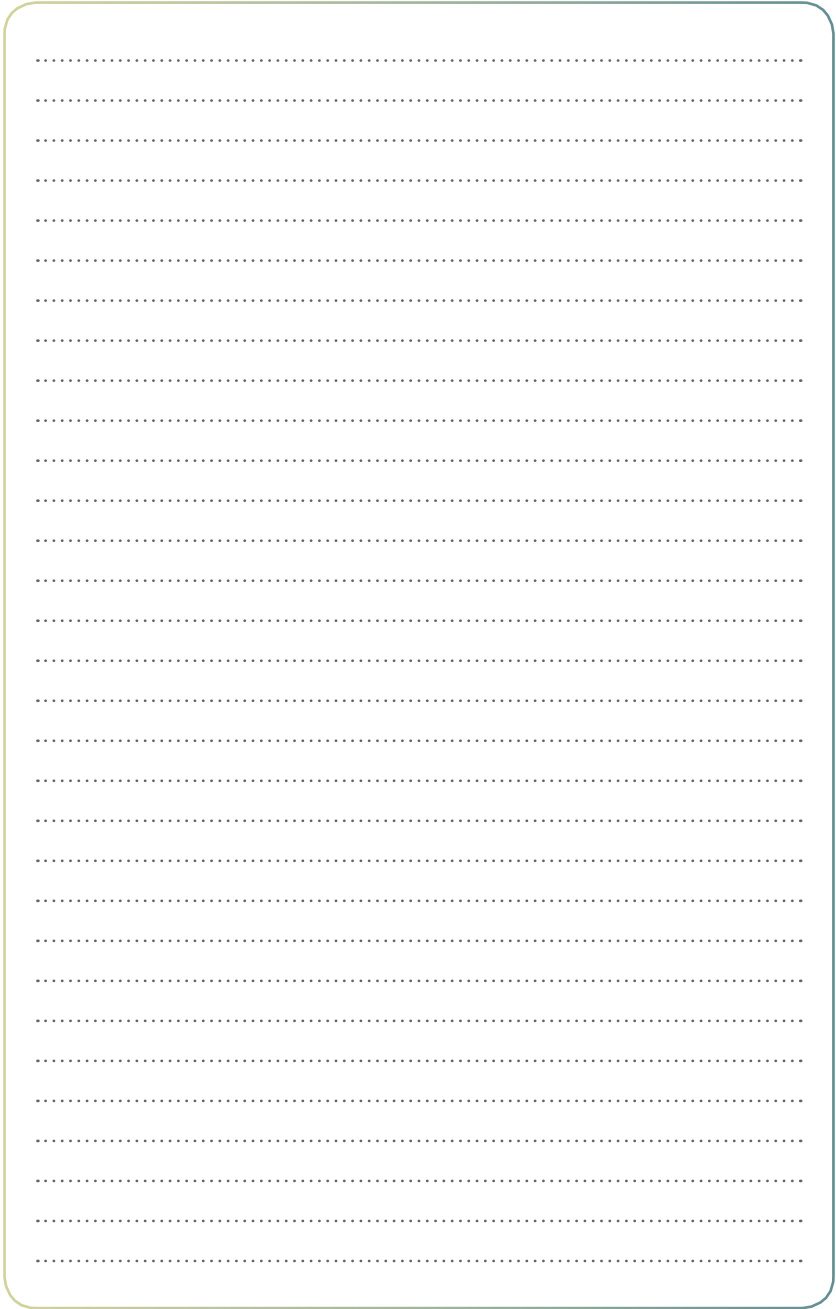
In breach with international standards that recommend that children should not be held in solitary confinement and that disciplinary measures and means of constraints are only used proportionately for security reasons, isolation and solitary confinement are still frequently used not only as a protective measure for the others and/or for themselves but also for disciplinary purpose.

Other negative effects of deprivation of liberty on children are the lack or inadequacy of **individualised care, treatment and/or educative programmes** as well as the denial or limited access to **physical activities, recreation, leisure, and contacts with the family and outside world** which, on the one hand, prevents the accomplishment of the rehabilitation and reintegration into community's purpose, and on the other, causes demotivation, idleness and contributes to risk of violence and ill-treatment.

Whether **the premises themselves** respond to the children's needs and particular rights, and the **location of the premises from the child's home and family** are also potential sources of violations of their rights and can contribute to difficulties with reintegration.

A lack of appropriate initial and on-going training of staff, and difficult working environments may also lead to inadequate treatment and care and to violation of children's rights.

Some children, due to their **situation of particular vulnerability**, are at heightened risk of being discriminated and/or abused and will require even more attention when it comes to safeguarding and prevention. This is the case for girls, foreign children or children on the move, children with mental health problems or with disabilities, children from ethnic or religious minorities and lesbian, gay, bisexual, transgender or intersexual children.



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3. MONITORING MECHANISMS OF PLACES WHERE CHILDREN ARE DEPRIVED OF THEIR LIBERTY



“Independent and qualified monitors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting.”

UN Committee on the Rights of the Child, General Comment N° 10

3

3.1. The right-based approach of monitoring

The CRC sets the general framework of the rights granted to children and all the above mentioned rules, standards and principles define their specific rights when they are deprived of their liberty taking into account that, aside from the right to liberty, they have the same rights as children living normal lives outside. These include the right to survival and development, the right to non-discrimination, the rights to participation and the right to have their best interests as a primary consideration in all decision that affect them. Children's rights are interdependent and should be approached with a holistic perspective.

Above all, the CRC emphasises that children should only be deprived of their liberty as a measure of last resort and for the shortest appropriate period of time; and the explicit and over-riding purpose of depriving children of their liberty should be to contribute to their education, rehabilitation and to prepare their reintegration into society.

A right-based approach of monitoring, consisting of **the consideration of children's rights and needs as a starting point**, is the reference from which monitors should perform their monitoring task in order to control the effective upholding of these rights, safeguarding and enforcing on the one hand (protective / investigative role), and ensuring that they are not violated or abused on the other hand (preventive role).

A right-based approach aims **to strengthen – on a long term basis – the capacity of right-holders** (the children) to call for respect of their rights and to legally and legitimately claim for redress and reparation in case of damages caused by the abuse or violation.

In contrast, an approach based solely on needs will aim to address – on a short term basis – unfulfilled needs and to provide immediate satisfaction without necessarily reinforcing the position of the people in need for the future.

This kind of approach also seeks **to build the capacity of duty-bearers** (the authorities) to respect, protect and guarantee these rights of the child rather than “just” fulfill their needs. It aims to address the complexities of deprivation of liberty with a **holistic approach**, taking into consideration the connections between individuals and the systems of deprivation of liberty in general.

Lastly, a right-based approach endeavors to ensure **accountability of the authorities**.

3.2. Object of monitoring children's deprivation of liberty

Monitoring children's deprivation of liberty involves examining, through onsite visits, the **different and interdependent rights of children** that must be guaranteed and upheld by the authorities while children are deprived of their liberty with a focus on:

General:

- **All the applicable legal and administrative measures and guidance** that applies to the place of deprivation of liberty with a view of protecting children, guaranteeing the best interest of children, their right to life, physical and psychological integrity, non-discrimination and right to participation;

And more specifically, but not limited to:

- **Living / material conditions** of their deprivation of liberty;
- **Protection from torture or cruel, inhuman or degrading treatment** as well as violence in general;





- ➔ **Regime** applied in the place of deprivation of liberty and the fulfilment of the purpose of the deprivation of liberty (education, rehabilitation, reintegration into society) as well as the continuity of the assistance after release;
- ➔ **Access to education, vocational training, work, physical activities, leisure and recreation;**
- ➔ **Access to medical / health care** and appropriate social, psychological and/or psychiatric support;
- ➔ **Separation** from adults and between children themselves;
- ➔ Recruitment, selection, composition, qualification, conduct, initial and on-going training of the **staff members and directors** of the facility in child issues;
- ➔ **Contacts** with the family, the outside world and **access to legal assistance and lawyer;**
- ➔ **Protection measures** including the right and access to defence and assistance as well as to complain and the importance of the record;
- ➔ **Safety of children**, including the interaction between staff and children, and between children;
- ➔ **Specific measures and equal treatment** of girls and other groups of children particularly at risk.

A complete and detailed list of all child specific indicators that monitors shall consider while performing their visit can be found in Section 5 which takes into account the full breadth of international and regional standards. The relevance of the local context should also be looked at when devising criteria appropriate to their context but local criteria should never be lower than those outlined in international standards.

3.3. Basic requirements for effective monitoring

- ⊙ INDEPENDENCE
- ⊙ EXTERNALITY
- ⊙ REGULARITY OF VISITS
- ⊙ POWERS OF INVESTIGATION / CAPACITY
- ⊙ INTERVIEWS WITH CHILDREN
- ⊙ REPORTING AND RECOMMENDATIONS
- ⊙ FOLLOW UP
- ⊙ COMMUNICATION AND COOPERATION

The international standards previously mentioned, refer to a series of criteria that monitoring mechanisms should fulfil to perform their mission effectively and with efficiency i.e. to guarantee the respect of children's rights while they are deprived of their liberty.

INDEPENDENCE

This first and probably most important characteristic is the independence / the autonomy both from the authority on which it depends (namely regarding human, material and financial resources, their election process, their composition, reports and recommendations), from the visited institutions and the administration the institutions depend on.

EXTERNALITY

The monitoring mechanism should be different from an internal entity. It should be distinct from the object of its control in order to avoid any conflict of interest or risk of partiality.

REGULARITY OF VISITS

The monitoring visits should ideally take place as regularly as possible; this does not necessarily mean frequently, but at least on a periodic basis. The regularity of the visits allows teams to know the places better, as well as the staff and the children and it helps to build a trusting relationship with them which is fundamental to establish a constructive dialogue with both of them, having due regard to their independence and impartiality. Children may find it particularly difficult to trust an unfamiliar adult and it will usually take time, sensitivity, flexibility and patience before a child feels that s/he can communicate freely.

Visits will be much more effective in promoting sustained improvement in the conditions of deprivation of liberty and treatment of children if they take place on a regular and systematic basis. Furthermore, regular monitoring visits enable assessment of the evolution of practices (changes and improvements) and follow up of the degree of implementation of previously issued recommendations.

However, occasional visits such as those performed by (national or EU) Parliamentarians or other bodies conducting informal monitoring visits are still efficient but their function is therefore more to observe and report rather than prevent.

 See – Section 4.1. / E. – p.51




POWERS OF INVESTIGATION / CAPACITY


In order to be able to fully and properly perform their monitoring missions, monitoring team should have the capacity:

- To perform unannounced visits;
- To have access to all places where children are deprived of their liberty on a State's territory and to all parts of the facility itself;
- To have access to all information and records about the treatment and conditions of deprivation of liberty including about all security and disciplinary measures for any child;
- To choose freely which places of deprivation of liberty to visit and which children to interview;
- To have access to all staff members;

- ➡ To receive confidential correspondence from children deprived of their liberty and to follow them up;
- ➡ To follow up (themselves or to refer to the competence authorities) on allegations of abuse or violation of children's rights;
- ➡ To produce, disseminate and take all the necessary follow-up measures of the report including recommendations of improvement.

INTERVIEWS WITH CHILDREN

Every monitoring visit should include interviews with children deprived of their liberty as the expression of their right to participate. These interviews can give valuable insights into a closed facility regime and provide monitors with qualitative data to report on. However, interviewing children is really delicate and is a process that needs specific training or experience in communication with children, proper preparation, adequate implementation and should be conducted sensitively and with flexibility. Monitors could be confronted to challenging ethical issues while interviewing children. They should always refer to an ethical Guidelines  *See – Section 4.1. / G. – p.56 & Annex 2. – p.158* for details of all the principles to be respected while interviewing children deprived of liberty  *See – Section 3.3. – p.32*, a specific methodology on how to interview and how to address common problems  *See – Section 4.3. / D. – p.73.*

In any case, interviews of children must always be conducted on a voluntary, confidential basis and with a child-sensitive approach, with or without the presences of a third person of the child's choice  *See – Section 3.3. – p.32.* Children should be offered the right to be informed of the result of the monitoring process.

REPORTING AND RECOMMENDATIONS

Reporting on the findings of the visits should be completed correctly², in a timely manner and reported to the right people.

Reports should include all of the aspects and issues that have been covered and identified during the visits. Improvements that might have been observed since the previous visit should be highlighted and each good practice that can be inspiring should also be noted. Concerns and issues should be discussed with the directors of facilities before the reports are addressed to the authorities in charge of the place of deprivation of liberty. The reporting process should take place as soon as possible after the completion of the visit.

The recommendations for improvement included in the reports should be written in a constructive and achievable way and be adapted to who they are intended for. They should be discussed with the directors of places where children are deprived of their liberty and addressed to the authority in charge of the visited facility and in particular to the level of authority that has the power to make things change. Institutions' management shall respond to recommendations once the report is received.

Monitoring bodies shall have the power to make the reports and recommendations available publicly. They must respect the principle of confidentiality of interviews (in general, and especially with children) in order to prevent any risk of reprisal.

FOLLOW UP

Reporting and addressing recommendations without a systematic follow-up would make no sense. It is very important to follow up the recommendations and ensure that they are being effectively implemented. The extent to which there have been improvements or changes further to the recommendations made should be mentioned in the next reports. Follow up meetings with directors and/or authorities could also be organised during the process, as well as other strategies to enforce the effective implementation of recommendations.

² Sometimes, in the interest of the child, it is not desirable to report in detail, for example when allegations are still under internal scrutiny, when they are not sufficiently substantiated or raise a risk of reprisal.

COMMUNICATION AND COOPERATION

The different monitoring mechanisms for visiting places where children are deprived of their liberty should at the minimum communicate and for best practice, cooperate with each other and with key actors.

They should share information and findings by publishing their reports and making them available to other national, regional and international monitoring bodies, to key authorities (administration, Ministries, parliamentarians, etc.), to civil society groups and sometimes, where it is appropriate and with a particular attention to the content, to the media. Monitoring bodies that are intending to visit the same places should be informed of the respective planning of visits and should conduct their visit in a complementary manner (avoiding unnecessary duplication), completing the findings already gathered from its own perspective and insights, ensuring a follow up of specific issues or concerns. In addition, they should consider, in some cases, to conduct joint visits.

As regards to monitoring bodies that are operating on the basis of confidentiality, where the sharing of findings and outcomes is impossible, the other monitoring bodies should as a minimum requirement do their best to avoid overlap or duplication.

3.4. Basic principles for monitoring

- ⊙ DO NO HARM
- ⊙ KNOW THE STANDARDS
- ⊙ RESPECT FOR THE AUTHORITIES
- ⊙ CREDIBILITY
- ⊙ CONFIDENTIALITY
- ⊙ SECURITY
- ⊙ SENSITIVITY
- ⊙ OBJECTIVITY
- ⊙ VISIBILITY

Monitoring places where children are deprived of their liberty should be conducted in accordance with basic principles. In this context, it is fundamental that those who conduct such visits understand, keep in mind and respect the series of basic ethical principles, which are listed below ³.

A. DO NO HARM



Often when monitoring a place of deprivation of liberty for children there is a conflict of interest between the need to obtain information and the safety of the children deprived of their liberty, for example, the risk of reprisals for those who may be interviewed, or the risk of psychological and emotional harm or trauma caused by an inappropriate interview. When carrying out monitoring visits, the safety of the children in the facility must be paramount and prioritised at all times. No action by the visiting body should jeopardize this.

B. KNOW THE STANDARDS

Monitors must have a good knowledge of the international, regional and national standards, both those which provide their mandate to monitor, and those which set out the appropriate treatment and conditions of the facilities to be visited.

³ These principles are mainly inspired by the 18 basic principles of monitoring identifies in Chapter V of OHCHR (2001), "Training Manual on Human Rights Monitoring", Professional Training Series N°: 7, UN – See these principles in more details in APT, "Monitoring places of detention – a practical Guide", (2004), pages 27 to 32.

C. RESPECT FOR THE AUTHORITIES

A visiting body's role is to monitor the authority's compliance with the rights of children deprived of their liberty and this is best achieved by establishing a minimum basis of mutual respect. Monitors should respect the functioning of the authorities and identify the hierarchical levels and their responsibilities so that problems can be addressed at the right level.

This relationship of mutual respect does not mean that the authorities have any influence on the monitoring team and, in any case, it must not affect its objectivity and impartiality.

D. CREDIBILITY

Credibility is crucial to successful monitoring and monitors should not make any promises they cannot follow through with. When interviewing children, it is especially important to ensure that children know the limitations of what a monitor can achieve and that any information given is anonymous and confidential.

E. CONFIDENTIALITY

All information received by a monitoring body must be treated confidentially as to do otherwise can have serious consequences both for the person interviewed and the monitors' credibility. Special measures should be taken to keep recorded information anonymous, such as the identities of interviewees, for example, by using code names etc. 

F. SECURITY

Monitors must be aware of both their own security, the security of those they come into contact with and the security of the institution as a whole.

G. SENSITIVITY

When interviewing children deprived of their liberty, it is imperative that monitors are sensitive to the traumatic effect that recalling certain events may have on them and to their potential trauma, psychological disorder and/or fragility. They should be aware of, and trained in, child friendly communication skills.

H. OBJECTIVITY

Monitors should work to record actual facts and work to provide a report of the facility that is objective and free from emotion or preconceived ideas.

I. TRANSPARENCY

Monitors should be sure that the authorities know of their methodology and the extent of their mandate for monitoring the institution. The work of monitors should be publicised through their written reports and careful use of the media to inform the public of their work and generate debate, policies and advocacy.

3.5. Overview of different monitoring mechanisms

A range of different organisations or bodies may be involved in monitoring facilities where children can be deprived of their liberty. Each mechanism can provide **different perspectives, vision and functionality** as well as **complement each other** provided that they communicate and cooperate effectively.

What we see in practice is that there are often many monitoring mechanisms but little or none solely dedicated to monitoring places where children are deprived of their liberty or using a child-rights based approach or that have a particular department or agent specifically assigned to that task.

Yet, the special status of children deprived of their liberty require either a separate and specific monitoring body or special arrangements within an existing body to reflect specific needs, particular vulnerability and gravity of rights violations children may experience in these circumstances.

A. INTERNATIONAL MECHANISMS

International bodies have been established with a mandate to visit all places of deprivation of liberty – including those where children can be found - and to report to governments on their findings.

The United Nations: The Sub-Committee on Prevention to Torture and other cruel, inhuman or degrading treatment or punishment (SPT)

The SPT established under the OPCAT, can carry out regular visits to all places where people are deprived of their liberty, with no prior authorisation from the State Party concerned and no prior information regarding its programme of visits.

Afterwards, the SPT provides a confidential report including recommendations to the State Party concerned and, if relevant, to the NPM. The confidential report can be published upon the State's initiative. Recommendations are not binding but States have to examine them and enter in dialogue in relation with their implementation. If the State Party refuses to be cooperative, the Committee against Torture may adopt a public statement or publish the report, at the suggestion of the SPT.

As of the entry into force of the OPCAT in 2006, States Parties that have ratified this protocol are also required to establish their own National Preventive Mechanisms (NPM) to carry out the monitoring of deprivation of liberty's facilities with a proactive preventive mandate.

 *See – Section 3.5. – p.47*

The SPT has also the mandate to advise the States Parties on the establishment of NPMs and to provide them with assistance and training while implementing their obligations under the OPCAT.

Geneva Conventions: The International Committee of the Red Cross (ICRC)

The Geneva Conventions mandate the ICRC to visit both prisoners of war and civilians interned during conflict, including children. They also visit people deprived of their liberty in other situations of violence. According to the Conventions, the ICRC has full liberty to select the places it wishes to visit and must be able to interview the detainees without witnesses. The duration and frequency of such visits may not be restricted. However, visits may be refused for reasons of imperative military necessity, but only as an exceptional and temporary measure. The aim of their visit is to ensure human treatment of detainees, prevent abuse and improve conditions.

B. EUROPEAN MECHANISMS

There are also regional bodies established by the Council of Europe, mandated to visit places of deprivation of liberty and to report to governments on their findings.

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

The CPT is the first international monitoring body established especially to perform preventive visits. Upon ratification of the Convention by State parties, the CPT has unrestricted access at any moment to all places of any kind where adults or children are deprived of their liberty, within Council of Europe States.

The Committee is able to interview any person deprived of liberty or other people who can provide information to them. The CPT may conduct periodic and ad hoc visits (i.e. “required by the circumstances”).

After each visit, a report is sent to the State concerned containing the CPT's findings and recommendations to which the State must respond in details. Visits are based on the CPT Standards which include a specific section on juveniles deprived of their liberty ⁴. Both the report and the response are kept confidential until the State decides to authorise the publication.

The Council of Europe Commissioner For Human Rights

Within its mandate, the Commissioner carries out visits to all Member States to monitor and evaluate the human rights situation. In the course of such visits, he meets with the highest representatives of government, parliament, the judiciary, civil society and national human rights structures. He also talks to ordinary people with human rights concerns, and visits places of human rights relevance, including prisons, psychiatric hospitals, centres for asylum seekers, schools, etc.

Following the visits, a report or a letter may be addressed to the authorities of the country concerned containing an assessment of the human rights situation and recommendations on how to overcome shortcomings in law and practice.

The Commissioner also conducts thematic work on subjects central to the protection of human rights in Europe. He provides advice and information on the prevention of human rights violations and releases opinions, Issue Papers and reports. He has notably issued a position paper on Children's Rights (2010) and two issues papers on the matters of children and juvenile justice (2009) and on children and corporal punishment (2008) ⁵.

⁴ 9th General Report on the CPT's Activities 1998; 24th General Report 2015

⁵ The Council of Europe Commissioner for Human Rights, Positions on children's rights (CommDH/PositionPaper(2010)1), Strasbourg, 3 May 2010; Children and juvenile justice: proposals for improvements (2009); Children and corporal punishment: "The right not to be hit, also a children's right" (2008)

C. NATIONAL MECHANISMS

At the end, complemented by international and regional monitoring bodies, there are national monitoring bodies. The following list is a non-exhaustive list of the different types of national monitoring bodies that have been identified through the national research performed in the framework of the “**Children’s Rights Behind Bars**” project.

Statutory Monitoring bodies

These are monitoring bodies whose responsibilities and functions are established by law. In order to guarantee their independence, they should be established by and accountable to the Parliament to whom they report publicly. It should be legislated for them have full access to all kind of places where children are deprived of their liberty and produce reports to authorities that shall follow up on their recommendations.

NPMs established under the OPCAT

NPMs are independent external bodies (existing or to be created) able to carry out unannounced visits to all places where people, including children are deprived of their liberty, to establish reports including recommendations and to follow up their implementation.

States Parties are free to choose the type of body that is most appropriate to their particular legal context (ex: a national human rights institution, an ombudsperson, a parliamentary commission, an NGO, etc.) and whether the NPM should be unique or should form a system of several bodies or commissions based on a regional or thematic division of task for example.

The SPT adopted (in 2010) a set of Guidelines on national preventive mechanisms in order “*to add further clarity regarding the expectations of the SPT regarding the establishment and operation of NPMs*” as well as an Analytical self-assessment tool for NPMs.

Children's Commissioners / Ombudspersons for Children / National Human Rights Institutions (NHRIs)

These bodies have a very broad mandate to promote, safeguard and assess the respect of children's rights, including the statutory right of monitoring places of deprivation of liberty where children are held and receiving requests and complaints from children who are deprived of their liberty and to investigate these.

The depth and frequency of their visits may, however, vary. Moreover, the task of monitoring children's facilities is often only one of their many tasks.

As a consequence, the required time, adequate human, material and financial resources as well as the necessary regularity of the visits are not always devoted to the monitoring mission of places where children are deprived of their liberty. Also, visits to such places are often undertaken to investigate specific allegations and examine an individual complaint rather than to preventively monitor and assess the overall conditions of deprivation of liberty.

Depending on the situation, some advantageous features of the ombudspersons and national human rights institutions are the following:

- ➔ Independent and external
- ➔ Broad mandate
- ➔ Specific focus on children
- ➔ Accessibility
- ➔ Capacity to perform unannounced visits and large powers of investigation
- ➔ Public reports to the Parliament (annual and/or thematic)
- ➔ Authoritative recommendations
- ➔ Cooperation with other key actors

Special monitoring bodies

In some countries, special monitoring bodies have been set up under a specific Ministry (e.g. prison monitoring committee, police inspection commission) or under the Parliament but assigned to certain facilities of deprivation of liberty (ex: mental health institutions, immigration facilities).

