

# Juveniles in detention

## *The CPT at 25: tacking stock and moving forward*

Prof. Dr. T. (Ton) Liefwaard  
t.liefwaard@law.leidenuniv.nl

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Universiteit Leiden  
The Netherlands



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# Outline

## Detention of juveniles