These Committees and Commissions are legally established as external monitoring mechanisms. Their members are however generally appointed by the relevant Minister.

Such bodies can be composed of officials, independent civilians, NGO representatives and experts (judges, lawyers, medical experts, social workers, etc.). The overall mission of these bodies is the independent control of the places (e.g.: prisons or police cells) and the monitoring of the treatment of the detainees (including children). In addition, they often have the mandate to advise the Ministry responsible for the facility on necessary improvements of the legislation or rules and regulations.

Civil society monitoring

In some countries, civil society organisations have the necessary authorisation / accreditation to regularly visit places of deprivation of liberty.

Monitoring by civil society is usually characterised by a high degree of independence from the authorities and of the team members. However, the legal basis for monitoring can often be weak, based on the discretionary powers of one or several Ministries or Ministers. In this case, civil society monitoring can depend on the political will of the authorities. As a consequence, in some circumstances, certain NGOs may not enjoy all the required powers of investigation while monitoring and they may not feel free to report their findings with the essential degree of independence required. Another difficulty that may infringe on the efficiency of their task can be their limited financial resources in order to cover travel costs, or to pay the monitors' fees for example. Yet, this obstacle may be overcome by constituting platforms of collaboration in order to develop synergies and to divide the monitoring tasks (and required resources) amongst organisations.

Judicial monitoring

Judges often have a formal role of oversight of facilities by visiting and controlling the conditions in the places of deprivation of liberty, supervising the enforcement of the measures and hearing children's complaints. Such monitoring works best when the judges are able to devote adequate time and resources to this part of their work. In some countries, there is a specific judge in charge of the supervision of settings where children can be deprived of their liberty. Their knowledge of places of deprivation of liberty gained through investigating individual cases can lead them to pay more attention to the general conditions and regime of deprivation of liberty and to report back their findings to authorities. As for children, they generally know the judge and research shows that children perceive them as powerful.

Parliamentary inspections

In most countries, the elected (EU or national) parliamentarians have the right to visit any places where people, including children are deprived of their liberty as part of their function of scrutinizing the executive. Reports summing up their observations, findings and recommendations are usually made in public session. As part of their legislative function, they can also use the conclusions of their visit in the lawmaking process.

Lawyers

As a secondary duty, lawyers may play an informal monitoring role whilst implementing the right to visit their clients, the right to be contacted anytime free of charge and without limit by their client, the right to be informed of all the measures of constraint taken against their client (ex: solitary confinement) and to assist him/her in these circumstances, etc.

The lawyers' informal monitoring works best when adequate attention, time and resources are dedicated to it. It becomes extremely efficient when lawyers report findings not protected by legal privilege to key recipients or to services that have the power to intervene and follow up on allegations.

Monitoring bodies making regular visits of monitoring (such as NPMs or children's ombudspersons) should – as a matter of good practice – make themselves known to lawyers to create an effective channel of information sharing between them.

Multi-agency monitoring

Many countries do not just have a single monitoring body but a range of organisations and agencies that are playing this role, working together to provide comprehensive oversight of places where children are deprived of their liberty. This is especially the case of small countries (like Luxembourg) where this model of monitoring is promoted. In the case of multi-agency monitoring, cooperation between these bodies is not only an asset but is fundamental for the effectiveness of their mission.

4. MONITORING METHODOLOGY

Each monitoring body must establish a clear methodology to perform its visit effectively and to meet the required children's rights standards.

The monitoring methodology shall be based on the following elements:



- ➔ the scope of the mandate of the monitoring body;
- ➔ the objectives to be achieved;
- ➔ the extent of its powers;
- ➔ the material, financial, human resources available and required;
- ➔ the standards for effective monitoring [□ See – Section 3.3. – p.32;](#)
- ➔ the basic principles to be respected while performing the monitoring [□ See – Section 3.4. – p.37;](#)
- ➔ all the concerned standards and child-specific indicators [□ See – Section 5. – p.93.](#)

Monitoring involves three required stages none of which can be overlooked:

- ⦿ **Preparation of the visit (*before*)** – [□ See – Section 4.2. – p.60](#)
- ⦿ **Implementation of the visit (*during*)** – [□ See – Section 4.3. – p.67](#)
- ⦿ **Follow up of the visit (*after*)** – [□ See – Section 4.4. – p.83](#)

4.1. Developing a monitoring strategy

- ⊗ UNDERSTAND THE OVERALL CONTEXT OF CHILDREN'S DEPRIVATION OF LIBERTY
- ⊗ DEFINE CLEAR MONITORING OBJECTIVES
- ⊗ SET AN OVERALL TIMEFRAME FOR THE MONITORING PROGRAMME
- ⊗ SELECT PLACES WHERE CHILDREN ARE DEPRIVED OF THEIR LIBERTY TO VISIT
- ⊗ DEFINE THE NATURE, DURATION AND FREQUENCY OF THE MONITORING VISITS
- ⊗ DESCRIBE THE MONITORING TEAM
- ⊗ ADOPT ETHICAL GUIDELINES AND CHILD PROTECTION POLICY
- ⊗ GET INFORMATION ABOUT, COMMUNICATE AND COOPERATE WITH OTHER VISITING BODIES

Each monitoring body should establish a monitoring strategy.


From the very beginning, the monitoring strategy must put the child, his/her rights, needs and specificities as the centre of its objectives.

A. UNDERSTANDING THE OVERALL CONTEXT OF CHILDREN'S DEPRIVATION OF LIBERTY

To understand the general context in which children's deprivation of liberty occurs, monitors shall **conduct research** to gather all available information concerning **the legal, social and political context of deprivation of liberty of children** of the State concerned and the most **recent available statistics** on the matter.

Important elements to consider are:

- ➔ The **international (legal) framework** composed of: international instruments ratified by the State concerned in terms of deprivation of liberty for children [□ See – Section 1.2. – p.17](#); recommendations issued by the Treaty bodies in their reports; general comments or conclusions regarding the deprivation of liberty of children, the CPT's Standards and reports, the ECHR's jurisprudence [□ See – Section 4.1. / H. – p.58 & Annex 4. – p.162](#);
- ➔ The **national legal framework** of the deprivation of liberty of children (who may be deprived of liberty, at what age, for what reasons, by whom, in what kind of facility(s), for how long; etc.) [□ See – Section 2.1. – p.23](#);
- ➔ The **policy Guidelines** of the deprivation of liberty for children in the country and the **recent policy developments** in this area;
- ➔ Examine **possible conflicts between local or national regulations**, Guidelines or policies and international standards.

- The **different places where children may be deprived of their liberty**, the rules and regulations that govern these places, the authorities responsible for these institutions, their capacity, their regime, the status and different groups of children deprived of their liberty within these places, etc.;
- The **different monitoring bodies operating** in these different places where children are deprived of their liberty; their mandate; the extent of their powers; their composition; the date of their last visit; the content of their latest reports and recommendations
 *See – Section 3.5. – p.40;*
- **Information on practice and on specific incidents** (research, media).

B. DEFINING MONITORING OBJECTIVES

On the basis of their mandate and the rationale of their function, monitoring bodies shall define **clear goals and objectives** to their visits.

In general, due to the guiding principles (CRC, article 37) that deprivation of liberty of children should be **a last resort measure**, that can only take place **in exceptional cases**, with due respect of **the best interest of the child** and **for the shortest possible time**, the objectives of the monitoring of places of deprivation of children may be to:

- **Ensure that the deprivation of liberty of children is implemented in conditions respectful of human dignity, safeguarding children's physical and mental integrity and in compliance with all the rights granted to children** by the related international, regional and national standards;
- **Ensure that the objectives assigned to the deprivation of liberty of children**, namely education, rehabilitation and reintegration into society **are effectively pursued**, and that adequate financial and human resources are devoted to that purpose and to post-release care and assistance;
- **Ensure** that in case of violation or abuse of their rights, children deprived of liberty can effectively have **access to legal assistance and to effective complaint mechanisms**;
- **Ensure and reinforce** the enforcement of the **right of the child to participate** – the right to express their views in all matters affecting them, and that those views are heard and given due weight in accordance with the child's age and maturity.

While defining its goals and objectives, each monitoring body must be **realistic** as to what can realistically be achieved.

C. SETTING AN OVERALL TIMEFRAME FOR THE MONITORING PROGRAMME

The timeframe for the monitoring programme should be based on the following elements:

- the **duration** of the monitoring body's **mandate**;
- the time required for the accomplishment of a **complete monitoring cycle** (preparation - implementation - follow-up of the visit);
- when possible, the **regularity** of the visits – [☐☐ See – Section 3.3. – p.32](#);
- the capacity to plan **unannounced and/or ad hoc visits**.

D. SELECTING PLACES WHERE CHILDREN ARE DEPRIVED OF THEIR LIBERTY TO VISIT

Before selecting the places to be visited in priority, each monitoring body should establish a **complete and updated mapping of the places where children are deprived of their liberty located in its scope of intervention** and gather **all useful information in relation to these places** [☐☐ See – Section 2. – p.23 & Section 4.1. / A. – p.48](#).

The order in which the facilities will be visited will then depend on the specific objectives set by the monitoring body.

The following (non-exhaustive) **criteria** – alone or together – may help the monitoring body to select the different places to be considered:


The risk (potential or actual) to which children are exposed:

- Police custody (at the time of arrest, during transportation or questioning);
- Pre-trial detention centres or remand homes;
- Facilities where children are held together with adults (pre-trial detention centres or remand homes, police custody, immigration detention facilities, prisons, etc.);
- Solitary confinement rooms or other similar rooms in which children are completely isolated (isolation cells, time out cells, separation units, etc.);
- Places not traditionally related to detention (hospitals, immigration centres, drug rehabilitation units, etc.).

The available information:

- Number of complaints registered by external complaint mechanisms (both large numbers or complete lack of complaints);
- Press articles or research studies reporting conditions of living, treatment, allegations or cases of abuse, etc.;
- Information received from other sources, such as other national or international visiting bodies.

Sample:

- Places deemed to be most representative of the different kind of facilities where children are deprived of their liberty in the country  See – Section 2.1. – p.23;
- Other places, for instance those not frequently visited, less accessible or not traditionally related to detention (hospitals, immigration centres, drug rehabilitation units, etc.);
- Cross selection of different kinds of places of deprivation of liberty and/or different children (younger and older, boys and girls, on remand and convicted, with mental health problems or with disabilities, etc.).

E. DEFINING THE NATURE, DURATION AND FREQUENCY OF THE MONITORING VISITS

Visiting places where children are deprived of their liberty is the **main source of information** and **most effective tool of monitoring**.

Different types of visits may take place and will be carried out differently notably in terms of timing and frequency, depending on their nature and purpose.

Nature-Function

Two important distinctions can be made between preventive visits and investigative visits, and within preventive ones, between in-depth and snapshot visits.

Preventive visits can take place at any time, generally on a regular basis. They are pro-active and do not attempt to respond to individual cases. Their focus is to prevent any violation or abuse of children's rights, analyse (from a holistic perspective) the place of deprivation of liberty as a system and assess all aspects

related to the deprivation of liberty that could lead to a violation of children's rights, other offences or abuses to human dignity in this context. For example the practice of the staff members, or stated within the rules or regulations applicable to the place through values or attitudes that take place in the facility.

Through a positive approach and a constructive dialogue, the preventive visit will lead to a culture of improvement in the visited places of deprivation of liberty. In that sense, it is also important to focus on dynamics that display good practice and to highlight them.

Furthermore, preventive visits can take several forms:

- **In-depth visits** will last longer (from 1 to several days) and involve a large professional multidisciplinary team that looks at all or a broad range of aspects of the functioning of a place of deprivation of liberty. Their main objective is to document the situation thoroughly, analyse risk factors and identify both problems and good practice. These visits are carried out regularly by monitoring bodies such as the NPMs.
- **“Snapshot” visits** are much shorter (from a few hours to half a day) and involve an individual or a smaller team. The main objective is to get an overall picture of the place of deprivation of liberty. These visits also aim at having a deterrent effect and contributing to the transparency of places of deprivation of liberty and accountability of their management. EU or national Parliamentarians for example are much more likely to conduct such visits.
- **Protective / Investigative visits** take place in response to a specific event or complaint lodged by children deprived of liberty. This kind of visit is more occasional. The focus of protective / investigative visits is more individual and reactive. Its purpose is to examine the allegations, to find facts and investigate problematic aspects of the deprivation of liberty that were at the origin of the event or rights violation, in order to restore children in their rights, and potentially to repair the harm that has been caused.

In addition to their preventive, protective or investigative role, visits can also have the following **functions**:

- **Gathering information** regarding conditions and treatment in places where children are deprived of their liberty to establish a baseline to assess future improvements;
- **Gathering statistics** on the number, the characteristics of children deprived of their liberty and on specific child rights violations (for example, whether children are being imprisoned in adult prisons; whether children in pre-trial detention are experiencing excessive delay in the processing of their cases, etc.);
- **Providing a basis for direct and constructive dialogue** with authorities in charge of rehabilitating children deprived of their liberty;

- ➊ **Gathering information about children's experience of deprivation of liberty and children's perception of their rights;** for example, they can be asked about the way they were treated whilst in police custody, during questioning or court hearings, whilst they were in solitary confinement, etc.;
- ➋ **Ensuring that children are aware of the existence of their right to lodge a complaint** and making sure that they perceive this right as meaningful and useful.

Models

Unannounced visits enable the monitors, having the benefit of the surprise effect, to have a more realistic perception of the living conditions and treatment of children in the visited place of deprivation of liberty. The unpredictability has the advantage of ensuring for the monitors that when the visit is undertaken, special measures have not been taken to embellish the situation and/or to mask any potential problem and staff members or children have not been prepared to be interviewed.

Announced visits are those organised in a way so that the visited places of deprivation of liberty have been informed that a monitoring visit will take place and of its purpose and objectives. The aim of the visit could be to follow up on previous recommendations or to examine a specific issue.

Duration

The length of visits depends on **the nature and the purpose / function** of the visit as well as on the (human and financial) resources of the monitoring body. However, in any case, the visit should be for an **adequate duration of time** for the visiting team to examine the facility, to observe the living conditions and treatment of children deprived of their liberty, to interview the director, staff members and children willing to participate.

Several factors may be used to estimate the length of the visit:

- ➊ the size and type of the visited place;
- ➋ the number and the different groups of children (younger and older, boys and girls, on remand and convicted, with mental health problems or with disabilities, etc.) deprived of their liberty;
- ➌ the location of the facility;
- ➍ the amount of information already gathered about the place to be visited;
- ➎ whether the place has already been visited by the same or another monitoring body or not;

- the advices given by others monitoring bodies about the foreseen time required to be dedicated to the visit of this place;
- the security regimes applied (the higher the security, the longer it can take to move around within the facility);
- the languages spoken by children deprived of their liberty and the possible need for interpretation.

Frequency of the visits

The more **regularly** visits take place, the more effective they are in terms of prevention of torture or ill-treatment and promoting sustained improvement.




However, the monitoring body should also keep in mind that – on the one hand, too many visits in the same place may be seen as constant intrusion by children and that – on the other hand, too frequent visits may disrupt or obstruct the work of the staff in favour of children deprived of their liberty (schooling, activities, etc.).

It is thus important to strike a balance between the need for efficient monitoring and the constraints inherent to a group of children deprived of liberty, and the management as well as the programme of activities that take place in the facility. Unexpected situations may also arise so that the visiting team should be prepared to be **flexible** when defining the length and frequency of its visit.

In addition, more occasional visits (such as those performed by national or EU parliamentarians) with another function than prevention may also have an important monitoring impact. [See – Section 3.3. – p.32](#)

F. DESCRIPTION OF THE MONITORING TEAM

Composition / Competences

The visiting team should ideally be composed by **well-qualified** monitors with a **high degree of sensitivity, experience, with child specific training** regarding children's deprivation of liberty. 




The team should ideally be **multi-disciplinary** and should be composed in accordance with the type of facility to be visited and the groups of children deprived of their liberty represented within the facility concerned.

It is always useful to have at least one monitor with a legal background within the team. The presence of a health professional may also be of particular importance where cases of torture or ill treatment may be reported and/or to access to medical files and/or to facilitate the contacts with the medical staff members with respect to medical confidentiality. In addition, the following fields of expertise could usefully complete the team: **child rights and in particular juvenile justice, social work, education / pedagogy, criminology, child psychology and/or (pedo-) psychiatry, etc.** Notwithstanding the abovementioned special expertise and competences, a monitor should also always remember that **using common sense** is always valuable when conducting monitoring visits.

The composition of the team must also reflect **gender equity** and it should, as far as possible, integrate the **ethnic, linguistic and regional background** of the group of children held in the visited facility. **The inclusion of a former child-detainee may also be considered with the added value of his/her own experience of deprivation of liberty.**

Training


The **initial training** of monitors should ideally cover the following elements:

- the (national, regional and international) legal framework of children deprivation of liberty;
- the basic principles of monitoring  See – Section 3.4. – p.37;
- the key needs, issues and problems as well as their potential causes related to deprivation of liberty of children and child protection policy;
- the connections between social exclusion and deprivation of liberty;
- the ethical principles, skills of communicating with children and techniques of interviewing children in a context of deprivation of liberty;
- the methodology to practically conduct a monitoring visit and interview staff members and directors of places where children are deprived of their liberty;
- the methods to formulate and address reports and recommendations.


The need for **ongoing training** is fundamental. It ensures awareness of the last developments and necessary knowledge and skills to deal with specific issues in relation with deprivation of liberty of children. In addition, it contributes to share experience with other people conducting the same kind of monitoring.



Interpretation

If interpretation is required, interpreters should be **duly informed of their role**, of all the details related to the visit and **properly prepared and trained in child issues** (protection, confidentiality, communication, etc.). 

For further developments regarding the interpreters:

 See – Section 4.2. / G. – p.65 & Section 4.3. / D. – p.73

Size

The size of the monitoring team should be **adapted to the place to be visited** and depends on the nature of the visit, its purpose, the number and different groups of children deprived of their liberty, the type of facility, etc.

The team could be composed of two (2) to six (6) monitors possibly accompanied by interpreters.

The case of Parliamentarians

Parliamentarians usually perform the monitoring alone or in very small groups. The above-mentioned competences, experiences and/or training required for the other monitoring bodies do not necessarily apply to parliamentarians who are not imperatively supposed to have any specific knowledge about children's rights (primarily in the matter of deprivation of liberty). It is obviously recommended that they should be familiar with the context and to have adequate knowledge prior to any visit in accordance with the type, objectives and functions of monitoring.

G. ADOPT ETHICAL GUIDELINES AND A CHILD PROTECTION POLICY

Ethical Guidelines for interviewing children deprived of their liberty

Interviewing children deprived of their liberty is a central and key element of effective monitoring. This requires not only child specific training and experience or particular human qualities (great sensitivity, patience, empathy, flexibility) but also a clear set of Ethical Guidelines to apply and follow, with respect to these Guidelines.

The Guidelines could, for example, include the following elements:

- **Basic principles** for conducting an interview with children in the framework of a monitoring visit [□ See – Section 3.4. – p.37;](#)
- **Inclusion and exclusion criteria** to the child participation to an interview or a focus group [□ See – Section 4.3. / D. – p.73;](#)
- **Key elements for preparing-conducting-concluding** an interview with children (preliminary contacts, introduction to the interview, informed consent, presence of third person, monitors' behavior, attitudes and perceptions, etc.);
- **Issues / common problems** that need to be considered before- during- after an interview with children.

The Guidelines address all of these concerns in order to mark out the **interviews with children** in such way that they are **performed in the safest and most respectful way**, in consideration of the children.

Child Protection Policy

In addition to these Guidelines, the monitoring team must develop a child protection policy so that they can **react immediately** when facing **a case of child rights abuse or a risk of retaliation** while performing the monitoring visit and contribute to create a safe environment for children deprived of their liberty.

The Child Protection Policy could **define all the circumstances** that the monitors may be confronted with and address all the situations with a **pre-defined and agreed response and reaction**.

For example, if a child is complaining about or making an allegation of abuse, the case can be referred to designated children's services and in case of emergency, to the police, the prosecutor or to request the immediate intervention of a health professional.

It can also be specified that in case of risk of retaliation against a child who has reported an abuse or a violation of his/her rights, to request special arrangements (for instance) to transfer him/her to another place or to ask for special surveillance in order to protect him/her from adverse treatment from peers or other staff members. A follow-up visit should be organised within a pre-specified period in the policy. The transfer or the suspension of the staff member suspected of the abuse may also be considered as a measure of protection in order not to disrupt the child in regards to school or other services.

This also provides **guidance on proper criteria for the recruitment and supervision of monitors** having contact with children deprived of their liberty; appropriate training provided to monitors on how to work with and interview different age groups of children; moreover, training on safe storage of children's personal information including records of allegations of abuse.

Each person that will perform a monitoring visit in a facility where children are deprived of their liberty must be required to sign a Child Protection Policy.

 *See – Annex 3. – p.160*

H. INFORMATION ABOUT AND COMMUNICATION / COOPERATION WITH OTHER VISITING BODIES




When several monitoring bodies are operating in the same place of deprivation of liberty or have the same mandate in relation to the safeguarding and promotion of children's rights, it is of the highest importance that they establish ways of communication and cooperation.

Degrees of collaboration may vary from a **simple exchange of information** on their monitoring programmes, methods or findings, to **complementary visits, cooperation on specific issues** or even **partnership**. The more the collaboration is developed, the more efficient the monitoring process will be. However, the degree of cooperation does not only rely on the willingness of the monitoring bodies but also on the available human and financial resources and sometimes on institutional constraints or specifications of the mandate.

At the international level, the coordination between the SPT and existing regional visiting mechanisms (mainly the CPT) is foreseen in the OPCAT, Article 31, which encourages them “*to consult and cooperate with a view to avoid duplication*”. Where the reports are kept confidential, they should at least consult and when they are made public, consultation and cooperation with the SPT is easier. The CPT is also promoting synergies and exchanges of knowledge and best practices with NPMs with the aim to “*support and inspire each other*”. In practice, they collaborate actively at the different stages of the monitoring process (before, during and after) of the CPT ⁶.

⁶ For further details on the “*Relations between the CPT and NPMs*” see the 22nd CPT General Report (2011-2012), pp.13 to 19.

At the domestic level, national monitoring mechanisms must be aware of the visits and reporting process of international or regional human rights mechanisms and take into account all their relevant findings, recommendations and conclusions  *See – detailed list here below*. Additionally, they can send information and/or their reports to international or regional human rights mechanisms.

It can also be useful to stay informed of the work of field offices of international organizations (OHCHR Field Offices, Organization for Security and Co-operation in Europe); of the International Committee of the Red Cross; of several civil society organisations that have a specific focus on deprivation of liberty, children's rights and/or juvenile justice such as APT (Association for the Prevention of Torture), DCI (Defense for Children International), FiDH (International Federation of Human Rights Leagues), OIJJ (International Juvenile Justice Observatory), OIP (Observatoire International des Prisons), OMCT (World Organization Against Torture), PRI (Penal Reform International), Save the Children, TDH (Terre des Hommes), The Howard League for Penal Reform, etc...

United Nations Human Rights System

RELEVANT UN TREATY BODIES

- ➔ Committee on the Rights of the Child
- ➔ Human Rights Committee
- ➔ Universal Periodic Review
- ➔ Committee against Torture
- ➔ Sub-Committee on Prevention of Torture

RELEVANT SPECIAL PROCEDURES UNDER THE UN HUMAN RIGHTS COUNCIL

- ➔ Special Rapporteur On Torture
- ➔ Working Group on arbitrary detention
- ➔ Special representative of the UN General Secretary on violence against children

RELEVANT UN SPECIALIZED AGENCIES

- ➔ UN High Commissioner for Refugees
- ➔ UNICEF (children detention program)

Human Rights System in Europe

- ➔ European Committee for the Prevention of Torture
- ➔ Council of Europe Commissioner for Human Rights
- ➔ European Committee of Social Rights
- ➔ European Court of Human Rights
- ➔ EU Parliamentarians
- ➔ Experts on Action against Trafficking in Human Beings (GRETA) of the Council of Europe

4.2. Preparation to the visit

- ⊙ DEFINE THE SPECIFIC OBJECTIVES OF THE VISIT
- ⊙ GATHER A MULTIDISCIPLINARY MONITORING TEAM AND PREPARE FOR THE VISIT
- ⊙ GATHER ALL THE RELEVANT INFORMATION AND STATISTICS
- ⊙ ESTABLISH THE INITIAL CONTACT PRIOR TO THE VISIT
- ⊙ SET UP A PROGRAMME OF VISIT
- ⊙ PREPARE THE SUPPORTING DOCUMENTS
- ⊙ PREPARE THE MATERIAL, DOCUMENTATION AND EQUIPMENT AND MAKE ALL THE RELEVANT LOGISTICAL ARRANGEMENTS



Having established the monitoring strategy, the monitors should begin preparing for the visit. The length of this phase of preparation should not be overlooked. Indeed, a well-prepared visit has the best chance to be performed in the optimum conditions and to achieve the expected results.

A. DEFINITION OF THE SPECIFIC OBJECTIVES OF THE VISIT

Defining the specific objectives of a visit consists of determining whether the visit will be:

- **an in-depth or full visit** with the objective to assess the overall conditions of the deprivation of liberty as regards to the full package of rights granted to children;
- **a follow-up visit** with the objective to evaluate the degree of implementation of the recommendations addressed in the framework of the previous visit(s); to make sure that the right's violation a child complained about has been effectively handled; the right's violation a child complained about; to ensure that no retaliation has occurred against a child who lodged a complaint or has been interviewed during the previous visit, etc.;
- **an ad hoc or targeted visit** with the objective to look into a particular aspect of conditions, treatment or regime of the visited place or to respond to specific incidents, events or complaints.

B. GATHERING AND PREPARATION OF THE MONITORING TEAM


Organise the work of the team

A **head of the team** should be identified in order to lead the work and coordinate the preparation – implementation – follow up of the visit.

A **clear division of tasks** should be established within the team taking into account the different skills, background, experiences and specific competences available.

Prepare the visit


Each monitor needs to:

- be familiar with **the monitoring strategy, goals, objectives, tasks** to be accomplished before-during-after the visit, **and the timeline** of the monitoring visit;
- have or obtain an **in-depth knowledge of the** (national, regional and international) **legal standards concerned**, the required **elements of context** and **specific issues of concern** in the place of deprivation of liberty to be visited;
- be familiar or be trained in **monitoring methods and principles** to be respected while performing the monitoring visit;
- **share the tasks** of gathering, reviewing, contacting, reading, and exchanging detailed information and documentation well in advance, taking into account the background and specific skills of each team member;
- **be prepared to be flexible** and to **face difficult situations** and in particular be aware of the potentially very fragile psychological state in which they may find with some or many of the children deprived of liberty;
- **be aware of how to act** (and when to act) when confronted to **(allegations of) child abuse**  See – Section 4.1. / G. – p.56 & Annex 3. – p.160;
- be aware of and have the **specific knowledge in relation to the type of facility to be visited and the specific child-population hosted** within the place concerned.



C. DESK REVIEW & INFORMATION GATHERING

The visit being announced or not, a desk review including **research, contacts, and readings** should be completed in order to gather as much information as possible about the facility that is about to be visited. Information to be collected must be a combination of **quantitative and qualitative data**.

Potential (but non exhaustive) **list of sources of information** includes:

- ➔ the monitoring body itself and the findings that have been gathered during previous visits;
- ➔ reports of other (national, regional or international) monitoring bodies;
- ➔ reports of NGOs or other civil society organizations;
- ➔ scientific research;
- ➔ press articles;
- ➔ **testimonies of children who have been deprived of their liberty previously;** 
- ➔ official reports from key authorities;
- ➔ statistics and data;
- ➔ **complaints lodged by children deprived of their liberty;** 
- ➔ communication with states services that work in collaboration with the facility (social, medical, education services) and different people visiting places where children are deprived of their liberty (spiritual or religious advisors, social workers, lawyers and legal assistants, family or familiar).

Information about the visited facility should include, where possible:

- ➔ the number of children deprived of their liberty in this specific setting and its official capacity (to check the overcrowding for instance);
- ➔ **the ages, gender and nationalities of children;** 
- ➔ the grounds on which they have been deprived of their liberty;
- ➔ the status of their deprivation of liberty i.e. whether they are on remand, convicted, retained for immigration purpose, locked up for their own safety-protection-care or because of a mental health problem or disabilities, etc.;
- ➔ the length of time they have been/will be deprived of their liberty in the facility;
- ➔ the authorities responsible and the composition of the management and staff members of the place;
- ➔ the location of the facility and its distance from the nearest town or urbanization;
- ➔ **the regime and educational programme applied in the facility;** 
- ➔ any allegations, complaint received or problem known about the place or about the children deprived of their liberty held there.


D. INITIAL CONTACTS TO ESTABLISH PRIOR TO THE VISIT

Contacts with the place of deprivation of liberty

IN CASE OF AN UNANNOUNCED VISIT, prior contacts with the facility must not be established.

IN CASE OF AN ANNOUNCED VISIT, the monitoring body should first enter into contact with **the head of the facility**, by phone (informal) or through an official letter (formal).

The aim of this initial contact can be:

- ➔ **To explain the purpose of the visit;**
- ➔ **To communicate the basic elements of the first visit** (examples: dates and number of days of visit, composition of the team, foreseen programme of visit, etc.);
- ➔ **To address specific requests for the visit** (authorisation to access the place, approval for bringing any material which may be prohibited inside such as laptop, camera or recording device);
- ➔ **To ask the director to communicate to children information** about the monitoring visit that will be conducted within the place concerned  See – Section 4.2. / F. – p.64;
- ➔ **To ask the director to provide the team with a map of the premises.**



Contacts with other key persons




If a youth council or some kind of board of children deprived of their liberty exists in the facility to be visited, it should be contacted and consulted about elements that should be looked at during the monitoring process.

The authorities responsible for the place to be visited have to be contacted at least to be informed of the announced visit or, if required, to get their approval to conduct the visit.

It may also be useful to inform **other political, judicial or administrative authorities** that have a functional link with the facility that will be visited by a monitoring body. **Other monitoring or visiting bodies** shall also be informed of the visit as part of the cooperation and communication that has to be developed and agreed between them. **Some external bodies in this context** (such as voluntary organizations or residents living close to the structure) may also be contacted in order to identify potential key areas to explore during the visit.

E. PROGRAMME OF VISIT

The monitoring team has to establish a **detailed** and **realistic** programme of visit. As has already been indicated, an adequate duration of the visit is required to give the team **sufficient time to build a trusting relationship with people to be interviewed (children, director, staff members), to perform these interviews without rushing these groups, especially with children**, to examine the overall facility and to review all the required documents and registers. 

The programme should include the arrival and departure times, the time to go to and get back from the place and the required time to have lunch and a break. In addition, the programme should leave room for unexpected situations that may delay other tasks but that may be of high importance to observe and to report.




Flexibility is thus required.

It is always better to allow more time for specific objectives than too little time for too high objectives that will not be achieved in a given timeframe.

F. PREPARATION OF THE SUPPORTING DOCUMENTS

Supporting documents could include the following:

- An **informative document** written in an appropriate language, explaining the mandate, the role of the monitoring body, the purpose of visit, its planned agenda, the composition of the team, the follow up and enforcement mechanisms;
- **Questionnaires** to be used while interviewing people (including children);
- A **checklist including the child specific indicators** that are going to be monitored during the visit as a mean of guaranteeing a standardised collection of information by the team.

It is very important to write these documents in an **appropriate language adapted to the person(s) to whom they are addressed, in particular for children, taking their age and level of development into account**. The informative document should not be written in the same way when they addressed to a (younger or older) child, to a child with disabilities or to an adult staff member of the place of deprivation of liberty. It is fundamental to keep this in mind and take it into account in the drafting of the supporting documents. The multi-lingual aspect shall also be taken care of by ensuring that documents are translated in (all) the languages that are spoken and understood by the interviewees. 

G. MATERIAL & LOGISTICAL ARRANGEMENTS


Documentation and equipment

Monitors should ensure that they bring the **proper documents** with them such as: personal identification documents

- ➔ copies of credentials to visit (delivered by the proper official body)
- ➔ identification documents to carry out the visit (mandate, article of law granting the right to visit, etc.)
- ➔ any relevant correspondence
- ➔ contacts (email and phone numbers) of key persons (among others, the responsible authorities) that may intervene immediately in case of emergency or any problem which may arise in gaining access to the place.

The **equipment** a monitoring team may need could be:

- ➔ a laptop
- ➔ a recording device
- ➔ a camera
- ➔ tape measures or electronic measuring meters
- ➔ thermometers or humidity gauges
- ➔ plastic gloves and sanitizers
- ➔ flashlights
- ➔ communication equipment between members of the team (walkies talkies)

A special authorisation may be required to be able to enter the places where children are deprived of their liberty with such equipment that is usually forbidden inside. When planning to use cameras, proper protocols must be established concerning the use of pictures.  See – Section 4.1. – p.48 & Annex 3. – p.160



Perceptions and Dress Code



Entering a place of deprivation of liberty, especially where children are locked up, requires **particular precautions in terms of appearance**. Indeed, the coherence between the independence, impartiality and objectivity of the monitoring body does not only have to exist per se, it has to appear through the behaviour of the monitors (and interpreters) and to be perceived as such by the children during their visit.

As a consequence, **the monitors (and interpreters)** should pay particular attention to the way they dress while visiting a facility. The **dress code** should be **serious and professional** without being confused with the way the staff members and director of the place are dressed. In order to be clearly identified, monitors may wear a badge or a distinctive sign such as a jacket or tee shirt of a specific color or with the logo or the name of the monitoring body. In addition, the dress code should be in accordance with the cultural context and in any case it should be correct and respectful.



Logistics

The required **time and flexibility** to be dedicated to logistical arrangements should not be underestimated but should not allow authorities to “prepare” for the visit.

The following aspects should be taken care of prior to the visit:

- **Announcement of the visit** (phones calls, letters, authorizations, informative document, program);
- Setting **the date(s), day(s) and time(s)** of visit;
- Ensuring that **the place** to be visited is **accessible** on the planned dates;
- Ensuring that **the chosen period** allows the monitoring of all aspects to assess (for example, performing a visit during public holidays may not allow to monitor how the right to education is implemented);
- Ensuring that **the security context** allows the visit on the planned dates;
- Getting **the required authorisations** to enter with the necessary equipment;
- Providing and testing **the required equipment**;
- Preparing all **the required documents**, making enough copies and bringing all the material needed (paper, pen, badges, etc.)
- Organising the **travel and accommodation** of the team;
- **If needed, contracting interpreters, providing them with all the appropriate documentation and information well in advance, inform and prepare them about their role as well as, if necessary - training in child interviewing.**



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4.3. Implementation of the visit

A visit usually involves the following steps, which can be interchangeable depending on the circumstances and which aspect should have more or less time dedicated to it depending on the type and purpose of the visit:

- ⊙ INITIAL TALK WITH THE HEAD OF THE FACILITY / THE DIRECTOR
- ⊙ INSPECTION OF THE PREMISES AND OBSERVATIONS OF CONDITIONS
- ⊙ REVIEW OF THE REGISTERS AND OTHER DOCUMENTS
- ⊙ INTERVIEWS WITH CHILDREN
- ⊙ INTERVIEWS WITH STAFF
- ⊙ DEBRIEFING OF THE VISIT BY THE MONITORING TEAM
- ⊙ FINAL MEETING WITH THE HEAD OF THE FACILITY / THE DIRECTOR

Regardless of which type of monitoring visit is performed, the purpose of the visit itself is to gather information about the conditions and treatment of children deprived of their liberty. Onsite, this information can be obtained by several means and from different sources:

- ➡ **the observations and perceptions of monitors** (what they see, listen and perceive);
- ➡ **the point of view of children** deprived of their liberty;
- ➡ **the point of view of director, staff members and all people** (internal or external) taking care of children deprived of their liberty in the visited facility;
- ➡ **the content of several official and written sources of information:** records, registers, internal rules and documents disseminated to children;

The amount of information gathered must obviously not be analysed in isolation but should be cross-referenced so that the assessment of the conditions and treatment of children deprived of their liberty is the most complete and the closest assessment possible to reality.

A. INITIAL MEETING WITH THE HEAD OF THE FACILITY

The first person to meet upon the arrival to the visited place of deprivation of liberty is usually **the head of the facility** or, in case of any impediment to this, a senior member of the director's team.

This initial meeting will follow the first contact the head of the monitoring team should have had previously to the visit by phone and through an official letter if the visit was announced.



The attitude of the monitor leading the discussion and the way the discussion itself is conducted is crucial to establish the proper basis of **a constructive dialogue** between the person directly in charge of the place of deprivation of liberty and the monitoring team.

The content of the discussion will be different depending on whether it is a first or a repeat visit but it can involve the following potential (and non-exhaustive) topics:

- **Presentation of the monitoring body** (role, mandate, composition of the team, methods of monitoring) if it is the first visit;
- **Explanation of the visit** (purpose, programme, interviews with children and staff, visit of the premises, examination of documents and registers, explanation about how information gathered during the visit will be used) and its follow up (report, next visit, contacts with the authorities, etc.);
- **Interviews with children** (explaining the need, detailing the methods and principles, giving a copy of the ethical Guidelines and child protection policy if they have not been communicated yet, asking for cooperation in facilitating and organising the interviews specifying that this must be on a strictly voluntary basis);
- **Interviews with staff members;**
- **Information about the visited facility** including any issue, concern or problem regarding a child in particular, a specific group of children, a violent incident or any allegation of abuse;
- **The point of view of the head of facility** about the facility itself, the staff, the regime, the conditions, the treatment of children, the pedagogical project or educational approach, the potential problems faced by the management of the facility; his/her own propositions for improvements;
- **The final meeting** planned for the end of the visit [□ See – Section 4.3. / G. – p.81](#);
- **All required clarification and information** in response to any questions, concerns, suggestions, recommendations or needs expressed.



B. INSPECTION OF THE PREMISES AND OBSERVATIONS OF CONDITIONS

If it is the first time that the monitoring body is visiting the facility, it may be useful to dedicate sufficient time for the inspection of the premises in order to have a good overview of the conditions of deprivation of liberty in every place and room of the facility. To do so, the team could divide this task between them.

If it is not the first visit, a short general tour of the facility may be sufficient perhaps with a stronger attention to several places that have been previously identified as “at risk” (isolation room, cells or dormitories, etc.).



The director or one staff member may accompany a delegation of the monitoring team to visit the premises. In this case, monitors should ensure that they go everywhere including the areas that the accompanying staff member does not show them or, if the interviews with children and/or the consultation of documents and registers have occurred previously, where their attention has been attracted to.

The inspection of the premises should include but not be limited to:

- ➔ the place where children are held / conducted upon their arrival;
- ➔ the bedrooms / cells / dormitories;
- ➔ the isolation / separation rooms;
- ➔ the disciplinary rooms;
- ➔ the medical facilities;
- ➔ **the educational facilities;**
- ➔ the social facilities;
- ➔ the exercise facilities (indoor and outdoor areas such as exercises yards and sports facilities);
- ➔ the sanitary installations;
- ➔ the visitor rooms + the telephone box + the mail box;
- ➔ the religious / spiritual rooms;
- ➔ the complaint and/or request box;
- ➔ the security room or video camera vigilance centre;
- ➔ etc.



While walking through these different areas, monitors should **pay strong attention** to all aspects that may be of high importance in regards to the respect of children's rights, including:

- ➔ the general configuration of the place (prison-like, protective); 
- ➔ the general living conditions;
- ➔ the security arrangements (fence, bars, confining wall, closed doors, security camera, staff carrying weapons, etc.); 
- ➔ the children's dedicated areas (bedrooms, cells, dormitories, courtyards, classrooms, common-rooms, refectories, bathrooms, etc.) and the places where services are provided to the children (kitchen, laundry, religious facilities, visiting rooms, telephone box, mail box to lodge a complaint, etc.);
- ➔ the general atmosphere of the facility;
- ➔ staff and director's facilities, such as offices, sanitary facilities, storage, cellars, attics, etc.;
- ➔ the behavior of the staff members on the one hand and of children on the other hand;
- ➔ the documents left (visible) to the children in their dedicated areas (rules and regulations, complaint procedures, envelopes and stamps, list of contacts, etc.).

During the visit, monitors should **talk to the staff** asking questions about the configuration of the premises and how different things work in practice (for example: in what circumstances is the disciplinary room used? How much time children can stay under the shower? Why is there no curtain to the showers?).

 *See – Section 5. – p.93*

C. REVIEW OF REGISTERS AND OTHER DOCUMENTS

Depending on the powers of investigation and capacity the monitoring body has, it is vital that it examines **files, registers, recordings and other documents** at the beginning of the monitoring process. These documents can help to cross-check information observed during the inspection of the premises, during interviews or to help in selecting areas of particular interest to visit or people to be interviewed, for example.

The first useful documents to consult are the **rules and regulations of the facility** that detail all the in-house rules that govern the daily life within the place of deprivation of liberty. Compared to child specific indicators, these rules already give monitors an overview of how the rights and standards applied to children deprived of their liberty are implemented within the premises.

In this context, particular attention should be paid to disciplinary sanctions and procedure, security rules, means of restraints and use of force authorised as well as rules applicable to contact with the outside world (telephone, visits, etc.).

This analysis will show specific aspects that will be important to cross-check regarding their implementation in practice, from the perspective of children on the one hand and from the point of view of the staff on the other hand.



It is also important to pay attention to **the language** in which these documents are formulated and **how they have been explained** to children (and by whom) upon their arrival in the facility.

The individual file of the child including its personal programme of education, vocational training, social care, counselling and – potentially – medical treatment should absolutely be consulted.

The registers that can be examined – if they exist – are the following:

- ➊ **the register of admissions, entries and exits**
(in order to know how long children have been held in the facility, how many children are deprived of their liberty at the same time cf. overcrowding, how often they have been able to go out with permission or for home leave, etc.);
- ➋ **the register of property taken on admission**
(in order to check if the inventory is consistent with the properties retained pending the release);
- ➌ **the register of disciplinary measures or sanctions**
(in order to identify children who have been sanctioned, how many times, for which reasons and through what kind of measures);

➔ **the register of solitary confinement**

(in order to identify children who have been isolated previously, how many times, for how long, where, by whom and how often they have been checked during single separation/solitary confinement);

➔ **the register of incidents**

(in order to identify children who may have been the victim or be part of any previous incident or to know when the use of force has been deemed necessary);

➔ **the complaint register**

(in order to identify children who have lodged complaints, how the complaint has been handled, in which timeframe, etc.);

➔ **the medical register** (with respect to the medical confidentiality)

(in order to assess the proper health care of children and potentially to identify children who might have been victim of any kind of ill-treatment or torture);

➔ **the register of visits and the register of phone calls or mails**

(in order to evaluate the level and frequency of contacts children have with the outside world);



Monitors will take notice of mentions in margins, notes in brackets, the author of mentions, who has signed or countersigned the register, the empty fields, the regularity of inscriptions, etc. Low records on registers (of disciplinary measures, incidents, etc.) may not indicate positive findings but may actually signify that records are not properly maintained.

Other documents of interest could be:

- ➔ staff lists (including their professional background and function);
- ➔ staff working schedules;
- ➔ weekly menus;
- ➔ inspection reports regarding hygiene and sanitation, health care or other;
- ➔ agreements with external actors/organisations;
- ➔ protocol for the prevention of self-harm and suicide;
- ➔ etc.



D. INTERVIEWS WITH CHILDREN



“For most professionals, communicating with children in general presents significant challenges that, by and large, may be overcome by specific initial training and ongoing supervised practice. With children deprived of their liberty, professionals are advised to take into account additional paramount idiosyncrasies. In all situations, professionals should envision interviewing children as a task that requires a positive and confident attitude and respect for the complexity of a person in development with so-called cognitive and emotional evolving capacities. This requires that the professional rapidly assess the child’s developmental level with regard to language, his/her degree of relational (un) ease, and scan for other potential red flags that may characterize the child’s functioning.

With children deprived of their liberty it is usually expected that meeting an unknown adult may generate considerable anxiety that could lead a given child to withdraw and be less communicative and another to chat along in a compliant but superficial manner. Research suggests that the prevalence of abuse is particularly high in populations of children deprived of their liberty, whether this it be physical, psychological, sexual or any combination thereof, or even having been exposed to critical levels of violence. This should generate a cautious attitude on the part of the professional who may never gain a given child’s complete trust, but will always risk significantly losing it entirely if the interview does not follow basic rules. Nonetheless, under adequate conditions, professionals should find great satisfaction when interviewing children as they are often not entirely predictable and are capable of generating powerful positive attitudes.”


Philip D. JAFFE, Psychologist, expert in child development issues in the context of deprivation of liberty



Ethical Guidelines should be adopted by the monitoring body to define the interviews with children in such way that they are performed in the safest and most respectful conditions for children and without a risk that children will face reprisals for speaking to a monitoring team. In this sense, it is generally accepted that child interviews should take into account a number of elements and principles so that **children feel confident, safe and secure** in order to deliver unbiased information that reflects *their* reality to the interviewers. [□ See – Sections 3.4. – p.37, Section 4.1. / G. – p.56](#)




[□ Annex 2. – p.158.](#) It is highly desirable that the monitor in charge of interviewing children has **experience** and if not, is **well prepared and trained** in child and welfare issues as well as in communication methods with children. **The communication style** is vital here. In addition, they must also be familiar with the principles and methods to be respected while interviewing children [□ See – Section 3.4. – p.37.](#)


The priority should be given to **individual interviews** but in cases where this is not possible or where it appears to be of interest or strategically beneficial in order for example to avoid the risk of retaliation, **focus groups** can be gathered.  See – p.79

Before the interview take place, several aspects have to be taken care of:

WHAT ARE THE PARTICULAR COMMUNICATION REQUIREMENTS TO KEEP IN MIND?

The ability to feel comfortable with children and to engage with them in whatever style of communication and language suits the child and appropriate to his/her age and stage of development (e.g. by playing with him/her, by sitting on the ground, by using local terminology or slang, etc.). 

The ability to understand and to adapt the communication style and ways to approach certain topics to the cultural norms of children.

The ability to appreciate that children may perceive their situation and express their feelings in a very different form from adults (e.g. they may express themselves in symbolic ways, they may invent explanations, emphasise certain issues and downplay others, etc.). 

The ability to understand and tolerate expressions of distress, hostility, mistrust or suspicion.

WHO ARE THE CHILDREN TO BE INTERVIEWED?

Identify a representative group of different children deprived of their liberty within the visited facility in terms of age, gender, particularly vulnerable children (those described as troublesome, violent, often subject to disciplinary measures, victims of bullying, those who have lodged formal complaints, etc.); not only those who have been proposed by the staff members or those who approach the monitoring team. The examination of files and registers may help to identify potential children to be interviewed.

 See – Section 4.3. / C. – p.71



Always make sure children voluntarily agree to be interviewed after being provided with all the necessary information in a comprehensive form to give their informed consent. The decision of a child who is not willing to participate must absolutely be respected but it could be interesting to understand their reasons.

Precautions – The interview of a child presenting any of the following criteria shall be approached with great caution: a child who has clear cognitive challenges or is traumatised; or whose psychologist, childcare staff or social worker are sharing serious concerns about possible negative impacts that the participation to such interviews may have on him/her.

WHERE ARE THEY GOING TO BE INTERVIEWED AND BY WHOM?

Find a location where there is as much privacy as possible and where the child feels safe and at ease without too many sources of distraction. The room chosen by the child him/herself is obviously the best option. Otherwise, a neutral room should be the priority such as the cafeteria or a classroom or a visiting room but in any case not the guardians' office or any other place where the child may not feel safe or comfortable, or where the privacy may be in jeopardy.

PRIVACY AND CONFIDENTIALITY:

“The privacy and personal data of children in detention must be protected by monitoring monitors so that access to personal information about children is restricted to the minimum number of people who need to know and no information or personal data is made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including image, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc. Children must be asked for their permission before a photo is taken and a photo may only be used if a child has given their consent for its use for a specified purpose. Monitors must be aware of the risk that, once public, their reports may be used to sensationalise issues around children in detention and that the children who participated may be misrepresented and linked with moral panic surrounding children in conflict with the law. It is essential to avoid the use of language and images that could degrade, victimise or shame children, which make generalisations which do not accurately reflect the nature of the situation, or which discriminate against certain groups of children.”

Justice for children Briefing n°2: Independent monitoring mechanisms for children in detention. PRI


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WHO WILL PERFORM THE INTERVIEW?

One member of the team should be designated to lead the interview. Specific experience and/or proper preparation and training in child issues and communication skills is required.  See – Section 4.1. / F. – p.54

When possible, children should be offered the option of the gender of the person conducting the interview which can be particularly important for a child who has been abused.

When necessary, duly prepared interpreters will participate in the interview.

 See – Section 4.1. / F. – p.54 & Section 4.2. / G. – p.65

HOW THE INTERVIEW WILL BE RECORDED AND HOW THE INFORMATION COLLECTED WILL BE KEPT CONFIDENTIAL?

If allowed, a recording device may be used to reduce the number of people in the room. If not, a second monitor should join the main interviewer to take notes in order for him/her to maintain full attention and eye contact with the child as part of building trust with him/her.

It is important to make the child aware of why the interview is being recorded and how the recording will be kept confidential.

WHAT ARE THE COMMON ISSUES AND PROBLEMS THAT MIGHT OCCUR?

Be aware and be prepared to face the following problems or issues while interviewing:

- Children answering questions to which they do not know the response;
- Children down playing some issues or exaggerating others particularly in front of other children to gain “kudos”;
- Children telling the interviewer what they believe the interviewer wants to hear or what they have been taught by the staff;
- Children not saying anything because they fear that the disclosed information will lead to reprisals when the monitoring team has gone;
- Children whose train of thought and / or speech is difficult to understand and to follow.



As an introduction to the interview, monitor should make children feel safe by ensuring that they:

- Introduce themselves properly before interviewing and giving the possibility to the child to introduce him/herself;
- Explain the purpose of the interview, what the information they give will be used for and the limitations of the things the monitoring body can or cannot change;
- Explain why they are taking notes/using a recorder during the interview and how it will be kept confidential;
- Explain that children are free to end the interview at any time.

In addition, consider ice-breakers before starting off interviews with children. Sit down and have lunch with them; play a game or join a sport activity; have a look and discuss artistic works made by children before getting started (recommended if time and security measure allow it).



Then, whilst questioning children to obtain information, interviewers should build **trust and confidence** towards children and demonstrate how **safe** they can feel with them by:

- Starting with conversational or non-controversial questions and work towards more sensitive issues;
- Using an informal and relaxed approach to help children feel at ease.
- Understanding that it may take some time for children to become sufficiently comfortable talking (especially if the events they are recalling are traumatic ones);
- Emphatically understanding children’s situation and feelings;

- Observing children's reactions and, if needed, interrupt or stop the session in case of extra-sensitivity or aggression for example;
- Clearly distinguishing your own feelings from that of children;
- Adopting a non-intrusive approach that will respect the privacy and intimacy of children.



The **interviewers' behaviour and physical language** is also of high importance.

While listening to children's stories, no judgmental signals can be given by the interviewers. In addition, children must feel that monitors

- Trust them;
- Are considering them at the centre of their attention;
- Are not judging them;
- Are empathic to the way they feel and express themselves;
- Are patient;
- Have a genuine interest in their views and opinions and their current situation;
- Are aiming at gathering this information in order to contribute to the development of better protection for all children.

Furthermore, in order to be sure to get **unbiased information**, interviewer should:

- Encourage children to give their information and tell their story in their own words by using open-ended questions;
- Explain that it is acceptable to tell the interviewer if they do not know the answer to a question;
- Explain that they should correct the interviewer if s/he is mistaken or incorrect;
- Avoid leading questions or comments that may make children feel coerced or pressured into giving a certain answer as well as questions that could be negatively received by children;
- Avoid repeated questions as it may lead children to believe their previous answer was 'wrong';



- Use simple, age-appropriate language and ensure that children understand the correct meaning of the question;


- To get more detail use follow-up questions, e.g. "And then what happened?";



- Plan to vary the rhythms of the interview so that it is not too tiring and trying for children.

When necessary, **interpreters** will join the monitors to interview children. In this case, they will be professional fluent in both language properly prepared in advance, able to use words which children can understand, aware that they cannot intervene within the discussion between interviewers and children and that they cannot influence the interview by mis-translating, summarizing or omitting selected parts of what is said. They will also be reminded that they are bound by the duty of confidentiality and that **their personal behaviour, dress code and attitude are of particular importance to maintain a trusting environment for the interviews of children.** As for the interviewers, no judgmental signals should be seen on their face while listening to children's explanations.



 See – Section 4.1. / F. – p.54 & Section 4.2. / G. – p.65

As a closure, the interviewers should ensure that:

- Children have no further questions or no further concerns they would like to raise;
- Children have understood the limitations of their work and have no false hope of what monitors may do for them;
- They give positive feedback to the children about the information they shared and how important they are to complete the monitoring process;
- They give their contact information in order to be reached in case of reprisals, questions or if they want to add any further information;
- Their notes are completed as soon as the interview is finished in order not to forget any detail and to be the most accurate record possible of what has been said, heard and felt during the interview.



In addition, **it is very important to make the experience meaningful for children** and not only purposeful for the monitoring process. **Any kind of acknowledgement of the importance of their contribution to the process may be useful**, such as the deliverance of a certificate of participation, the verbal acknowledgement at the closing of the interview, the feedback given to children after the completion of the visit, etc.



Focus Groups

In general, due to their particular vulnerability, individual interviews are preferable to focus groups with children deprived of their liberty.

However, **different reasons** may lead the monitoring team to gather children in a group to be interviewed:

- ➡ some children prefer to be part of a group to speak in order not to be identified and to be less worried about potential reprisals;
- ➡ time available can be optimised when meeting children in groups;
- ➡ no children is volunteer to be interviewed individually;
- ➡ etc.

In these circumstances, the questions should include the same topics as the individual interviews but they need to be adapted to allow discussion in a group and to **avoid any delicate question that would likely to make a child uncomfortable in front of his/her peers**. For example, questions related to torture and ill-treatment should be avoided in group because it is entirely unethical and dangerous.



As few adults as possible (as for individual interviews) should be present in order to allow children to talk more freely.

It is also important to guarantee that **no disclosure of the information** discussed in groups will occur in order to avoid any risk of harm or reprisal to the child(ren) concerned. During discussions, the interviewer should pay attention to **involving all children** to an equal extent in the narration, without exerting pressure on children who may not feel comfortable to speak about a certain issue in the presence of his/her peers. Be aware of **possible group pressures and informal hierarchies between children, bullying, snitches**, etc.

The information gathered through focus groups may corroborate the data collected in individual interviews; identify common problems or concerns, identify who will be of interest to have a one-to-one interview with, for example. When contradictory or questionable information emerges, it will be necessary to cross-check this during individual interviews, through monitors' observation and/or with other sources.

E. INTERVIEWS WITH STAFF

It is very important to allow the **staff members** to speak and express their views in relation to their daily life, working conditions, relationships with the director, their colleagues and the children as well as their perception of the regime, the respect of children's rights and any problems within the place of deprivation of liberty. If time allows, a discussion with representatives of trade-unions could be an additional source of information. With a view to building a **constructive dialogue** with the visited facility, it is useful to adopt such a horizontal approach which could be seen as cooperation rather than control. Any good practices must be highlighted and any suggestions of improvement duly taken into account.



The contacts between monitors and staff members must remain professional at all times, especially in front of children, in order to **avoid any kind of confusion regarding the nature of their relationship and any possible suspicion of collusion or partiality.**



It is important to define a **clear selection process** to identify which staff members will be interviewed in order to avoid interviewing staff that the director would trust to report only the good in the relevant facility.

In addition, **external service providers** are another valuable source of information about the conditions and treatment of children in places where they are deprived of their liberty, and this can help to cross-check information collected from the other sources.

Different categories of staff and external service providers that may be interviewed:

- ➔ security staff;
- ➔ educational staff;
- ➔ health care staff;
- ➔ social workers;
- ➔ psychological staff;
- ➔ civil society representatives active within the facility;
- ➔ lawyers;
- ➔ religious or philosophical representatives;
- ➔ etc.

Each of them can be approached differently depending on the way they interact with children and the role they play regarding the aspects to look at in the framework of the monitoring process. However, the same questions may be asked to all of them in order to cross-check information.

F. INTERVIEWS WITH EXTERNAL PERSONS CLOSELY RELATED TO CHILDREN DEPRIVED OF THEIR LIBERTY



When justified by the circumstances, monitors can request an interview with external persons who are closely related to children deprived of liberty in order to get further information and/or to cross-check findings gathered through other sources. **These persons** could be:

- ➔ parent(s);
- ➔ guardian(s);
- ➔ tutor(s);
- ➔ assigned social worker(s);
- ➔ named lawyer(s);
- ➔ etc.

G. FINAL MEETING WITH THE HEAD OF THE FACILITY – DEBRIEFING OF THE VISIT

The monitoring visit should finish with a formal meeting with the head of the facility or a member of the director staff. Its preparation and content will vary depending on its purpose and the type of visit performed.

The aim of such a meeting is to **report back immediately** about the prominent findings as well as to **discuss specific issues and concerns and their potential causes** identified during the visit. Be careful to avoid reporting findings or issues that cannot be sufficiently substantiated with strong evidence. Otherwise, the credibility of the monitoring body might be weakened.

This meeting might be an occasion to **make initial recommendations** for improvements and monitors should not hesitate to **highlight good practices** (and improvements since the last visit if it is not the first monitoring visit).

4.4. Follow up monitoring visits / Actions to enforce

- ⊙ ORGANISE A DEBRIEFING WITH THE MONITORING TEAM
- ⊙ PROCEED TO INTERNAL ANALYSIS AND REPORTING
- ⊙ PREPARE EXTERNAL REPORTS
- ⊙ DRAFT THE RECOMMENDATIONS
- ⊙ DISSEMINATE THE REPORTS
- ⊙ FOLLOW UP ON REPORTS AND RECOMMENDATIONS
- ⊙ ASSESS THE IMPACT OF REPORTS AND RECOMMENDATIONS
- ⊙ SET UP POSSIBLE ADDITIONAL FOLLOW UP STRATEGIES

The follow up phase of the visit and the resulting enforcing actions are **crucial steps** after the visit **to fully achieve a monitoring mission**. The visit in itself is not sufficient. Rights violations may be documented or observed but change will not occur without an effective follow-up. The information and findings gathered during the visit have to be collated, analysed and reported to the appropriate people i.e. to whoever has the capacity to take actions that can improve the treatment and conditions in which children are deprived of their liberty and in doing so, respect the rights of these children. The effective implementation of the recommendations included in the reports and addressed to authorities shall also be duly followed. This process requires as much attention and planning as the visit itself, if not more!

The type of follow up and the categories of actions that will be planned to enforce the implementation of recommendations will depend on the type and specific objectives of the visit that has been performed. The planning of the follow up process should be included in the general timeframe of the monitoring strategy.

As part of the right-based approach previously developed, it will be useful to proceed to the analysis of findings and information taking the **child specific indicators** into account [☐ See – Section 5. – p.93](#). The way the analysis is made should also allow **comparison of the results from one visit to another** in order to measure the level of improvement of the respect of the rights of children. To that aim, **indicators of improvement** should be established by the monitoring team and should be used as a basis for the preparation of the next visit.

A. INTERNAL REPORTS

Team Debriefings

Depending on the time dedicated to the monitoring visit, it is recommended that **one or several meetings** with the entire team **in the framework of the visit itself** are organised in order to **exchange information, cross-check findings and to raise specific issues** as well as their potential causes. This/these first debriefing(s) will enable the team to prepare the potential final meeting with the head of the facility and/or to agree on key concerns to be reported.

In addition to this/these first debriefing(s), the team or certain monitor may require a further debriefing with the aim of **sharing with other colleagues the potential emotional and/or psychological difficulties** he/she has been confronted with during the visit. These kind of internal discussions may allow the team to be “fresh” for every new visit and to prevent burn out symptoms and a high turnover in the monitoring body staff which influences its efficiency.

B. INTERNAL ANALYSIS AND REPORT

Immediately after the closure of the visit (and the final meeting with the director), the monitoring team should work on **an internal document based on the agreed key concerns and findings** submitted to the director of the visited facility.

It is important to proceed to this analysis and completion of information **immediately after the visit** to avoid any loss of information.

C. EXTERNAL REPORTS

Depending on the status of the monitoring body, the type and objectives of the visit that has been conducted and the targeted audience, **several types of reports** can be established by the monitoring team. In any case, external reports shall be addressed **as soon after the visit as possible** so as to be based on current information.

FIVE GENERAL PRINCIPLES OF REPORTING:



- ① *Accuracy and precision*
- ② *Disclosure of personal information only with express and informed consent, and as necessary*
- ③ *Consistency of language and terminology*
- ④ *Timeliness*
- ⑤ *Action-oriented*

APT – International Detention Coalition – UNHRC,
“Monitoring Immigration Detention, Practical Guide”, page 76

Visit Report

Visit reports shall include:

- Key findings (supported by strong evidence)
- Specific issues and concerns as well as their potential causes
- Recommendations for improvements
- Good practices identified
- Improvements since the last visit (if it is not the first monitoring visit)
- Any issues raised during the final meeting with the director

Note that when information has been collected through interviews (individual or in group), the rules of **privacy and confidentiality** must be respected in order to respect the do no harm principle See – Section 3.4. – p.37.



Such reports shall be **addressed to the authorities** in charge of the visited place of deprivation of liberty shortly after the closure of the visit and the drafting of the internal report. It is important to highlight the dynamics of the constructive dialogue that has already been established with the staff of the facility, if it is the case.

If the monitoring team believes that a comprehensive and detailed visit report is not justified, **an official letter** summarising the main results of the visit and suggesting several ways of improvement should at least be sent to the authorities responsible for the visited facility.

Periodic Reports

These kind of reports are produced on a periodic basis and should include all the findings and key issues of the visits performed by the monitoring body within this period to any kind of deprivation of liberty facilities, or of all the visits conducted to the same place of deprivation of liberty within a certain period of time.

Such reports are made to allow the comparison between data, to give an overview of the situation over a certain period of time and to keep a record of the recommendations made and how they have been implemented over a certain period of time.

Thematic Report

Thematic reports may cover one or more issues that may need improvement in one, many or all facilities where children are deprived of their liberty, for example on the use of solitary confinement, serious harm or torture.

Annual Report

The purpose of an annual report is to globalise all the visits carried out by a monitoring body.

Annual reports might also be the occasion to

- proceed to an in-depth analysis of the root-causes of the main issues or concerns emerging from the visits;
- establish links between the most important findings and observations;
- measure the level of implementation of the recommendations from one year to another;
- present a catalogue of all the visits performed and all the findings and recommendations place per place;
- focus on one or several thematic / specific issues.

Thematic or annual reports should be seen as complementary to the visit reports on which they are based.

D. DRAFTING RECOMMENDATIONS

Within the reporting process, the task of drafting the recommendations for improvements is highly important and should be dedicated the required attention and precautions.

The formulation of the recommendations is determinant as regards to the way in which they will be effectively and successfully implemented. They shall be clear, specific, supported by documented information and based on an in-depth analysis. Except for important cases of violation of children's rights such as torture, ill-treatment or worse, they shall be written in a way that the improvement suggested is practically achievable and is perceived not as a condemnation for not being in conformity with the concerned standards but as a challenging opportunity to enhance practice and, in doing so, to better respect children's rights deprived of their liberty. As recommendations may have resource implications, identifying that more financial and/or material, human resources would be required to implement the recommendation effectively, would be an asset.

Recommendations shall be SMART:

Specific: One recommendation regarding one specific issue; each recommendation should suggest one specific solution and not only represent a vague wish;

Measurable: Follow up visits or further monitoring visits shall be able to assess the degree of implementation of a former recommendation.

Achievable: Recommendations should be applicable in practice on the premises that States shall provide sufficient resources to do so.

Realistic: Proposed actions should lead to realistic results.

Time-related: Recommendation should specify a timeframe for completion (short-medium-long term).

In addition to their formulation, recommendations shall be **addressed to the targeted recipients** and **at the proper level of authority**. In other words, recommendations should be aimed at the level of authority that has the power to make the appropriate change or decision for improvement.

In that sense, most of them shall be directly made to the authority responsible for the management of the place of deprivation of liberty (head of the facility) but if the root cause of an issue lies elsewhere, recommendations shall be addressed to the higher (or to several) level(s) of authority (administration or Ministry). A separate report would be necessary for that purpose.

Furthermore, in case of emergency, communication with the higher level of authority should be prioritised in order to avoid any risk of harm for the child who has disclosed any sensitive or grave facts.

E. DISSEMINATION OF REPORTS

Over a first phase, the dissemination of the report may be delayed to give the institution the opportunity to query some of the factual matters before publication. This could facilitate the **dialogue with the authorities** and allow editing comments, cross-checking information and investigating reported or alleged abuses. After a given deadline and after all attempts have been made to agree to recommendations, then the report may be **made public**. In that sense, a balance should be established between the need for flexibility and the promotion of a constructive dialogue on the one hand, and the necessity of transparency and accountability on the other hand.

Good practice suggests that analytical reports such as periodic and annual reports should always be made public and therefore be easily accessible and widely disseminated, notably to other stakeholders and in particular other monitoring bodies and civil society organisations that can play an important role in emphasising recommendations (advocacy).

When deemed appropriate, reports or key elements of reports may be communicated to the media. It is worth mentioning that the monitoring body should pay special attention to the formulation and content of the information **communicated to the media** in order to avoid any sensationalism of the issues and, above all, to respect the “do no harm principle” and the confidentiality of the sources.

It can also be useful to send the reports **to international organisations** such as the CPT, the SPT, the CAT, the CRC, the Special Rapporteur Against Torture or the Human Rights Commissioner of the CoE in order to orientate their further visits and to relate to them recent and updated information.

F. FOLLOW UP ON REPORTS AND RECOMMENDATIONS

The follow up phase can take several forms:

- ➔ Exchange of information and operational discussions through **periodic follow-up meetings or roundtables** gathering all the stakeholders;
- ➔ Exchange of **periodic official letters**;
- ➔ Announced or unannounced **follow-up visit(s)**;
- ➔ Report of the **status of the recommendations** (successfully implemented, pending, not yet implemented) in the annual report of the monitoring body.

In the absence of the explicit or implicit commitment of the authorities to consider the report and recommendations, **other kinds of enforcement measures** will have to be taken by the monitoring body, such as:

- ➔ **Refer to a higher level of authority and/or other authorities** who are likely to put pressure on those responsible for the concerned facility;
- ➔ **Make the report available to the media, civil society or international organisations** who may be able to influence the implementation of the recommendations;
- ➔ **Approach parliamentarians or other monitoring bodies** under the authority of the Parliament.



In addition, the monitoring body shall ensure that **feedback is given to the children** that have expressed the willingness to be informed of the follow-up of the visit. In this case, it is very important to be sure that the oral or written communication is made in an appropriate and comprehensive language and that no false expectations are raised for the children.

G. EVALUATION OF THE IMPACT OF REPORTS AND RECOMMENDATIONS

The efficiency of a monitoring body's work can be assessed through an evaluation of the impact of its reports and recommendations overtime. In order to proceed to that assessment, the monitoring body should look at **how reports and recommendations have been considered and effectively implemented, or not**. However, it should also look at the different stages of its monitoring process in order to review and assess **how efficiently they have been prepared, planned, performed and achieved** so that the planned objectives and expected results have been met.



The review of the methodology that has been chosen to perform the monitoring task can be done by answering the following questions:

- ➔ *What have we done?*
- ➔ *What have we achieved?*
- ➔ *How well have we done it?*
- ➔ *What difference have we made?*
- ➔ *How do we know?*

In turn, this ought to provide answers to the following questions:

- ➔ *What do we know now that we did not know before?*
- ➔ *Are there any gaps or deficiencies in our monitoring process?*
- ➔ *Were there any missed opportunities?*
- ➔ *What could we do better?*
- ➔ *How would it make a difference?*

APT – International Detention Coalition – UNHRC,
 “Monitoring Immigration Detention, Practical Guide”, page 83

H. POSSIBLE ADDITIONAL FOLLOW UP STRATEGIES

Depending on the extent of their mandate, the efficiency of their monitoring methodology and the scope of the objectives pursued, the monitoring bodies could develop additional and/or complementary actions to follow up their mission, including:

- ➔ **Review of legislation and/or administrative rules and regulations**
The NPM established under the OPCAT have powers “to submit proposals and observations concerning existing or draft legislation”;
- ➔ **Further investigations, individual interventions or referrals**
In case of emergency, allegation or complaint of abuse or violation of children’s rights;
☐ See – Section 4.1. / G. – p.56 & Annex 3. – p.160
- ➔ **Advocacy;**
- ➔ **Press release or article;**
- ➔ **Individual communications or complaint procedure to human rights treaty bodies**
such the CRC and CAT; participation to the UPR process of the UN Human Rights Council; exchange of information with other regional or international related Human rights or monitoring bodies;
- ➔ **Recommendations for capacity building and training** of staff members of places where children are deprived of their liberty.

☐ For further reading about the follow up strategies and how enhancing the impact of the monitoring mechanisms, see Ludwig Boltzmann Institute of Human Rights and University of Bristol, “Enhancing Impact of NPM”, May 2015

5. CHILD SPECIFIC INDICATORS OF VISIT

The child specific indicators of visit are based on and referenced against **international and European fundamental rights of children standards**. Their specific focus on children takes particularly into account their vulnerability, specific needs and required care due to children deprived of their liberty.

They are designed as an **assessment tool** on the basis of which monitors will be able to evaluate as objectively as possible at any given time and place, how children's rights deprived of their liberty are respected.

The way they are presented is intended to be user friendly for monitors who are supposed to use them as **Guidelines** throughout the complete cycle of a monitoring process (training, preparing, observing, examining, interviewing, consulting, reporting, drafting and addressing recommendations, following up on report).

The standards applying to children deprived of their liberty are **phrased as questions** monitors should ask themselves while performing their monitoring visits. Several **indicators** will then help the monitors to collect information, evidence and findings in order to be able to know whether the conditions and treatment of children deprived of liberty comply with the standards or not. People to be interviewed (**ASK**), specific aspects to observe (**OBSERVE**) and elements such as registers and records to be checked (**CHECK**) will be indicated to Guide the users towards the answers to the questions asked while performing the monitoring.

The proposed **list of indicators** is not exhaustive and these **should be completed** by monitors, depending on their experience, before, during or after their visits. Spaces for note-taking have been designed for this purpose.



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The flap of the back cover of the Guide includes a reminder of acronyms used to identify the sources of the standards to which reference is made. The jurisprudence of the ECtHR is referenced succinctly (by case and number of decision). See Annex 4 which includes all the decisions quoted, integrally referenced and sorted alphabetically.

It is understood that according to the people interviewed to obtain information about a particular element or aspect to be checked, the questions will be formulated in an adapted and appropriate manner. **The child's perspective, his/her perception and feelings should always be taken into account.** The information gathered may be cross-checked as explained above.



5.1. Deprivation of liberty procedures

A. PROCEDURE OF DEPRIVATION OF LIBERTY AND ALTERNATIVE TO DETENTION



Is there evidence that the decision to deprive a child of liberty has been taken as a measure of last resort, for the shortest period of time and in the best interest of the child?

ASK: Director

CHECK:

- ➔ **Individual file (administrative part)**, see whether the official decision has been taken by the competent authority (judicial, administrative or other public authority); see how it is motivated and how the use of deprivation of liberty rather than alternative measures has been explained; see the duration of the deprivation of liberty and if the decision allows a periodic revision
- ➔ **Alternative measures**, see whether the national law provides for alternatives to deprivation of liberty; see other options existing in practice as alternatives to deprivation of liberty; see which one(s) have already been used in the specific case of the child concerned

Specific group: Foreign nationals children

CHECK:

- ➔ **Uncertainty about the minority of an irregular migrant child**, see whether the child is treated as if s/he is a minor until the contrary is proven i.e. if s/he is deprived of his/her liberty in the interim
- ➔ **Detention of children**, including unaccompanied and separated children ⁷, see whether it is justified in relation with the best interest of the child
- ➔ **Immediate release**, see whether all efforts have been made for the placement of unaccompanied and separated children in a more appropriate facility

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⁷ "Unaccompanied children" (also called unaccompanied minors) are children who have been separated from both parents and other relatives and who are not being cared for by an adult who, by law or custom, is responsible for doing so. "Separated children" are children who have been separated from both parents, or from their previous legal or customary primary carer, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members. / CPT/Inf (2009)27, IV, 97, page 82.

CRC 3 (1), 37 (b) | RAJJ 14, 17.1 (c), 18, 19.1 | BOP 2 | GPJD 46 | RPJDL 1, 2, 17, 20, 21 | RNCM 2, 6, 8 | CRC - GC n°10
 §1, 11, 23, 28, 70, 79-80 | RTWP 57, 59, 64 | SMR 7 | ECHR 5 | EPR 11.1-2, 14 | ERJO 5, 10 | GCFJ: IV.A.6.19, IV.A.6.74
 | CPT/Inf (2009)27, IV, 97 | CPT/Inf (2015)1, V, 96 | ECtHR Mubilanzila Mayeka et Kaniki Mitunga v. Belgium
 (N° 13178/03 3); Muskhadzhiyeva and Others v. Belgium (N° 41442/07); Rahimi v. Greece (N° 8687/08); Popov v.
 France (N° 39472/07 and 39474/07); Mahmudi and others v. Greece (N° 14902/10)

B. ACCESS TO A LAWYER / PERSON OF TRUST



Do children have access to a lawyer / legal advisor / legal assistance and do they have effective, confidential and free access to them?

ASK: Director | Staff | Children | Lawyer | Parents | Guardians

OBSERVE:

- **Room(s) where meetings take place**, see whether the principles of privacy, confidentiality are respected; see if it is equipped with video surveillance (CCTV) and if the meetings take place in the presence of a third person (guards, educators, other)
- **Telephone**, see whether it is located in a place where privacy and confidentiality of conversations are respected (distance from staff office, etc.)

CHECK:

- **Assistance by a lawyer**, see whether the child has been effectively assisted by a lawyer before, during and after the procedure as well as during the deprivation of liberty (i.e. at the time of arrest, during the hearing by the police, in front of the judge, at court, during the period of deprivation of liberty); see whether there is a named lawyer / legal assistant referenced in the individual file of the child; see whether the visitors records refer to visits of legal advisors/lawyers (dates, duration, frequency); see the phone calls records of the child to his/her legal assistant / lawyer and his/her correspondence records
- **Access to legal assistance**, see whether and how the access to legal assistance is regulated in the internal rules, in particular see if the child can contact his/her lawyer/legal assistant at will, if there are some restrictions, under which conditions (privacy, confidentiality, schedules, under video surveillance, with the presence of a third person, etc.), see the distance from the facility and the court and/or the lawyer's office
- **Legal aid system free of charge for the child and his/her family**, see whether it is legally organised, effectively implemented, easily accessible and qualified
- **Quality of the legal assistance**, see whether the child is satisfied by the intervention of his/her lawyer or legal advisor; whether s/he understands what has been said, done, decided; whether the lawyer/legal assistant is specialised in children's rights and is familiar with the different context of deprivation of liberty of children (juvenile justice, mental health institutions, administrative detention, etc.)

Specific group: Foreign nationals children

CHECK:

- Specific information and access to lawyer / legal assistance and to interpretation, translation of official documents, existence of information (including internal rules, complaint mechanisms Guidelines, etc.) in a language of the child understanding

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CRC 37.d, 40.2.b.ii | RAJJ 7.1, 15 | BOP 11, 17-18 | GPJD 7.1, 15.1 | RPJD 18.a, 24, 60-61, 78 | CRC - GC N° 10 §49, 52, 81, 82, 92 | SMR 120 | ECHR 6 | EPR 23.1-6, 37.4, 98 | ERJO 105.4, 120.1-120.3 | GCFJ IV.C.28, 30, IV.D.2.37, 39, 41, IV.E.75, 77, V.d, f, §8, 46, 67, 101, 103, 104 | CPT/Inf (2009)27, IV, 97 | CPT/Inf (2015)1, V, 98 | ECtHR Dushka v. Ukraine (N° 29175/04); Salduz v. Turkey [GC] (N° 36391/02); Soykan v. Turkey (N° 47368/99); Panovits v. Cyprus (N° 4268/04); Adamkiewicz v. Poland (N° 54729/00)

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C. (POLICE) CUSTODY, PREVENTIVE DEPRIVATION OF LIBERTY, REMAND, ETC.



Is the deprivation of liberty of children in custody, on remand (before being tried) limited to exceptional circumstances for the shortest possible duration and is it respectful of the presumption of innocence and of the dignity and personal integrity?

ASK: Director | Staff | Children

OBSERVE:

- The room where the child is held, see its size, the equipment and material conditions
- The overall environment of the facility, see whether there are only children or children and adults, if there boys and girls, younger and older children, on remand and convicted, etc.

CHECK:

- Individual file, see the duration of the child stay, medical record
- Duration, see whether the duration is prolonged beyond 24 hours
- Location, see whether the facilities are adapted to children; whether children are separated from adults and from convicted children

- **Notification of deprivation of liberty (e.g. arrest)**, see whether the law enforcement officials have formally notified the detention to the relative or another adult person trusted by the child
- **Presence of a lawyer and an adult person trusted**, see whether the child has been questioned and/or been requested to make any statement or to sign any document without the mandatory presence of these persons; see when, how and how often the child had access to these persons; [☐ See – Section 5.1. / B. – p.95](#)
- **Specific information sheet**, see whether the above-mentioned safeguards have been set out in an information sheet given to the child into custody immediately upon arrival at a law enforcement establishment; see whether it is child-friendly, written in simple and clear language and available in a variety of languages; see whether the child has fully understood his/her rights in this context
- **Signs and or allegations of ill-treatment** [☐ See – Section 5.7. / C. – p.139](#)
- **Measures of constraints** [☐ See – Section 5.3. / C. – p.108](#)
- **Work, education, vocational training, leisure's**, see whether the child has been able to keep working and/or studying as well as taking rest and leisure in this context
[☐ See – Section 5.6. / C. – p.127 / D. – p.129 / F. – p.131](#)

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CRC 37.b,c,d | BOP 12, 28, 36, 37 | RAJJ 10.3, 13 | RPJDL 2, 17, 18, 21 | RNCM 5, 6 | CRC - GC N° 10 §79, 83, 85, 89 | SMR 7, 11-17, 111-120 | ECHR 5 | EPR 11.1, 15.1, 18.8-9 | ERJO 10, 78.4, 78.5, 108 – 113.2 | GCFJ §73-74 | CPT/inf (2015)1, V, 98, 99 | ECtHR, Güveç v. Turkey (N° 70337/01); Salduz v. Turkey [GC] (N° 36391/02); Soykan v. Turkey (N° 47368/99); Panovits v. Cyprus (N° 4268/04)

D. TRANSFER, ARRIVAL AND RECEPTION



At the time of transfer and admission, is the child provided with sufficient and adapted information to enable him/her to fully understand his/her rights and obligations during deprivation of liberty?

ASK: Director | Staff | Children

CHECK:

- **Information on transfer and admission**, see whether the parents, guardians or close relatives have been informed
- **Information provided to children**, see whether it includes copy of the rules governing the facility, written description of the child's rights, information about complaint mechanisms, contact of legal assistance; see whether this information was accessible to children (written form, accessible language, in a manner enabling comprehension and understanding) and how s/he was helped to understand this information
- **First screening** (psycho – medico – social) See – Section 5.7. / A. – p.135
- **Conditions of transfer**, see whether the transfer has been authorised by the competent authority and if it has been implemented in conditions respectful of the human dignity (with adequate ventilation and light)

Specific group: Foreign nationals children

CHECK:

- **Communication and access** to consular post or diplomatic mission
- **Initial interview**, see whether it has been conducted by a professionally qualified person, in a language the child understands; see whether it includes an assessment of the child particular vulnerabilities (incl. from the standpoints of age, health, psychosocial factors and other protection needs, incl. those deriving from violence, trafficking or trauma)

Specific group: Girls with caretaking responsibilities for children

CHECK:

- **Permission to make arrangements for those children** see whether there is possibility of a reasonable suspension of detention, taking into account the best interests of the children.

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RAJJ 10.1, 13.3 | BOP 10, 13, 16 | RPJDL 22 – 27 | RTWP 2 | EPR 15, 30, 37.1-5 | ERJO 62.3, 62.5, 62.6 |

GCFJ IV.A.1-5, IV.A.1 | CPT/Inf (2009) 27, IV, 98 | CPT/Inf (2013) 29, 73 | CPT/Inf (2015) V, 114

E. RECORDS



Does the facility keep a complete, confidential and secure record concerning each child?

ASK: Director | Staff

CHECK:

- **Records**, see whether they include information on the identity of the child, the fact of and reasons for commitment and the responsible authority, the date, time and place of arrest, the day and hour of admission, transfer and release; details of the notifications to parents and guardians on every admission, transfer or release of the child in their care at the time of commitment, details of known physical and mental health problems, including drug and alcohol abuse, visible injuries and complaints about prior ill-treatment, inventory of his/her personal property, all the contact details of the family, guardians or representatives, contact details of the lawyer
- **Individual file**, see whether it includes valid and detailed (judicial, administrative or other public authority) commitment order, legal record, medical record, record of disciplinary procedures and other documents relating to the form, content and details of the individual care programme of the child; see whether it is kept up to date and where it is kept (in a secured place)
- **Confidentiality**, see whether the records and individual files are kept confidential, see who can have access to them (authorised persons)
- **Access by the child**, see whether s/he has access to his/her own file and records (conditions)

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RAJJ 21 | BOP 12 | RPJDL 19, 20, 21, 70 | RNCM 3.12, 13.6 | RTWP 3 | SMR 6-9, 39.2, 51 | EPR 15.1 |

ERJO 34.1, 34.2, 62.2, 62.5

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F. RELEASE AND AFTER-CARE



Does the child have the possibility of early release to assist him/her in returning to society, family life, education and employment?

ASK: Director | Staff | Children

CHECK:

- ➔ **Individual plan**, see whether regime activities include the preparation for release and aftercare; see what kind of activities are concerned and if they are integrated into the educational and vocational training system of the country; see whether the plan includes an indication of appropriate post-release measures; see whether they are meaningful for the child
- ➔ **After-care arrangements**, see whether the national legal framework provides specific guarantees such as records sealing and expungement after release as well as no mention about the institutionalisation of the child on diplomas or educational certificates awarded while in detention; see who are the actors (internal and external) involved in the after-care arrangements; see what kind of arrangements do exist (on leave and half way houses, work or education release, various forms of parole, remission, pardon, etc.)
- ➔ **Procedure of early release**, see what are the conditions of early release, who decides, on the basis of which elements and if the child is heard about his/her release; see what kind of support is provided to the child to ask for his/her early release

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CRC 37.b, d, 40 (1) | RAJJ 10.2, 19.1, 28 | BOP 38, 39 | RPJDL 20, 40, 79 | RNCM 9 | RTWP 46, 55, 63 |

SMR 4, 5, 9, 87, 90, 91, 98, 103, 104, 107, 108, 110 | EPR 26.3, 28.7, 30.3, 33, 35.3, 103.2, 103.4, 107 |

ERJO 49.2, 50.1, 51, 77 (o), 78.5, 79.3, 100-103

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5.2. Personnel / Staffing

A. STAFF RECRUITMENT, TRAINING AND CONDUCT



Is there a specific selection and recruitment process for staff working with children deprived of their liberty?

ASK: Director | Staff | Children

CHECK:

- ➔ **Number and functions of staff**, see whether they are multidisciplinary, see the number of specialists including guards, educators, vocational instructors, counsellors, social workers, psychologists and psychiatrists, health professionals, etc.
- ➔ **Diversity of staff members**, see the gender, language, ethnicity
- ➔ **Ratio of staff to children**
- ➔ **Recruitment policy**
- ➔ **Job description of recent recruitments**
- ➔ **Qualification standards**, see whether they include maturity, integrity, humanity, ability and professional capacity to deal with children, suitability for the work)

Specific place: Police stations

CHECK:

- ➔ **Police officers**, see whether they are specially trained and instructed, see whether special police units exist for children

Specific place: Mental Health Institutions

CHECK:

- ➔ **Auxiliary staff**, see whether they have been carefully selected; whether they have received both appropriate training before taking up their duties and in-service courses; whether they are closely supervised by - and be subject to the authority of - qualified health-care staff

Specific place: Establishments holding foreign nationals children

CHECK:

- ➔ **Social worker, psychologist**, see whether their presence in the establishment is regular, they have individual contacts with children
- ➔ **Mix gender staffing**

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CRC 3.3 | **RAJJ** 12, 22.2 | **RPJDL** 51, 54, 55, 81, 82, 83, 86 | **RNCM** 15.2, 16 | **CRC - GC** No 10 §85, 89 |
RTWP 21, 31, 32, 33, 34, 35 | **SMR** 46(1), 47(2), 49, 50, 51, 52, 53, 74-82 | **EPR** 8, 76, 77, 81.1, 81.3, 89.1 |
ERJO 89.4, 128.1, 128.3 | **CPT/Inf** (1998)12, B., 28 | **CPT/Inf** (2009)27, IV, 99 | **CPT/Inf** (2015)1, V, 119



Are staff employed in a way that ensures, in the one hand, continuity in the treatment of children and, in the other hand, efficient fulfilment of their duties?

ASK: *Director | Staff*

OBSERVE:

- ➔ Conditions of service
- ➔ Well-being at work
- ➔ Communication between staff of different functions and between staff and management

CHECK:

- ➔ Type and conditions of contract (permanent/temporary, full-time/part-time, remunerated/volunteer and remuneration rates, etc.)
- ➔ Turnover, see the number of staff on sick leave, recent strike(s)
- ➔ Staff working schedules
- ➔ Meeting schedules between staff of different functions and between staff and management
- ➔ Forms of existing internal and/or external assistance and support (remedial, educational, moral, spiritual, etc.)
- ➔ Collaboration(s) with external actors of the community

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RAJJ 1.6, 24-25 | **GPJD** VII. 60 | **RPJDL** 81, 83, 84, 86, 87 | **RNCM** 15.3 | **SMR** 46 (3) | **EPR** 7, 52.2, 78, 79.1 |
ERJO 19, 42, 131.1, 132, 133, 134.2



Is there special training of staff working with children deprived of their liberty and regular continuous training, adequate supervision, follow up and evaluation of their work?

ASK: *Director | Staff*

OBSERVE:

- ➔ Behaviour and interaction between staff and children

CHECK:

- ➔ **Level of initial and continuous training required** (in child psychology, child welfare and international standards and norms of human rights, child rights), see adequacy of staff training with their function
- ➔ **Programme of continuous training** offered to staff (dates of last and next sessions organized)
- ➔ **Type of training:** theory, practice, knowledge, behaviour, etc.
- ➔ **Request for training by staff**
- ➔ **Procedure of staff evaluation, staff development**

Specific group: Girls

CHECK:

- ➔ **Capacity-building**, see whether they enable staff to address the special social reintegration requirements of girls deprived of their liberty
- ➔ **Equal access to training** for male and women staff
- ➔ **Specific training**, see whether it includes training on gender sensitivity and prohibition of discrimination and sexual harassment, on gender specific needs and human rights of girls deprived of their liberty, on issues relating to girls' health, on HIV and other sexually transmissible diseases

Specific place: Police stations

CHECK:

- ➔ **Specialised initial and ongoing training**, see whether training includes the prevention of juvenile delinquency

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RAJJ 12, 22 | GPJD 58 | RNCM 16.3 | CRC GC No10: 89 | RTWP 29, 32, 33, 34 | SMR 47(2), (3) | EPR 8, 54.3, 76, 81.1, 2, 3, 4 | ERJO 129.1, 2, 3 | CPT/Inf (2015), V, 100, 101, 120



Is there any specific training of staff to intervene in altercation between children without resorting the use of force?

ASK: *Director | Staff | Children*

OBSERVE:

- ➔ Attitude of staff if a(n) (violent) incident occurs

CHECK:

- ➔ Existing training in management of violent incident (including verbal de-escalation to reduce tension and professional restraint techniques)
- ➔ Internal procedure to deal with violent incident
- ➔ Records of incidents
- ➔ Records of complaints
- ➔ Records of disciplinary measures
- ➔ Medical records

Specific place: Mental Health Institutions

CHECK:

- ➔ Use of specific means of restraint, medication, drugs, restrain jackets

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RPJDL 24, 25, 64, 75-78 | CRC GC N° 10: §89 | SMR36, 38, 76, 82.2 | EPR 66 | ERJO 90.3, 129.3(f) |
CPT/Inf (2015), V, 120



Do staff conduct themselves and perform their duties as to influence the children deprived of their liberty so as to give good by their example and to command their respect?

ASK: *Children | Staff*

OBSERVE:

- ➔ **Staff behaviour in general**, see whether staff is perceived as human, professional, fair, efficient, inspiring respect and be respectful of children, to represent a positive role model and perspective
- ➔ **Staff interactions with children**
- ➔ **Staff clothing**, see whether they wear a uniform
- ➔ **Staff security instruments**, see whether they carry or have access to batons, handcuffs, weapons, incapacitating sprays or other means of restraint

CHECK:

- ➔ Register of incidents
- ➔ Register of disciplinary sanctions
- ➔ Register of isolation
- ➔ Register of complaints

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RPJDL 65, 87 | *SMR* 48 | *EPR* 64.1, 66, 69.1, 69.3, 72.4, 75 | *ERJO* 90.3, 92, 129.3(f) |
CPT/Inf (2015), V, 120

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5.3. Safety and safeguards

A. TORTURE AND OTHER ILL-TREATMENT



Are all necessary safeguards in place to avoid all infliction, instigation or tolerance of any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstances?

ASK: *Children | Staff | Director*

OBSERVE:

- Staff behaviour in general
- Children's behaviour and appearance (any sign of stress, trauma, injury, hematoma)

CHECK:

- **Internal rules**, see whether any act of torture and other forms of ill-treatment are explicitly prohibited
- **Register of incidents**, see whether all incidents are recorded
- **Register of sanctions and disciplinary measures**, see whether they can be interpreted as torture or ill-treatment (corporal punishment, isolation or solitary confinement, forced feeding, etc. and any other punishment that may compromise the physical and/or mental integrity of children concerned such as reduction of diet, restriction or denial of contact with family members and the outside world)
- **Records of use of force or restraint by staff**
- **Register of complaints**, see whether any (formal or informal) complaint has been lodged for of torture or ill-treatment
- **Allegation of torture or ill-treatment by children**
- **Medical records** *See – Section 5.7. / C – p.139*

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CAT 1 - GC 2 §3 | CRC 37 (a) (d) | OPCAT 3, 17-23 | RAJJ 17.3 | BOP 6 | GPJD VI.54 | RPJDL 67, 87 (a) | SMR 1, 8(d), 32(d), 34, 43 | ECHR 2, 3 | EPR 60.3 | GCFJ III.c.2 | CPT/Inf (2015), V, 126 | ECtHR, Dushka v. Ukraine (N° 29175/04); Tarariyeva v. Russia (N° 4353/03); Mubilanzila Mayeka et Kaniki Mitunga v. Belgium (N° 13178/03 3); Muskhadzhieva and Others v. Belgium (N° 41442/07); Rahimi v. Greece (N° 8687/08); Popov v. France (N° 39472/07 and 39474/07); Mahmudi and others v. Greece (N° 14902/10); Güveç v. Turkey (N° 70337/01); M.S.S v. Belgium and Greece [GC] (N° 30696/09)

B. ISOLATION AND SOLITARY CONFINEMENT



Is the use of solitary confinement and isolation minimised strictly regulated and in any case used as a measure of last resort, and for protection or security purposes?

ASK: Children | Staff | Director

OBSERVE:

- Isolation rooms and any other cell that could be used for solitary confinement or isolation
- Material conditions, see windows, lights, bed, toilets, access to sanitary facilities
- Children's behaviour and appearance (any sign of stress, trauma, injury, hematoma)

CHECK:

- Internal rules and regulation, see whether the decision has been taken by the competent authority, what procedure has been applied, who must be informed / notified of the decision, its extension, its revision (judge, lawyer, parents), who should be consulted, who can visit the child during the measures, how often, for how long
- Register of isolation and solitary confinements, see purpose, justification, duration, frequency, who took the decision, who has been informed, who has visited the child, when and for how long
- Register of disciplinary measures and sanctions, see whether sanctions or disciplinary measures can be linked to isolation or solitary confinement
- Information, see whether the competent authority has been duly and timely informed, whether the lawyer of the child has been notified
- Medical records, see whether the medical staff has been informed immediately and if s/he had access to the child and if s/he does effectively visit the child, how often
- Register of complaints, see whether any (formal or informal) complaint has been lodged by a child for prolonged or irregular measures of isolation or solitary confinement
- Allegations of prolonged or irregular measures of isolation or solitary confinement

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CRC 37 (a) (d) | RPJDL 66, 67-70 | SMR 43 §1 a) b) | ECHR 2, 3 | EPR 60.5 | ERJO 94.1 | CPT/Inf (1998)12, 49-50 | CPT/Inf (2015), V., 128, 129

C. USE OF FORCE AND METHODS OF RESTRAINT



Is the use of instruments of restraint and force limited to strictly restrictive conditions and only in order to prevent children from inflicting self injury, injuries to others or serious destruction of property?

ASK: Children | Staff | Director

OBSERVE:

- ➔ Instruments of constraint worn by or available to the staff (handcuffs, restraint jackets, weapons, etc.)
- ➔ Children's behaviour and appearance (any sign of stress, traumas, injuries, hematoma)

CHECK:

- ➔ Internal rules and regulations, see whether the use is restricted to exceptional cases where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation, see what constitutes an exceptional case
- ➔ Procedure concerning the use of force, see whether stipulations include the various type of use of force that may be used; the circumstances, the members of the staff who are entitled to use of force, the level of responsibility required to authorised the use of force, the report that must be done after and the process of reviewing the reports
- ➔ Duration, see whether it is effectively used for the shortest possible period of time
- ➔ Specific training of staff ☐ See – Section 5.2. – p.101
- ➔ Register of incidents, see how often the use of instruments of restraint and force used occur, see whether the justification is in accordance to the prevention of children from inflicting self injury, injuries to others or serious destruction of property; see if it includes the times at which the measure has begun and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the competent authority who ordered or approved it, and an account of any injuries sustained by children and/or staff
- ➔ Medical records, see whether the child has been systematically examined by a healthcare professional each time physical restraint or force is used against him

- **Register of complaints**, see whether children lodged any (formal or informal) complaint relating to the excessive use of instrument of constraint and force by the staff, see what follow up has been given (investigation, interviews, researches)
- **Perception of children**, see whether children felt hurt, humiliated or degraded by the use of force or restraint by staff

Specific place: Mental Health institutions

CHECK:

- **Physical restraints methods** (straps, strait-jackets, restraint chair, etc.), see whether there is a clear internal policy and a detailed protocol for the recourse to these methods; see whether the decision has been taken by a health professional or ratified by him/her immediately after the use of the methods; see the duration of the measure.
- **Medication abuses** ☐ *See – Section 5.7. / A. – p.135*

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CRC 19, 37 (a) (d) | BOP 6, 21 | RAJJ 17, 1. (b) | RPJDL 63, 64 | SMR 43.2, 47-49 | ECHR 2, 3 |
 EPR 64.1, 64.2, 65, 68.2-4, 69.3 | ERJO 7, 90.1 – 90.4, 91.1 – 91.3, 92 | CPT/Inf (1998)12, 47-50 |
 CPT/Inf (1997)10, E, 36 | CPT/Inf (2006) 35,37-38 | CPT/Inf (2015)1,II, 53

D. SEARCH



Are the search methods used respectful of the dignity, physical and mental integrity as well as privacy of children?

ASK: *Children | Staff | Director*

CHECK:

- **Procedures regarding searching of children, staff, visitors and premises**, see conditions under which they are authorised, their nature (e.g. strip searching, use of cameras, CCTV in searching rooms, etc.), how it is recommended to use these methods (internal rules, national law, etc.)
- **Staff**, see whether only staff of the same gender are authorised to perform searching, see whether intimate examinations – justified by reasonable suspicion – are conducted only by medical staff, see whether staff is trained at the highest level to be able to manage this kind of process without violating the child's physical and psychological integrity
- **Records of searches**
- **Presence of a third person**, see whether the child was assisted by his/her lawyer or another adult person of trust
- **Alternative screening methods**, see whether scans or other methods have been developed
- **Register of complaints**, see whether any (formal or informal) complaint has been lodged by a child regarding the use of search methods

Specific group: Girls

CHECK:

- **Specific requirements**, see whether effective measures have been taken to protect girls' dignity and respect during searches, whether they are only carried out by women staff, properly trained in appropriate searching methods

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CRC 37 (c) (d) | BOP 1 | RPJDL 28 | SMR 50-53 | ECHR 3 | EPR 54.1-54.8 |

ERJO 89.1 – 89.4 | CPT/Inf (2015)1, V, 73

E. SAFEGUARDING ISSUES



Does the management of the facility take the appropriate and sufficient precautions and measures to ensure the protection of the physical and mental integrity as well as well-being of children?

ASK: *Children | Staff | Director*

CHECK:

- **Procedure for reporting, investigating incidents and abuses and protecting children from reprisals** *See – Section 5.7. / C. – p.139*
- **Register of incidents**, see the incidents occurred, their records, how they have been handled and how children have perceived these incidents and the measures that have been taken accordingly
- **Register of complaints**, see the (formal and informal) complaints lodged by children, how they have been followed up, which decision has been taken and how children perceived the treatment that has been reserved to their complaint
- **Medical records**, see cares and treatments administered to children, the incidents they might be linked to and how children perceived the care they have received
- **Specific safeguarding measures** applied to following children: younger juveniles; pregnant girls and mothers with infant children; drug addicts and alcoholics; children with physical and mental health problems; children who exceptionally are deprived of their liberty for long periods; children who have experienced physical, mental or sexual abuse; socially isolated juveniles; and other particularly vulnerable offender groups.

Specific group: Girls

CHECK:

- **Specific measures of safeguard to protect girls**, see whether there is a gender perspective in the internal rules; see clear regulations on the conduct of staff aimed at protecting girls from any gender-based physical or verbal violence, abuse, sexual harassment (existence, implementation)

Specific group: Foreign nationals children

CHECK:

- **Additional measures of safeguard** to protect children separated from their parents or other carers, or are unaccompanied, without parents, carers or relatives

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CRC 19, 37 (d) | BOP 1 | GPJD VI. 52, 53 | RPJDL 87 | RTWP 31, 36 | SMR 2.2, 76 b) | EPR 1 |
 ERJO 54, 64, 73 | CPT/Inf (2009) 27, IV, 97 | CPT/Inf (2015) 1, V, 121

F. VIOLENCE BETWEEN CHILDREN



Does the management take appropriate steps to address bullying and inter-peer violence amongst children?

ASK: Children | Staff | Director

OBSERVE:

- Interactions between children
- Communication between staff and children and between children themselves

CHECK:

- Specific policy and procedure to address bullying and inter-peer violence amongst children (including physical and sexual assault, verbal abuse, extortion, and theft of other juveniles' belongings), see what are the measures to prevent, alert and respond accordingly
- Specific training of staff See – Section 5.2. – p.101
- Register of incidents
- Register of disciplinary measures and records of solitary confinement
- Record of solitary confinement

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CRC 6 | SMR 38, 76 c) | EPR 56.2 | ERJO 88.2 | CPT/Inf (2015) 1, V, 121

5.4. Order and Discipline

A. DISCIPLINARY PROCEDURES AND REGISTERS



Is the framework of disciplinary measures strictly, clearly and precisely regulated? Does it take full account of the fundamental characteristics, needs and rights of children?

ASK: *Director | Staff | Children*

OBSERVE:

- **Brochures, leaflets** providing information in a child-friendly language about conducts constituting a disciplinary offence, type and duration of sanctions, competent authority

CHECK:

- **Disciplinary measures/sanctions** see whether it is clearly provided by the internal rules of the visited establishment/institution including the object and purpose of each disciplinary measure/sanction; see whether the procedure complies with the international and regional standards and legal framework applicable in the context of deprivation of liberty of children (consistent with the dignity of the child, his/her best interest and his/her fundamental rights, last resort measure, taken for the shortest appropriate period of time)
- **Register of disciplinary measures/sanctions**, see the reasons, the measures taken with regards to the principles of necessity and proportionality, the duration, the frequency, who is asking for these measures and who is authorising them
- **Register of incidents**, see whether any incident finds any link with disciplinary measures/sanctions
- **Register of solitary confinement and isolation room**, see whether any link can be made between the decision to put a child in solitary confinement and a disciplinary measures/sanctions taken against him/her
- **Register of complaints**, see whether the child had lodged any (formal or informal) complaint about the disciplinary measures/sanctions
- **Information**, see whether the internal rules of the facility are provided and explained to children; see whether children have understood them

Specific groups: Foreign nationals children

CHECK:

- **Interpretation**, see whether these children have access to interpretation to understand the internal rules of the facility including the object and purpose of each disciplinary measure/sanction

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CRC 2, 3, 6, 12, 37, 40 | *RPJDL* 66, 70 | *CRC GC* N° 10 § 11, 23, 79 | *RTWP* 22-23 | *SMR* 36-46 | *ECHR* 3 | *EPR* 49, 50, 56.1-62 | *ERJO* 94.1, 94.3 | *CPT/Inf* (2015) 1, V, 126



Does the restorative conflict resolution approach prevail over formal disciplinary procedures and sanctions?

ASK: *Director | Staff | Children*

OBSERVE:

- **Interaction** between children and staff members
- Any form of bullying, harassment, peer violence
- **Mediation rooms**, any place available to create a safe and secure environment
- **Environment**, safe, secure, respectful of the dignity and physical integrity of children, favourable to child development

CHECK:

- **Range of available disciplinary measures**, see whether there are alternative measures to formal disciplinary measures/sanctions, see whether there is particular attention to protect vulnerable children and to prevent victimisation
- **Approach to safety and security**, see whether there is dynamic approach developed by the staff to build on positive relationships with children
- **Perception of children**, see whether they effectively feel safe and secure and that their dignity and physical integrity is respected by staff and peers, see if they are encouraged to commit themselves individually and collectively to the maintenance of good order in the institution and how this is encouraged
- **Specific training of staff** ☐ *See – Section 5.2. – p.101*

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CRC, 40 | *RPJDL*, 66 | *SMR* 38.1 | *EPR* 56.2 | *ERJO* 88.1 – 88.4, 94.1 | *CPT/Inf* (2015) 1, V, 126



Do the disciplinary procedures provide sufficient guarantees and safeguards to the child?

ASK: Director | Staff | Children

CHECK:

- ➔ **Notification**, see whether the lawyer / legal assistant of the child has been notified of disciplinary measures taken
- ➔ **Accessibility**, see whether children have unrestricted access to their lawyer/counsel, whether they had the opportunity to meet, whether the lawyer / legal assist was present when the child has been heard by the competent authority
- ➔ **Medical assistance**, see whether children have access to a health professional and to a psychologist
- ➔ **Review**, see whether disciplinary measures are subject to regular review, how often and by whom
- ➔ **Procedures**, see whether disciplinary procedures comply with the presumption of innocence principle and with the adversarial principle; see whether the child and all the stakeholders had the opportunity to be heard about the misconduct concerned by an impartial authority, see whether a decision is taken by the authority after thorough examination of the case
- ➔ **Right to defence**, see whether it includes the right to complain and the right to appeal to an independent authority, see the conditions (delays, means, etc.)
- ➔ **Recording**, see whether there are complete records of all disciplinary proceedings and measures/sanctions (dates, facts, justifications, interviews, investigation, decision, appeal, notifications, etc.)
- ➔ **Complaint**, see whether the child has lodged any (formal or informal) complaint about disciplinary measures/sanctions

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CRC 37 (d), 40§2(b)ii | RAJJ 7.1 | BOP 7 | RPJDL, 68, 70 | CRC - GC N° 10, §12, §89 |

SMR 41, 54-57 | EPR 58, 59, 61 | ERJO, 93.2, 94.2, 94.3, 94.4

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B. COMPLAINT MECHANISMS



Do children have access to complain mechanisms and effective remedies?

ASK: Director | Staff | Children

OBSERVE:

- **Means of communication** (phone, pen, paper, envelopes, stamps, mailboxes, computers), location and access to them
- **Specific rooms** for (confidential / private) meeting between the child and his/her lawyer / legal assistant
- **Documents and information**, see if the child has a copy of the internal rules of the facility, of a complaint Guideline or any other document describing how s/he can implement his/her right to complain in his/her possession

CHECK:

- **Complaint mechanisms**, see whether internal rules of the facility include a section about requests and complaint mechanisms; see whether it includes internal and external mechanisms, individual and collective procedures; whether it provides child-friendly explanation about how to lodge a complain; whether it provides detailed contacts of complaint mechanisms; whether deadlines are established to respond to complaints of children;
- **Information**, see whether, when and how information is provided (in a clear and accessible language) to children about their right to complain, about the outcome of their complaint and their right to appeal; see whether this information is made available upon request of the child, his/her lawyer / legal assistant, family or guardians
- **Confidentiality**, see whether the confidentiality of the correspondence is respected, who can open the child's letters and on which conditions; see whether the complaint box is locked, who has the key and how often it is up; see whether the child's phone calls are listened by a staff member; see whether the meeting rooms is equipped with CCTV or other means of surveillance
- **Forms**, see whether complaint forms exist, are available (upon request, freely available or in the child's room) and are established in a child-friendly manner (drawing, pictures, posters, etc.); see whether alternatives non-dependant on literacy and in other languages are available
- **Complaints registers or records**, see whether it is completed and updated, see the information provided
- **Access to lawyer / legal assistant**, see whether weekly access to services of lawyers, civil society organisations or external complaint mechanisms is organised
☐ See – Section 5.1. / B. – p.95
- **Children**, see whether they are aware of their right to complain; whether they understand the complaint procedure; whether they have already lodged a complaint directly or through their parents, guardians or lawyer / legal assistant, whether they can inquire about their complaint and to whom; see whether children perceive the complaint mechanisms available meaningful

- **Informal complaint**, see whether a system of informal complaints or requests exists and how it works in practice (who handle the requests and respond to them, which form the request can take – oral or written – , etc.), see whether mediation is used and in which cases
- **Complaint procedure**, see whether it includes a review of documents by the institution's director, hearing from the children concerned as well as other stakeholders and witnesses including staff members, hearing from medical and other experts and requesting information from other authorities; see whether the reasons for rejection of a complaint are explained and how; see whether there are avenues for appealing the decision to a different authority (internally or externally)

Specific group: Foreign nationals children

CHECK:

- **Interpretation**, see whether they have access to an interpreter with specific knowledge of the context

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CAT 13 | CRC, 12, 37(d), 40 | RAJJ 35, 36 | BOP 33 | RPJDL, 75-78 | CRC - GC N° 10, §89 | RTWP 25 | SMR 54-57 |
 EPR 70.1-70.7 | ERJO 121 | CPT/Inf (2015)1, V, 131 | EctHR, Tarariyeva v. Russia (N° 4353/03); M.S.S v. Belgium
 and Greece [GC] (N° 30696/09)

5.5. Material conditions

A. SEPARATION



Are the different groups of children being kept in separate institutions or part of institutions taking into account their sex, age, criminal record, legal reason of their deprivation of liberty and the necessity of their treatment?

ASK: Director | Staff | Children

OBSERVE:

- **Accommodation**, see cells, rooms, dormitories, units, etc.
- **Crossing points**, see hallways, lifts, stairs, transports, etc.
- **Common areas/Community spaces**, see lunch room, library, classrooms, courtyards, sports hall, visiting room, etc.

CHECK:

- **Separation**, see whether there is a clear separation between children and adults, boys and girls, older and younger children, untried and convicted children, children with mental health issues; see whether the separation is not resulting in circumstances that can generate isolation; see whether it is of the best interest of the child to be separated
- **Supervision**, see whether children are under appropriate supervision when they are mixed with other groups of children or with adults or when they perform joint activities

Specific group: Foreign nationals children

CHECK:

- **Family**, see whether children in the company of their parents or other close relatives are separated from them

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CRC, 37(c) | RAJJ 13.4, 26.3 | BOP 8 | RPJDL, III, 17, 28, 29, 53 | RTWP 41.d | SMR 11, 93, 109, 112 |
 EPR 12.1, 18.8-9, 21, 35.4, 47, 104.1 | ERJO, 54, 57, 59.1 - 60 | CPT/Inf (1998)12, B., 29 | CPT/Inf (2000)13, 24 |
 CPT/Inf (2009)27, IV, 100 | CPT/Inf (2015)1, V, 101-104 | ECtHR, Coselav v. Turkey (1413/07); Mahmundi and
 others v. Greece (N° 14902/10); Güveç v. Turkey (N° 70337/01)

B. ACCOMMODATION AND OVERCROWDING



Are there personalised accommodations respectful of the dignity and privacy of the child?

ASK: Director | Staff | Children

OBSERVE:

- **Accommodation**, see cells, rooms, dormitories, units, etc.
- **General environment and atmosphere**

CHECK:

- **Sleeping accommodation**, see whether they consist of personalised, individual bedrooms and if not, what are the reasons and how do they respect the best interest of the child; whether children are consulted before being required to share sleeping accommodation and to state with whom they would wish to be accommodated; see the size and the kind of furniture, windows' size, natural light, air, the state of the bath (hot water available), the presence of personal decorations
- **General environment of the facility**, see whether it is positive, child-friendly and consistent with the rehabilitative aim of residential treatment, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities; whether due regard is paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation
- **Supervision**, see whether it is regular, unobtrusive, if it concerns all sleeping areas, including individual rooms and group dormitories, in order to ensure the protection of each child; see whether there is an effective alarm system that can be used in case of emergencies

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CRC, 37(c) | *RAJJ* 27.2 | *BOP* 1 | *RPJDL*, 28, 32 and 33 31-37, 41, 47 | *GC-GC* No10 §89 | *RTWP* 4, 5 |
SMR 12-17, 18, 19-21, 22, 23, 42-43, 64, 89, 113 | *EPR* 17.1-18.10, 19.1-7, 20.1-21, 27, 28, 36.3, 96 |
ERJO, 63.1-64, 65, 66, 67 | *CPT/Inf* (92) 3, 46 | *CPT/Inf* (2015)1, V, 101 | *ECtHR*, *Popov v. France*
 (N° 39472/07 and 39474/07)

C. FOOD AND DRINKING WATER



Do children deprived of their liberty have access to adequate food and drinking water in line with their healthy development?

ASK: Director | Staff (cooks and health professionals) | Children

OBSERVE / CHECK:

- ➔ **Drinking water**, see whether the access is ready and available at all time
- ➔ **Food**, see whether children are given food at appropriate times (three meals a day with reasonable intervals between them every day; see whether food is of quality and quantity - i.e. something more substantial than a sandwich) to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements
- ➔ **Special dietary regimes** (for medical, cultural, religious and health reasons), see whether they are respected and if not, why
- ➔ **Kitchen**, see cleanliness, hygiene, general state of maintenance of equipment

Specific place: Mental health Institutions

CHECK:

- ➔ **Eating arrangement**, see whether they are decent (with proper utensils whilst seated at a table)

Specific group: Children with disabilities

CHECK:

- ➔ **Catering arrangement**, see whether specific arrangements have been organised

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CRC, 14, 24§2 (c) | *RPJDL*, 37 | *RTWP* 5, 48 | *SMR* 22, 42, 43.1.d) | *EPR* 22, 44 | *ERJO*, 68.2, 68.3 |
CPT/Inf(1998)12, 35 | *CPT/Inf*(2002)15, 47 | *ECtHR*, *M.S.S v. Belgium and Greece* [GC] (N° 30696/09)

D. SANITATION FACILITIES AND HYGIENE



Do children deprived of their liberty have access to adequate decent sanitation facilities respectful of privacy and hygiene?

ASK: Director | Staff | Children

OBSERVE:

- **Sanitary installations**, see general configuration (individual or collective, number of toilets, number of showers), equipment (toilets, curtains to showers), state of maintenance (well-maintained or decrepit), cleanliness, decency, surveillance (presence of security staff, CCTV)
- **Hygienic items**, see soap, shampoo, toothpaste and brushes, number and state of towels, etc.

CHECK:

- **Accessibility**, see when the sanitary facilities are accessible and how often (frequency of showers); if the toilets are outside the cell, see whether the child can have access to them upon request; see whether there is access to running water and where
- **Privacy and intimacy**, see whether children feel that their privacy and intimacy is respected; see in which cases the protection and security prevail over privacy and intimacy

Special group: Children with disabilities

CHECK:

- Specific arrangements and equipment

Special group: Girls

CHECK:

- **Specific sanitary and washing dispositions and provision of hygienic items**, such as sanitary towels and tampons free of charge, safe disposal arrangements for blood-stained articles, a regular supply of water for the personal care of children and girls, in particular girls who are pregnant, breastfeeding or menstruating

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CRC, 37(c) | RAJJ 8.1 | RPJDL, 31, 34 | RTWP 5 | SMR 15-18, 19.2 | EPR 18.1, 19 | ERJO 63.1, 65.1 – 65.4 | CPT/Inf(1998)12, II, 34 | CPT/Inf(2000)13, 31 | CPT/Inf(2002)15, 47 | CPT/Inf(2015)1, V, 105

E. LIGHTING AND VENTILATION



Do children deprived of their liberty have adequate lightning and access to ventilation?

ASK: Director | Staff | Children

CHECK / OBSERVE:

- **Natural light and artificial lighting**, see in both cases whether it is sufficient to read by, sleeping period excluded
- **Autonomy**, see whether the child is able to control the lightening (switch on/off the light, open/close the shutters, the curtain, open/close the window)
- **Adequate heating and ventilation**, see whether it is appropriate to the climate and seasons
- **Access to fresh air**

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CRC, 37(c) | RPJDL, 26, 31 | SMR 13-14, 73.2 | EPR 18.1-2, 32.2 | ERJO, 63.1 | CPT/Inf(2001)16, 30 | CPT/Inf(2015)1, V, 104

F. CLOTHING AND BEDDING



Are children deprived of their liberty provided with adequate clothing and bedding?

ASK: Director | Staff | Children

CHECK / OBSERVE:

- **Clothing**, see whether children are allowed to wear their own clothes, whether those who do not have suitable clothing of their own are provided with clothing by the establishment, see whether these clothes are not uniform-like
- **Bedding**, see whether every child is provided with a separate bed and appropriate bedding, whether they are kept in good order and changed often enough to ensure its cleanliness; see whether the mattress and blankets are clean and in good state, whether the bedding is changed regularly

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CRC, 14, 37(c) | *RAJJ* 27.2 | *RPJDL*, 31, 33 and 36 | *SMR* 19-21, 35, 67, 115 | *EPR* 19.5, 20-21, 97 | *ERJO*, 65.4, 66-67 | *CPT/Inf*(2002)15, 47 | *CPT/Inf*(2015)1, V, 106 | *ECtHR*, *M.S.S v. Belgium and Greece* [GC] (N° 30696/09)

G. RIGHT TO PRIVACY (KEEP A DIARY, KEEP PERSONAL BELONGINGS, ETC.)



Is the right of privacy of children deprived of their liberty respected?

ASK: *Director* | *Staff* | *Children*

CHECK / OBSERVE:

- **Belongings**, see whether children have the possibility to keep a diary, personal effects such as pictures, books, objects, etc.
- **Inventory**, see whether such inventory of the child's belongings on arrival has been signed (during the intake procedure and on the child release)
- **Storage facilities**, see whether such facilities are available to children and if they can lock them (autonomy)
- **Decoration**, see whether children are allowed to decorate their bedroom according to their will
- **Supervision**, see whether children are routinely observed

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CRC 16, 40 § 2(b) vii | *RAJJ* 8.1 | *RPJDL*, 35, 36, 65 (64?), 87(e) | *SMR* 7, 19-20, 67, 115 | *ECHR* 1 | *EPR* 15.1(d), 31, 33.4-5, 54.8, 97 | *ERJO*, 16, 62.2, 63.1 | *CPT/Inf*(1998)12, C, 34

5.6. Socio-pedagogical framework, socio-educational regime and personal development

A. REGIME & PROGRAMME



Is there an individualised plan/programme drawn up for every child upon his/her arrival to the facility with the purpose to foster his/her personal development, education, rehabilitation and preparation to reintegration into society?

ASK: Children | Staff (educators, vocational instructors, social workers) | Director

CHECK:

- **Description of the regime** (internal rules), see whether it is of specific type and the level of care
- **Individual programme**, see whether it includes education, vocational training, recreational / sport / physical activities, counselling / care, activities oriented towards reintegration into society, who organise these activities and how many children participate;
- **See whether it is based on medical, psychological and social report and that it takes into account** the age, personality, gender, social and cultural background, stage of development and origin of deprivation of liberty
- **Objectives, timeframe and means**, see whether its purpose is to develop skills and competences that will assist the child to reintegrate into society
- **Number of children within the facility**, see whether it is small enough to enable individualised care
- **Information about and conception of the child's individual programme**, see whether it is done upon arrival, in a child-friendly manner, with the participation of the child (and possibly of his/her family or guardians)
- **Implementation of the individual programme**, see whether practice complies with theory and if the plan is coherent with the medical, psychological and social report; see the typical day of children in the facility (timetables of: wake-up, meals, school, training, leisure, sport activities, opening and closure of the cells, which should be opened as long as possible
- **System of incentives**, see which incentives are foreseen in relation with which positive behaviour, see whether temporary leave are allowed, how often and for what duration
- **Perception of the individual programme** by the child him/herself see if it is meaningful for him/her

Specific group: Children with specific needs as regards to gender, ethnicity, minority, physical or mental abilities, sexual orientation, etc.

CHECK:

- **Individual programme**, see whether it includes specific provisions based on the particular needs of these children and particular vulnerability pointed out by specialised staff
- **Fair and equal treatment**

Specific group: Foreign nationals children

CHECK:

- **Information and planning**, see whether it takes into account the language and potential cultural particularities of the child
- **Constructive activities and education**

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CRC 40(1) | RAJJ 1.2, 26 | GPJD, IV. 10, B. 20-31, C. 32-39, V. 45 | RPJDL 24, 25, 27, 28 | RNCM 7 |
 RTWP 2.1 | SMR 94 | EPR 35.1, 103.1, 103.2, 103.3, 106.1, 106.2, 106.3 | ERJO 50.1, 53.4, 62.6, 76.1 – 77, 79.1 |
 CPT/Inf (2009) 27, IV, 99 | CPT/Inf (2015) 1, 107-112 | ECtHR, Popov v. France (N° 39472/07 and 39474/07)



Does the institution take the necessary and sufficient measures to guarantee the continuity of care after release?

ASK: Director | Staff (educators, vocational instructors, social workers)

CHECK:

- **Measures to guarantee the continuity of care** including assistance (from the beginning and throughout any period of deprivation of liberty) by the services / agencies / organisations that may take care of the child after release
- **Agreements with external** corresponding services of the community, see whether there is a real synergy and effective collaboration between outside and inside
- **Individual programme**, see whether it includes activities developing useful skills to the reintegration of the child into society
- **External point of reference**, see whether the contacts between the child and his/her external point of reference (e.g. social assistant, psychologist, teacher, etc.) has been preserved, fostered, interrupted

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RPJDL 38-46, 49, 53, 79-80 | RTWP 46-47 | SMR 4.1, 87, 104.2, 107, 110 | EPR 7, 26.3, 26.12, 28.7, 33.3, 33.7, 33.8, 35.3, 43.3.j, 107.4 | ERJO 15, 50.1, 51, 53.5, 77, 78.5, 79.3, 100.1-102.3 | GCFJ §21.c

B. PARTICIPATION



Is the level of participation of the child to matters relating to general conditions of deprivation of liberty and regime activities adequate and sufficient?

ASK: Children | Staff | Director

CHECK:

- **Institution policy** about child participation in decision-making and through all other means and activities that allow them to express their opinions and have their voice heard
- **Measures to encourage the child** to discuss and express his/herself (formal and informal, individual and collective) including periodic meetings with staff and/or director, youth council, suggestion box, questionnaires, etc.
- **Participation** to regular implementation and update of individual programme together with external services / agencies / organisations concerned, parents or tutors
- **Potential barriers** encountered by the child to participate in decision-making
- **Perception of the child** about his/her participation, (taken into account, useful, encouraged or not); see whether the staff and director personally know children

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CRC 12 | GPJD 50 | EPR 103.3 | ERJO 13, 62.6 (d), 76.1, 79.4

C. CONTACT WITH THE OUTSIDE WORLD



Do children have adequate access to communication with the outside world?

ASK: *Children | Staff | Director*

OBSERVE:

- ➔ **Visiting room**, see whether it allows privacy, contact and unrestricted communication
- ➔ **Location of the telephone and the computer** see whether privacy is respected in these areas
- ➔ **Availability of communication material** (paper, pen, envelopes, stamps, internet) and information sources (newspapers, periodicals, publications, radio, television, and computer)

CHECK:

- ➔ **Means of communication** with families, friends and other persons, defence council or representatives of any lawful club or organisation in which the juvenile is interested (by telephone, correspondence, internet, visits)
- ➔ **Access** to these means of communication and conditions of communication (unrestricted, private, schedules, cost, open air, etc.)
- ➔ **Visits schedules and modalities** (when, where, who, how often)
- ➔ **Register of visits**, see whether visits are regular and frequent (in principle once a week and not less than once a month)
- ➔ **Register of communication**, see whether phone calls and letters (sent and received) are regular and frequent (in principle at least twice a week with the person of his or her choice)
- ➔ **Register of entries and exits**, see how often and for how long children have been allowed to go out with permission (for educational, vocational or other important reasons such as preparing their reintegration) or on holidays
- ➔ **Restrictions to communicate and receive visits**, see whether they are legal (ie necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime) and whether they still allow an acceptable minimum level of contact.
- ➔ **Accessibility to press** (articles, newspapers, periodicals, publications, etc.), media (radio, television, internet) and information in general from the outside world
- ➔ **Quality of contacts, communication and information**
- ➔ **Existence of disciplinary measures** that could suspend / withdraw the contacts with the outside world

Specific group: Foreign nationals children

CHECK:

- ➔ **Visits and other forms of contacts** with the outside world, see whether the allowed forms of contacts are compensating for their social isolation

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RAJJ 26.5 | BOP 15, 19 | RPJDL 59, 60, 61, 62 | CRC GC N°10: § 87, 89 | RTWP 2, 26-28 | SMR 43.3, 58-63 |
EPR 24.1-12, 60.4, 99 | ERJO 83-86.2, 104.5 | GCFJ 21 | CPT/Inf (2015)1, V, 122 – 125, 127



Is the facility located in places that are easy to access, that facilitate contact between the children and their families and that is integrated into the social, economic and cultural environment of the community?

ASK: *Children | Director*

OBSERVE:

- ➔ **Location in relation with the urban context**, see whether the facility is located in the countryside, near or within a city (centre, periphery)
- ➔ **External environment**, see whether it is isolated or located within the community
- ➔ **Access to public transport**, see whether the access to the facility is easy and quick

CHECK:

- ➔ **Distance between the facility and the child's home**, the court, the lawyer's office
- ➔ **Distance of the facility from the nearest urbanisation** and ways of access (through public transports, by road, on foot, etc.)
- ➔ **Description of social, economic and cultural environment** see the level of integration of the facility into the local community
- ➔ **Agreements and collaborations** with external organisations from the local community

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BOP 20 | RPJDL 30 | CRC GC N° 10, §87 | RTWP 4, 26, 43 | SMR 59 | EPR 17.1 | ERJO 53.5, 55

D. EDUCATION AND VOCATIONAL TRAINING



Do children have access to education and vocational training suited to their needs and abilities and designed to prepare them for return to society?

ASK: Children | Staff (teachers, educators, vocational instructors, social workers) | Director

CHECK:

- ➔ Number / Percentage of children attending a course or a vocational training
- ➔ Teachers / Vocational trainers, number, specialisation / discipline, qualifications, see whether they are duly qualified and if they have been properly trained to adapt their methods to the particular context and public, see whether they are employed within the facility or outside
- ➔ Educational / Vocational training programme (daily, weekly) see whether is organised inside and/or outside the facility; whether it is integrated with the education system of the country
- ➔ Ratio of education / vocational training in the overall individual programme, see whether children have the possibility to follow it on a regular basis
- ➔ Quality of education / vocational training, see whether it is equivalent to that found in the community and whether it is qualifying (diplomas or educational certificates awarded or not, without reference to institutionalisation)
- ➔ Perception of the educational / vocational training programme by the child see whether it is meaningful for him/her and whether it is likely to prepare him/her for further studies and/or employment

Specific group: Foreign nationals children; Children with particular cultural or ethnic needs; Children with cognitive or learning difficulties or illiterate

CHECK:

- ➔ Provision of specific educational / vocational training in line with their particular needs

Specific group: Girls

CHECK:

- ➔ Additional measures taken to ensure equal treatment

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CRC 28, 29, 40 | GPJD V. 47 | RAJJ 26.1-2, 26.6 | BOP 28 | RPJDL 27, 38-46 | RTWP 37 | SMR 4, 104, 107 |
 EPR 26.5, 26.16, 28, 35.1-2, 89.1, 103.4, 106 | ERJO 2, 28, 62.2.f, 62.6, 77-79.3, 102.1, 129.3.c | GCFJ 21.b, 82 |
 CPT/Inf (2015)1, V, 107 - 112

E. WORK AND REMUNERATED ACTIVITIES



Does the institution provide opportunity to perform (equitable) remunerated work?

ASK: *Children | Staff | Director*

CHECK:

- ➡ **Number / Percentage of children** who are working, how many hours per week and which tasks they are carrying out
- ➡ **Opportunity to work**, see whether they are equitable (remuneration) and if there are internal and external offers (within the community)
- ➡ **Ratio of work in the overall programme**, see whether the priority is given to education and vocational training over work
- ➡ **Meaningfulness of work**, see whether it is stimulating and of educational value and that it is not a sanction / disciplinary measure / compulsory (forced labour)

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CRC 32 | RPJDL 18.b, 42-46, 67 | SMR 4.2, 96-98, 100.2, 103, 116 | EPR 26.1-17, 100.1-2, 105.1-5 |
ERJO 78.1, 82.1-3

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F. OUTDOOR EXERCISE, LEISURE AND CULTURAL ACTIVITIES



Do children have a reasonable daily period of time to participate in recreational / sport / physical activities?

ASK: *Children | Staff | Director*

OBSERVE:

- ➔ Adequate space, installations and equipment (outdoor and indoor, size, general aspect)
- ➔ Open air activities

CHECK:

- ➔ Daily programme of recreational / sport / physical activities, see whether – at least – 2 hours every day are dedicated to these activities and whether – at least – 1 hour is in the open air
- ➔ Cultural activities, recreational activities, leisure, see outcomes, programmes, schedules
- ➔ Existence of disciplinary measures that could suspend the course of these activities

Specific group: Girls

CHECK:

- ➔ Access to physical activities, see whether they have equal access to physical activities, leisure and recreation

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CRC 31 | RPJDL 32, 47 | CRC GC 10 §89 | SMR: 23, 105 | EPR 27 | ERJO 77, 80.1-2, 81 | GCFJ 21.b |

CPT/Inf (2015)1, V, 108

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G. RELIGIOUS BELIEF AND WORSHIP



Do children have the right to satisfy the needs of religious and/or spiritual life as well as their cultural practice?

ASK: Children | Staff | Director

OBSERVE:

- ➔ Presence of books or items of religious or spiritual observance

CHECK:

- ➔ Existence, schedules and attendance to service
- ➔ Register of visits, see whether a spiritual or philosophical counsellor / representative of any religion of the child's choice come on a periodic basis to meet the child or is part of the staff
- ➔ Possession of necessary books and/or items of religious or spiritual observance
- ➔ Liberty not to participate in religious services and to freely decline religious education

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RPJDL 48 | SMR 2, 65 | EPR 29, 35.1, 38.2 | ERJO 87.1-3

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H. WELFARE AND COUNSELLING



Is the welfare of children sufficiently considered in the framework of their deprivation of liberty?

ASK: *Children | Staff | Director*

OBSERVE:

- **Apparent state of mind and health of children**, see the emotional state of the children

CHECK:

- **Internal rules**, see whether any specific policy of welfare – counselling applies within the facility; see the conditions and requirements to benefit from counselling
- **Medical record**, see whether there is a diagnostic process for recommending counselling; when it takes places and how often; who is the counsellor and what qualifications s/he has
- **Mobilisation of all resources possible**, see who is involved in the measures and services provided to foster the wellbeing of the child (his/her family, volunteers, community groups, schools, other community institutions, etc.)

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RAJJ 1, 1.2, 17.1 (d)

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I. ACTIVITIES ON REINTEGRATION / PREPARATION FOR RELEASE



Do children benefit from adequate arrangements designed to assist them in returning into society, family life, education or employment after release?

ASK: *Children | Staff | Director*

CHECK:

- ➔ **Activities on reintegration** (objectives, means, schedules, inside the facility and/or outside in the community, etc.)
- ➔ **Ratio of activities** in the overall individual programme
- ➔ **Links between services provided within the facility and corresponding services in the community** see whether they are closely related (formal agreement, visits in the facility – permission to leave – conditional release)
- ➔ **Provision of services preparing to release** (suitable residence, employment, clothing, sufficient means to maintain his/herself)
- ➔ **Perception of these activities** by the child him/herself see whether it is meaningful for him/her and whether it is likely to prepare him/her to returning into society, family life, for further studies and/or employment

Specific group: Foreign national children

CHECK:

- ➔ **Specific activities on reintegration in their country of origin**, see whether there is any co-operation with the juvenile welfare and justice agencies in order to guarantee the necessary assistance immediately upon arrival in their country of origin

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CRC 40(1) | **RPJDL** 8, 38, 40, 42, 45, 59, 67, 79, 80 | **CRC** – GC N° 10 §23, 29, 77, 89 | **RTWP** 29, 40, 43, 45-47 |
SMR 4, 25, 59, 87 | **EPR** 6, 26.3, 28.7, 33, 35.3, 42.3.j, 103.2, 103.4.d, 107 | **ERJO** 50.1, 51, 77, 78.5, 79.1 – 79.4, 100.1
 – 103, 104.3, 110 | **GCFJ** 21.c

5.7. Health Care

A. ACCESS TO MEDICAL CARE (ASSESSMENT, DOCUMENTATION, INFORMATION)



Do children have access to equivalent care services with those enjoyed by patients in the outside community
Does the health/medical care services for children constitute an integrated part of a multidisciplinary (medico-psycho-social) programme of care?

ASK: *Children | Staff (medical staff) | Director*

OBSERVE:

- ➊ **Health facilities**, equipment, see whether they allow privacy, whether they are well equipped, clean, respectful of the child's dignity
- ➋ **Pharmaceutical Materials**, see whether they are correctly administered and correctly stored
- ➌ **State of health of children**, see whether s/he seems in good overall health

CHECK:

- ➊ **Individual programme**, see whether it includes adequate (preventive and remedial) health/medical care services (including dental services, ophthalmologist, psychiatric, psychological and counselling services + pharmaceutical product and special diets) and whether it includes health education
- ➋ **Medical registers**, see whether the individual programme has been established on the basis of the first interview and physical examination done upon arrival to the facility
- ➌ **Availability and suitability of health facilities and health professionals** inside the facility and of services of the local community
- ➍ **Co-ordination** between the work of an establishment's health-care team (doctors, nurses, psychologists, etc.) that of other staff including specialised educators, social workers and teachers, and that of external services
- ➎ **Medical registers**, see whether the child has been examined on a regular basis, by which health-care professional (inside or outside the facility), if a follow up has been done when needed, under which treatment s/he is, the illness-injuries-pains-trauma s/he complained about or has been treated for, the potential connections of dates between incidents and injuries; see how often they are updated
- ➏ **Observance of medical confidentiality**, see whether the examinations of children are conducted out of the hearing and out of the sight of non-medical staff
- ➐ **Waiting list**, see how long children have to wait on average to be provided with the appropriate health care services
- ➑ **Perception of children of the health/medical care services**

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CRC 24 | RAJJ 13.5, 26.2 | BOP 24, 25 | RPJDL 49-55, 56 | CRC – GC N° 10 §89 | RTWP 6, 9, 10, 12, 15, 39 | SMR 24, 25, 27, 30-35, 46.2 | EPR 15.1.f, 16.a, 35.1, 39, 40.1-5, 41.1-5, 43.1, 46.1-2, 52.5, 103.5 | ERJO 28, 50.1, 62.2.g, 69.1-2, 70.1-2, 73.d, 74.1, 74.2 | CPT/Inf (2015)1, V,114



Are all measures being taken, upon the arrival of the child and during the length of the deprivation of liberty, to detect, identify and treat any signs or risks of physical or mental condition that may affect the child and require medical attention?

ASK: Children | Staff (medical staff) | Director

OBSERVE:

- ➔ Children with external signs of physical or mental condition

CHECK:

- ➔ **Medical registers**, see when the first interview and physical examination has been done (upon arrival or later); whether it has been done by a health professional; whether potential health problems (e.g. mental health, disabilities, drug or other kind of addiction, prior ill-treatment, physical or sexual abuse, suicidal tendencies, etc.) have been identified; whether preventive actions have been taken accordingly and which remedial actions have been taken; whether and when the medical staff has reported to the director of the facility any fact that could have injuriously affected a child (due to continued deprivation of liberty, hunger strike or any condition of detention)
- ➔ **Individual plan**, see whether it takes the signs or risks of physical or mental condition detected into account and which activities / services (preventive or remedial) are provided accordingly

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BOP 24 | RPJDL 49, 50, 51, 52 | CRC – GC N° 10, §89 | RTWP 6, 9 | SMR 25, 31, 46 | EPR 15.1.f, 16.a, 22.6, 40.4, 41.1, 42.1-3, 43.1-3, 47.2 | ERJO 62.2, 62.5, 70.1-2 | CPT/Inf (2015)1, V | ECtHR, Tarariyeva v. Russia (N° 4353/03); Güveç v. Turkey (N° 70337/01)



Are medicines administered only for necessary treatment on medical grounds and – when possible – after having obtained the informed consent of the child concerned?

ASK: *Children | Staff (medical staff) | Director*

OBSERVE:

- ➔ Use of medicines by children

CHECK:

- ➔ **Medical registers**, see the list of medicines administered; on which medical grounds they have been prescribed; whether they have been prescribed by a health professional (inside or outside the facility) and have been administered as prescribed
- ➔ **Consent of the child**, see whether consent has been given after having been duly informed (complete, exact and understandable information) of his/her medical state of health and the medical grounds on the basis of which medicines are prescribed by the health professional
- ➔ **Use of medicines** see whether there has been any experimental use of drugs and treatment; any use of medicines for eliciting information or obtaining a confession
- ➔ **Register of incidents and register of disciplinary measures**; see whether there is any connection between the use of medicines and a specific incident, punishment, disciplinary measure or mean of restraint

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BOP 22 | RPJDL 55 | ERJO 72.1, 72.2, 118 | CPT/Inf (1998)12, 41 | CPT/Inf (2015)1, V, 3, d, 115

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B. MEDICAL STAFF (EXTERNAL AND INTERNAL)



Are the medical staff appropriately qualified and trained to provide health care services, equivalent to those available in the community, to children?

ASK: *Staff (medical staff) | Director*

CHECK:

- ➔ **Qualification and training of medical staff** specific to children (including preventive health care and handling of medical emergencies, documentation and interpretation of injuries, reporting obligation and procedure of reporting evidence of ill-treatment, technique of interviewing children who may have been ill-treated); see the programme of continuous training and last programme of training
- ➔ **Level and panel of available equivalent services in the community**
- ➔ **Independence**
- ➔ **Connections and collaboration** between internal and external services
- ➔ **Confidentiality**, see where the medical registers are kept; who has access to them and by which conditions
- ➔ **Emergencies**, see how the medical staff deal with and how prompt medical staff are able to react to and provide due care in emergencies

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CRC 24 (1), (2)(b) | RAJJ 13.5 | BOP 24, 26 | RPJDL 19, 49, 51 | CRC – GC Nº 10 §89 | RTWP 8, 33, 39 |
 SMR 26, 27.2, 33-34, 46 | EPR 40, 41.4, 68.2.b, 81.3, 89.1 | ERJO 69, 71, 128.1, 129.2 | CPT/Inf(2013) 29, VII, 82

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C. DOCUMENTING AND REPORTING MEDICAL EVIDENCE OF ILL-TREATMENT



Are procedures of documentation and reporting of medical evidences of ill treatment of children deprived of their liberty (by staff and/or by peers) effective to prevent and combat ill-treatment?

ASK: *Children | Staff (medical staff) | Director*

OBSERVE:

- ➔ Visible injury(ies) of children

CHECK:

- ➔ **Medical records**, see whether the first interview and physical examination by a health-care professional of new arrivals records any injury and related allegations; whether systematic medical screenings take place each time the child is transferred through police services and each time a violent incident involving the child occurs in the facility
- ➔ **Records after medical screening**, see whether they contain an account of statements made by the child (including his/her description of his/her state of health and any allegations of ill-treatment); a full account of objective medical findings based on a thorough examination, the health-care professional's observations indicating the consistency between any allegations made and the objective medical findings, the results of additional examinations, detailed conclusions of specialised consultations and treatment
- ➔ **Records of medical examination**, see whether they are made on a special form (with body charts, photographs); whether they are included in the medical register of the child
- ➔ **Documentation of hand over of custody**, see whether it contains any observation of visible injury on the child at the moment of transfer from police services to facility depriving of liberty; whether this documentation has been forwarded to health-care services
- ➔ **Procedure of immediate reporting of injuries** recorded by health-care professionals consistent with allegations made by children to relevant authorities, see whether medical confidentiality has not been an obstacle to the reporting of medical evidence indicative of ill-treatment; whether the report has been done regardless of the wishes of the person concerned
- ➔ **Immediate report of injuries to relevant authorities**, see whether the report is communicated to an independent body empowered to carry out an official investigation, bodies responsible for disciplinary investigations, monitoring bodies, the child and his/her lawyer
- ➔ **Effective measures to protect the child** who is the subject of the report from any form of reprisal from staff or other children (transfer, avoid day-to-day contacts, alternative accommodation, etc.

Specific group: Girls

CHECK:

- **Sexual abuse**, see whether children have been informed of their right to seek recourse from judicial authorities, if they have been informed of the procedures, if they have access to legal assistance and immediate access to specialized psychological support or counselling; whether specific measures have been taken to avoid retaliation

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CRC 37 | BOP 6, 33 | RPJDL 50, 52, 67, 87 a-c-d | RTWP 7, 25 | SMR 7, 8, 30, 34, 56-57, 71 | EPR 15.1.e, 42.3 | ERJO 62.2.e | CPT/Inf (2013) 29, VII, 71-84

D. SPECIAL NEEDS OF GIRLS



Do girls have the same access (and same quality) of health-care as boys?

ASK: *Children | Staff (medical staff) | Director*

OBSERVE:

- **State of health of girls**, see whether they seem in good health

CHECK:

- **Gender-specific health-care services**, including gynaecology
- **Female health-care professionals**, see whether they are available within the facility or outside, within the community
- **Qualification of health-care professionals**, see whether it includes specific training in women health's issues including in gynaecology
- **Preventive health care measures of particular relevance to women**, see whether the screening for breast and cervical cancer are available to girls deprived of their liberty
- **Means of contraception**, see whether girls have access to contraception of their choice
- **Physical integrity**, see whether girls have access to the "morning after" pill and/or other forms of abortion at later stages of a pregnancy available to girls who are not in detention
- **Individual plan**, see whether it includes women's health education

Specific group: Pregnant girls and mothers with children**OBSERVE:**

- **Environment**, see whether it is mother and child-centred, free from the visible trappings of incarceration (uniforms, bars and handcuffs)
- **Equipment**, see whether babies and young children held with their mother have adequate play and exercise facilities

CHECK:

- **Specific diet of pregnant girls**, see whether it is a high protein diet, rich in fresh fruit and vegetables
- **Ante and post-natal care**, see whether they are equivalent to those provided into the community, see whether the mother has been allowed to give birth outside the place of deprivation of liberty and under which conditions (freedom of movement, handcuffed, guarded, etc.)
- **Treatment and care of babies and young children** held with their mother, see whether it is based on the best interest of the child; if it is supervised by specialists in social work and child development
- **Register of entries and exits**, see how often babies and young children held with their mother have the opportunity to leave the facility and experience the life outside (kinder gardens, visits to their father or grand-parents, etc.)

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RTWP 6 – 18, 24, 38, 39, 48–52 | SMR 28 | EPR 34.3 | ERJO 73 b., | CPT/Inf (2000)13, VI, 26 – 29, 32, 33 | CPT/Inf (2015)1, V, 3, d, 117

E. CHILDREN WITH MENTAL HEALTH ISSUES



Are children suffering from mental illness treated with special attention and by priority in specialised institutions under independent medical management?

ASK: *Children | Staff (medical staff) | Director*

CHECK:

- **Medical registers**, see whether any sign of mental illness has been detected through the first interview and physical examination (first screening) and the regular medical care services provided
- **Agreements and/or collaborations** with specialised institutions
- **Arrangements with appropriate agencies** ensuring the continuation of mental health care after release
- **Medical registers and individualised plan**, see special provisions or arrangements (through child-psychiatric follow up, psychotherapy, counselling, specialised educators provision, etc.)

Specific group: Girls

CHECK:

- **Mental health care and rehabilitation programmes**, see whether they are individualised, gender-sensitive, trauma-informed and comprehensive

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CRC 23 | **GPJD** V. 45 | **RPJDL** 21.e, 28, 50-51, 53 | **RTWP** 6.b, 12-13, 41.d | **SMR** 25, 31, 32.1.a, 109-110 |
EPR 12.1-2, 40.4, 42.3.b, 47, 81.3 | **ERJO** 57, 73 (d), 117-119 | **CPT/Inf** (2015)1, V, 116

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F. CHILDREN WITH ADDICTION PROBLEMS (DRUG, ALCOHOL, ETC.)



Is there a strategy for the management of substance abuse and a rehabilitation programme available to children concerned?

ASK: Children | Staff (medical staff) | Director

CHECK:

- ➔ **Comprehensive strategy** for the management of substance abuse (prevention and treatment)
- ➔ **Rehabilitation programme**, see whether it exists internally or whether any collaboration / agreements exists with external services (detoxification facilities, etc.), whether it is adapted to the age, sex and other requirements of the child concerned, whether the child has been given the choice to participate to this programme or if it is mandatory
- ➔ **Health information / education** on issues of particular relevance to adolescents such as substance abuse and rehabilitation programmes
- ➔ **Qualification and training of staff** responsible for the information – education – rehabilitation programme, see whether it is relevant
- ➔ **Perception of children** about the institutional policy on substance abuse and the rehabilitation programme including information and health education, see whether it is perceived as useful and meaningful

Specific group: Girls

CHECK:

- ➔ **Specialised treatment programmes** designed for girls, see whether it takes into account prior victimisation, the special needs of pregnant girls and girls with children, as well as their diverse cultural backgrounds

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CRC 24 (1), 33 | **RAJJ** 15 | **GPJD** V. 45, VI. 59 | **RPJDL** 21.e, 51, 53, 54 | **RTWP** 6.d, 15 | **EPR** 42.3.d |
ERJO 71, 73.c, 75

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G. CHILDREN AT RISK OF SELF-HARM OR SUICIDE



Is there a strategy for the prevention of self-harm and suicide tendencies?

ASK: Children | Staff (medical staff) | Director

CHECK:

- **Preventive health-care programme**, see whether it includes *prevention of self-harm and suicide tendencies*
- **Health information / education** on issues of particular relevance to adolescents such as self-harm and suicide
- **Qualification and training of staff** responsible for the information – education – preventive programme, see whether it is relevant
- **Perception of children** about the institutional policy on prevention of self-harm and suicide and, see whether it is perceived as useful and meaningful

Specific group: Girls

CHECK:

- **Policy of mental health care of girls** deprived of their liberty, see whether it includes *appropriate, gender-specific and specialised support*

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RTWP 6.B, 16 | **SMR** 30.c | **EPR** 47.2 | **ERJO** 70.2 | **CPT/Inf** (2015)1, V, 116 | **ECtHR**, Coselav v. Turkey, 9.10.2012, 1413/07 (Right to life) | **ECtHR**, Coselav v. Turkey (N° 1413/07); Güveç v. Turkey (N° 70337/01)

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H. SEXUAL ISSUES (RIGHT TO SEXUALITY, SEXUAL HEALTH, TRANSMISSIBLE DISEASES, ETC.)



Do children deprived of their liberty have access to sexual health education as part of a preventive health-care programme?

ASK: Children | Staff (medical staff) | Director

CHECK:

- **Preventive health-care programme**, see whether it includes sexual health education, prevention about sexually transmitted diseases such as HIV (and mother to child transmission), blood borne diseases, risk taking sexual practices, gender-specific health conditions; whether it includes education on relationships between sexually active people, mutual respect, non-harassment and equality; counselling
- **Right to sexuality**, see whether children are entitled to enjoy their right to sexuality and under which conditions

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RTWP 6, 14, 17, 18 | ERJO 71 | CPT/Inf (2015)1, V, 3, d, 116

6. COMPLAINT MECHANISMS AVAILABLE TO CHILDREN DEPRIVED OF LIBERTY ⁸

The last section of this Guide is devoted to a particular aspect, which should be of particular interest to monitoring bodies during their visits: complaints mechanisms available to children deprived of liberty. Accessible **within the places depriving children of their liberty** by the management, a specific staff member awarded the task, **or through an external body** (with a hotline); accessible to external bodies (independent or not) through (e)mails, mailbox, telephone or through other means of communication; that the complaint be **formal or informal; individual or collective; written or oral; lodged by the child him/herself or through his/her parents, guardians or representatives or through his/her lawyer**. Complaints mechanisms are a fundamental guarantee of the respect of the rights of children deprived of their liberty. The reason why an entire section of this Guide is devoted to it is simple: accessible and safe complaints mechanisms available to children deprived of their liberty is an **essential complementary mechanism** to ensure respect for the rights of children deprived of liberty. In addition, we consider that if the right of children deprived of their liberty to complain was implemented efficiently and effectively, small violations, grievances and complaints could be identified and addressed at the earliest stage possible, allowing greater promotion of the rights of children and without a child having to wait until a monitoring visit takes place to raise a violation and to ask for redress.



In practice, children deprived of their liberty can find it very difficult to make complaints either to internal or to external bodies. They are often expected to use complaints procedures that have been developed for use by adults and are not adapted to children's capacity and development, age and degree of vulnerability. Children find themselves in an unfamiliar and sometimes hostile environment. They may be afraid to make a complaint out of fear of negative consequences of complaining against staff with whom they are in contact daily. They may be unaware that they have grounds for complaint and consider, for example, that the use of violence as a form of punishment is common and widespread practice.

⁸ Adapted from the PRI / IPJJ publication The right of children deprived of liberty to make complaints (2013) http://www.penalreform.org/wp-content/uploads/2013/08/Briefing_child-complaints-v4_FINAL.pdf with permission from PRI

Perhaps most significantly, they may lack trust and confidence that their complaints will be believed and fairly assessed; this may be the case particularly in cases of sexual exploitation and abuse which can be associated with stigma, shame and secrecy. There may be an existing sub-culture among the children detained that complaining about abuse by other children is strongly prohibited and they may face reprisals.



6.1. Goals and objectives of complaint mechanisms

Children who have been deprived of their liberty have the right to make requests and / or to complain about their conditions, treatment and care through mechanisms that are **easily accessible, child-sensitive, effective and safe**. Upholding the right to complain is very important for **giving a voice to children deprived of their liberty** and for ensuring that their other human rights are protected. Such requests and / or complaints may concern issues of daily routine such as provision of adequate food and water and access to recreation. They can also raise concerns about access to education or contact visits, allegations of ill-treatment such as torture, violence, abuse and exploitation by police, staff members or other detained children.



Often, many minor complaints can be dealt with efficiently and effectively through informal mechanisms, such as individual or collective oral requests and mediation. However, children also need to be guaranteed access to formal systems of complaint when informal mechanisms have been exhausted or have reached their limits, or to address violations of their rights through a more procedural process.

Effective complaints procedures can be seen as part of the treatment of children deprived of their liberty which contributes to reinforcing their respect for human rights and fundamental freedoms. Both formal and informal complaints mechanisms can ensure that **places depriving children of liberty are transparent and accountable** for realising the rights of children in their care. They can act as a **deterrent to violations of children's rights**, as an **early defusing of tensions**, **assist with reintegration and bring information about serious abuses** against children into the public domain. Furthermore, when authorities systematically analyse requests and/or complaints that have been made, this can help them to **identify challenges and changes needed in policy, practice and legislation**. Facilities depriving children of liberty which have an effective (formal and informal) complaints procedure also give the public confidence that institutions are working to ensure children are aware of their rights, empowered to ask for respect and are being rehabilitated.

6.2. Basic principles for complaint systems?

A. ACCESSIBILITY



First and foremost children should be **informed both orally and in writing** about the existence of internal and external, formal and informal, individual and collective, complaints mechanisms **upon arrival** at the police station and/or place of deprivation of liberty. Copies of complaint **Guidelines** should be available upon request to a child's legal advisor, parent or guardian.

There are a number of **strategies** that can be used **to extend access to** – confidential – complaints mechanisms, such as:

- ➔ Using systems of locked boxes where children can mail complaints
- ➔ Providing access to child free help lines, to writing materials (paper, pen, envelopes and stamps) or even to electronic forms
- ➔ Organising weekly access to services of lawyers, civil society organisations or external complaint mechanisms

B. CHILD-SENSITIVITY



In addition to being provided with the written Guidelines, **the process for making a request and/or complaint should be explained clearly to a child in a child friendly and comprehensive form and in a language of their understanding**. Special measures, for example, the use of pictures or drawings, should also be provided. Having posters up can also be useful. Children should have the right to make a request and/or complaint on any ground concerning their conditions, treatment and care – even anecdotal – and these grounds should not be restricted.

Children should be provided with **appropriate assistance and/or legal aid** in order to allow them to submit requests and/or complaints in compliance with the regulations and Guidelines. Children should be allowed to make a request and/or lodge a complaint directly or their family members or legal representatives should be allowed to do it on their behalf when it is in their best interest. **Alternatives forms** – not dependent on literacy – should also be available. If complaint forms are used, they should be simple, freely available (i.e. children should not have to request them from staff) and free of charge.

Depending on their mandate, **civil society organisations** can make an enormous contribution to ensuring that complaints mechanisms are known, accessible, effective and child-friendly and they may assist children in preparing their complaints.

They may also have the right to file an internal complaint on behalf of a child or group of children provided they have their informed consent.

Requests and/or complaints procedures do not have to be formally written to be effective. Another point to consider is whether staff or mentors are assigned for the specific purpose of responding to more informal verbal requests from children. **Children should be able to communicate their complaint in their own language with the assistance of interpreters if required.** Children should be able to inquire at any time about their complaint to the person in charge of handling it.



C. SAFETY

Children should have the **right to confidentiality** when filing a request and/or complaint and in the course of the complaint procedure, although this is often not observed in practice. It can be achieved through having a locked box for complaints to be placed in, situated in an accessible location that is not under constant supervision by staff or by CCTV systems, with clear provisions regarding who can open the boxes and when and with the confidentiality of protected correspondence (of mails and emails). Monitoring and/or complaint bodies should also develop strategies to collect request and/or complaints when they are visiting the facilities in such way that the child complaining cannot be identified by the other detained children and/or by the staff.



There should be provision for requests and/or complaints to be filed anonymously.

D. EFFECTIVENESS

Each place depriving of liberty should have **a set of internal policies and procedures for handling requests and/or complaints.** In order for requests/complaints procedures to be meaningful and effective, any request and/or complaint should be dealt with **without delay.** **For internal requests and/or complaints, the maximum length of the procedure should be set out in written guidance and children should be aware of the timeframe** within which they can expect and ask for a response.




Minor complaints or requests can generally be dealt with efficiently and effectively through informal mechanisms, such as mediation. These “light touch” approaches which are flexible should be encouraged, where appropriate, for the rapid and win-win solution they offer to the parties.

More formal complaints should trigger an effective investigative procedure: for internal complaints, this might involve a review of documents by the institution’s director, hearing from the child or children concerned as well as other witnesses including staff members, hearing from medical and other experts and requesting information from other authorities. Good practice would involve site visits to facilities by the head of the institution particularly where the allegation requires immediate intervention, for example with a complaint of violence or abuse.

For external complaints mechanisms, investigative and procedural processes should – at a minimum – include the right of the child or children to be heard in person in compliance with Article 12 of the CRC. External complaints mechanisms should also call witnesses and request expert opinions, allow children to be legally represented and have access to relevant case files.

Complaint mechanisms should have the power to take **appropriate legal or other action**, such as compensating the victim for damages suffered and/or initiating disciplinary or civil proceedings against officials, with the consent of the child and/or his or her parents. When necessary, complaint mechanisms should **refer the complaint to the prosecutor** for criminal investigation and prosecution. In practice, many Ombudspersons can often only issue non-binding recommendations to detention authorities and this can be an ineffective form of remedy if these recommendations are not then considered and implemented.

 **Professionals** who work with children deprived of their liberty **need to be well-trained** in the role that complaints mechanisms can play in creating an orderly, safe and transparent institution and their value in initiating mediation, which can contribute to preventing more serious complaints and violations of children’s rights arising. **A comprehensive complaints policy** should also reassure staff that investigations into complaints will be impartial and fair.

 There should be a **formal, transparent and accessible procedure** for children to complain of torture or cruel, inhuman or degrading treatment. They must be able to access this procedure without fear of recrimination and with access to an independent authority. Such allegations should be referred, without delay, to a prosecuting body which is independent from those implicated in the events.

The **reasons for any rejection** of a complaint should be explained carefully to a child and there should be **avenues for appealing** this decision to a different authority within the child justice system or externally to a judicial body. The receiving institutions and other authorities must keep a **record of the complaints** and the corresponding findings and actions and subject them to routine scrutiny to determine common trends and patterns; for instance, it may be that many of the complaints relate to the same member of staff.

To promote transparency and to provide vital data and information to inform policy and planning, the number of cases, the nature of the complaints made by children, and the outcomes should all be published on a regular basis, while protecting the identity and confidentiality of those involved.

6.3. Who can children complain to?

Complaints mechanisms can take many different forms and children should have access to avenues of complaint both within and outside the child justice system. They should be able to make complaints to **internal bodies** which have responsibility for the facility where the child is deprived of his/her liberty as well as to **external independent bodies** such as ombudspersons, National Human Rights Institutions, independent monitoring bodies and judicial bodies.

There is an important link between complaints procedures and monitoring bodies and children should also have the right to speak in confidence to monitors of facilities depriving of liberty, which – depending on their mandate – could have powers to act upon their complaints or to refer them to the competent and appropriate complaint mechanisms.

Children should also have access to lodge complaints to **international human rights bodies** such as the UN Committee against Torture, the UN Human Rights Committee and the UN Committee on the Rights of the Child (since the Optional Protocol on a Communications Procedure is entered in force in April 2014) as well as to **regional bodies** such as the European Committee of Social Rights (through the mechanism of collective complaints) and the European Court of Human Rights.

7. FURTHER INFORMATION, READINGS AND ANNEXES

The conception of the present Guide is based on the results of national research conducted in the 14 European partner-countries of the project “*Children’s Rights Behind Bars*” and on the joint work, reflections and experiences shared by the partners and renowned experts of the above-mentioned project during the 3 international seminars organised in 2014 and 2015.

Inspiration was also drawn by **different books and methodological Guidelines** on monitoring other contexts of detention such as those of the [Association for the Prevention of Torture \(APT\)](#) and the **briefings and training materials** of [Penal Reform International](#). Number of **articles, publications, research and reports** on the themes covered by this Guide were also consulted.

All documents used as sources of inspiration an reference in the drafting of this Guide as well as **all the relevant reading materials and further information** on the topic of deprivation of liberty of children can be found on the following website:

www.childrensrightsbehindbars.eu



ANNEX 1: The Convention on the Rights of the Child (simplified version)

Not all the members of monitoring bodies are lawyers and/or are familiar with the most important binding human rights instrument that covers almost all aspects of a child's life: the 1989 CRC. The rights granted to children by the CRC are indivisible and interrelated. Equal importance should be attached to each and every right since each one of these rights is fundamental for the dignity of the child.

In order to facilitate knowledge of the CRC in the framework of the monitoring process, we have designed a simplified version of the CRC that is easy to access for any professional that will perform a visit to a place of deprivation of liberty for children.

FOUR BASIC PRINCIPLES

Non-discrimination article 2

The CRC is applicable to all children, irrespective of the child's or his/her parent's or legal guardian's race, the color of the child's skin, the sex of the child, the language s/he speaks, his/her religious, political or other views, his/her national, ethnic or social origin, his/her property, potential disabilities or any other status.

The best interest of the child article 3 par. 1

This principle must be a primary consideration in all actions concerning children. It applies to all adults who make decisions that affect children, be it public or private, social welfare institutions, courts of law, administrative authorities or legislative bodies.

Survival and development of the child article 6

Governments have the obligation to ensure the survival and development of every child.

Participation of the child article 12

Every child has the right to voice how they feel about decisions that affect him/her and to have his/her opinion taken seriously. A child's ability to form and express his/her opinion develops with age. In deciding the weight that is to be given to the views of the child, the child's age, development and level of maturity should be taken into account.

THE RIGHTS OF THE CHILD UNDER THE CRC:

Every child:

- ➔ **Definition of child** *article 1*
under the age of 18 has the right to be considered a child and enjoy the rights provided to them under the CRC;
- ➔ **Non-discrimination** *article 2*
has the right not to be discriminated against;
- ➔ **Best interests of the child** *article 3*
has the right to have his or her best interests be a primary consideration in all matters that affect him or her;
- ➔ **Realization of rights** *article 4*
should be able to count on his or her government to make every effort to ensure the rights granted under the CRC;
- ➔ **Parental guidance** *article 5*
should be able to count on his or her government to respect the role of their parents in their upbringing;
- ➔ **Survival and development** *article 6*
has the inherent right to live and survival and should be able to count on his or her government to ensure his or her survival and development;
- ➔ **Registration, name and nationality** *article 7*
has the right to a name, a nationality, to know his or her parents and to be brought up by them;
- ➔ **Preservation of identity** *article 8*
should be able to count on his or her government to protect his or her identity, including his or her name, nationality and family ties;
- ➔ **Separation from parents** *article 9*
has the right to live with his or her parents and to keep in touch with them when they live separately from each other;
- ➔ **Family reunification** *article 10*
has the right to be reunited, and in the meantime keep in contact, with his or her parent(s) when they live in different countries;
- ➔ **Kidnapping** *article 11*
has the right to be protected from kidnapping;
- ➔ **Participation** *article 12*
has the right to freely express his or her own views and have these views taken seriously;
- Freedom of expression** *article 13*
has the right to information and to freedom of expression;
- ➔ **Freedom of thought, conscience and expression** *article 14*
has the right to freedom of thought, conscience and religion;

- ➔ **Freedom of association** *article 15*
has the right to freedom of association and peaceful assembly;
- ➔ **Privacy** *article 16*
has the right to respect for his or her privacy;
- ➔ **Information and mass media** *article 17*
has the right to reliable, accessible and appropriate information from the media;
- ➔ **Parental responsibilities** *article 18*
has the right to be raised by both parents and, if needed, to have their parents receive proper support from the government in executing their parental responsibilities;
- ➔ **Protection from violence** *article 19 - 20 - 21*
has the right to be protected against any form of violence;
who is temporarily or permanently deprived of his or her family environment, has the right to special protection and assistance from the government;
should be able to count on the government to ensure that adoption only takes place if this is in the best interests of the child;
- ➔ **Refugee children** *article 22*
that is a refugee (or is seeking a refugee status) has the right to special protection and humanitarian assistance;
- ➔ **Children with disabilities** *article 23*
with disabilities has the right to special care and support and protection to enable them to live a full and decent life, actively participate in the community and live as independently as possible;
- ➔ **Health** *article 24*
has the right to the best possible health care and to facilities for the treatment of illness and rehabilitation of health;
- ➔ **Periodic review** *article 25*
being looked after by authorities, and is not living with his or her parents, has the right to have his or her living situation periodically reviewed to see if they are still the most appropriate;
- ➔ **Social security** *article 26*
has the right to benefit from social security, including social insurance;
- ➔ **Adequate standard of living** *article 27*
has the right to an adequate standard of living that is good enough to meet their physical and psychological needs;
- ➔ **Education** *article 28 - 29*
has the right to education of good quality, primary education that is free of cost;
- ➔ **Minorities/indigenous groups** *article 30*
belonging to an ethnic, religious or linguistic minority has the right to enjoy his or her own culture and to profess and practice his or her own religion, or to use his or her own language;
- ➔ **Leisure and play** *article 31*
has the right to rest, to play and participate freely in cultural life and artistic and recreational activities;

➤ **Child labor** *article 32*

has the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or be harmful to the child's health or physical, mental, spiritual, moral or social development;

➤ **Protection from narcotics** *article 33*

has the right to be protected from harmful drugs and from the drug trade;

➤ **Sexual abuse** *article 34*

has the right to be protected from any form of sexual exploitation and abuse;

➤ **Abduction, sale and trafficking** *article 35*

should be able to count on the government to take all possible measures to ensure that they are not abducted, sold or trafficked;

➤ **Other forms of exploitation** *article 36*

should be protected from exploitation or other activities that could harm their welfare and development;

➤ **Detention and punishment** *article 37*

has the right to be protected against any form of cruel or inhumane treatment. No child shall be unlawfully deprived of his or her liberty and death sentences or lifelong imprisonment sentences should not be applicable to children. Children that are deprived of their liberty should be placed separate from adults and the child should have access to legal and other forms of assistance, as well as contact with his or her family;

➤ **Armed conflict** *article 38*

has the right to be protected from armed conflicts;

➤ **Care for victims** *article 39*

has fallen victim to armed conflict, degrading or inhumane treatment, abuse, neglect or exploitation has the right to proper physical and psychological care to help them recover and reintegrate into society;

➤ **Juvenile justice** *article 40*

is accused of breaking the law has the right to legal aid and fair treatment within the legal proceedings. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings;

➤ **Respect for superior standards** *article 41*

has the right to have other legal provisions prevail over the ones in the CRC if they provide him or her with better protection;

➤ **Knowledge of rights** *article 42*

has the right to be properly informed about his or her rights.

ANNEX 2: Procedures & Ethical considerations for interviewing children deprived of liberty during a monitoring process

This document provides Guidelines for the establishment of procedures and specifies ethical considerations to be followed when interviewing children in the course of monitoring visits of places where children are deprived of their liberty.

This annex was designed to assist monitoring bodies in the establishment of their own set of procedures and ethical Guidelines taking into account all the principles, precautions and specificities to keep mind while preparing, conducting and concluding interviews with children deprived of their liberty.

KEY PRINCIPLES FOR CONDUCTING A MONITORING IN PLACES OF DEPRIVATION OF LIBERTY

 **See** – Section 3.4. – p.37

- | | |
|--|-------------------|
| ● DO NO HARM | ● CONFIDENTIALITY |
| ● KNOW THE STANDARDS | ● SECURITY |
| ● RESPECT THE AUTHORITIES
AND THE STAFF IN CHARGE | ● SENSITIVITY |
| ● CREDIBILITY | ● OBJECTIVITY |
| | ● VISIBILITY |

INDIVIDUAL INTERVIEW(S) / FOCUS GROUP(S) WITH CHILDREN

☐ See – Section 4.3. / D. – p.73

☉ Before the interview:

1 Children to be interviewed

- Identification
- Informed consent
- Precautions

2 Location of the interview

- Privacy
- Safety and “comfort”

3 Interviewer(s)

- Experience / Preparation – training
- Gender
- Interpretation

4 Recording

- Method(s)
- Confidentiality

Common issues and problems likely to be encountered during interviews

☉ During the interview:

1 Introduction

- Presentation of the interviewers, the context, the objectives and explanation of the use of information gathered
- Predictability
- Ice-breakers
- No false hope

2 Questioning

- Trust and confidence

- Safety
- Interviewers' behaviour and physical language
- Unbiased information

3 Closing

- Limitations / no false hope
- Positive feedback
- Acknowledgment / Make the experience meaningful for children

☉ After the interview:

1 Cross-check

- Other interviews with children, staff, director, other people
- Records and registers
- Observation


2 Follow up

- Feedback to children
- Reprisals
- Allegations
- Complaints

3 Reporting

- Internal
- External
- Dissemination
- Follow up
- Other enforcement strategies
- Assessment of impact

ANNEX 3: Child Protection Policy

Each person that will perform a monitoring visit in a facility where children are deprived of their liberty must be required to sign a child protection policy.  See – Section 4.1 / G. – p.56

This annex is conceived to assist monitoring bodies in the establishment of their own child protection policy, consistent with their principles, scope of their mandate and function.

THE CHILD PROTECTION POLICY SHOULD CONTAIN (BUT SHOULD NOT BE LIMITED TO) THE FOLLOWING ELEMENTS:

Principles supported by the monitoring body while monitoring the institution visited.

E.g.: the best interest of the child, the safety and protection of the child of any form or risk of violence or abuse, the welfare of the child, the participation of the child, the right to access effective remedies, the right to education, rehabilitation and reintegration into society, etc.

Staffing

- ➔ Recruitment process, selection of the team members

 See – Section 4.1. / F. – p.54

- ➔ Preparation and training of the team members

 See – Section 4.1. / F. – p.54

Privacy and Confidentiality

 See – Section 3.3. – p.32

Human Rights: International and European legal framework and standards relevant in the context of deprivation of liberty of minors.

 See – Section 1.2. – p.17

Child abuse or ill-treatments

- ➔ Definition and types of child abuse or ill-treatments (e.g. neglect, psychological-physical-sexual child abuse, ill-treatments, etc.)
- ➔ Roles and responsibilities of each (internal and external) services competent to handle cases of abuse or ill-treatment
- ➔ Contacts information

Prevention of child abuse and ill-treatment:

- ➔ Strategy
- ➔ Procedures

Reporting and Response to child abuse or ill-treatment:

☐ See – Section 6.2. – p.149 & Section 6.3. – p.152

- ➔ Allegations of abuse or ill-treatment
- ➔ Complaints of abuse or ill-treatment
- ➔ Detection of signs and symptoms of abuse or ill-treatment
- ➔ Internal reporting and response
- ➔ External referencing
- ➔ Emergency procedures
- ➔ Follow up of a referral / complaint

Reprisals / Retaliation

- ➔ Strategies of prevention
 - ➔ Procedures of protection
 - ➔ Reporting
 - ➔ Follow up
-

ANNEX 4: ECtHR - Jurisprudence

CASE	DATE	NUMBER	RIGHT(S)
Adamkiewicz v. Poland	02.03.2010	N° 54729/00	Right to legal assistance Right to a fair trial
Coselav v. Turkey	09.10.2012	N° 1413/07	Right to life
Dushka v. Ukraine	03.02.2011	N° 29175/04	Prohibition of inhuman or degrading treatment
Güveç v. Turkey	20.01.2009	N° 70337/01	Prohibition of inhuman or degrading treatment
Mahmundi and others v. Greece	31.07.2012	N° 14902/10	Prohibition of inhuman or degrading treatment
M.S.S v. Belgium and Greece [GC]	21.01.2011	N° 30696/09	Prohibition of inhuman or degrading treatment Right to an effective remedy
Mubilanzila Mayeka and Kaniki Mitunga v. Belgium	12.10.2006	N° 13178/03 3	Prohibition of inhuman or degrading treatment
Muskhadzhiyeva and Others v. Belgium	19.01.2010	N° 41442/07	Prohibition of inhuman or degrading treatment
Panovits v. Cyprus	11.12.2008	N° 4268/04	Right to legal assistance Right to a fair trial
Popov v. France	19.01.2012	N° 39472/07 and 39474/07	Prohibition of inhuman or degrading treatment
Rahimi v. Greece	05.04.2011	N° 8687/08	Prohibition of inhuman or degrading treatment
Salduz v. Turkey [GC]	27.11.2008	N° 36391/02	Right to legal assistance Right to a fair trial
Soykan v. Turkey	21.04.2009	N° 47368/99	Right to legal assistance Right to a fair trial
Tarariyeva v. Russia	14.12.2006	N° 4353/03	Right to life Prohibition of inhuman or degrading treatment

French edition

Guide Pratique : Monitoring des lieux où des enfants sont privés de liberté.

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This Practical Guide marks the final outcome of “*Children’s Rights Behind Bars*”, a project coordinated by Defence for Children International (DCI) - Belgium and funded by the Criminal Justice Programme of the European Union, with special contributions from the Council of Europe and the Fonds Houtman (Belgium).

On the premise that children deprived of their liberty are, in this respect, in a position of particular vulnerability and are – unfortunately too often – at heightened risk of being abused without respect to their dignity and humanity, this Guide aims at improving the respect of their fundamental rights.

This is the very first Practical Guide in Europe for monitoring all places where children are deprived of their liberty with a child sensitive and preventive perspective, based on a child specific approach. It has been conceived to be used by a broad range of professionals, who are entitled to monitor or visit places where children can be deprived of their liberty.

The Practical tool has been designed in a way that provides different levels of practical guidance depending on the degree of experience and the level of knowledge of users in child rights; deprivation of liberty of children; monitoring process and methodology.

This Guide should be used by monitoring mechanisms to prepare, implement and follow up their monitoring visits. It could also be used to support the assessment of places where children are deprived of their liberty. Besides, it could be used with pedagogical aims as training material to prepare monitoring teams and/or trainers at European level.



"Hence the importance of this Guide. It has been developed taking into account the practical experience of a number of national and international bodies and drawing on the experience of experts working in the field. The Guide aims to assist and strengthen the capability of monitoring bodies to effectively carry out a visit to an establishment holding children, elaborating a step by step approach with practical tools providing direction on the way in which a visit should be organised and which issues should be examined. In my opinion, this Guide should be part of the toolkit of every organisation intending to undertake an effective monitoring visit of any establishment detaining children."

Foreword by Mykola GNATOVSKYY,
President of the European Committee for the Prevention of Torture (CPT)

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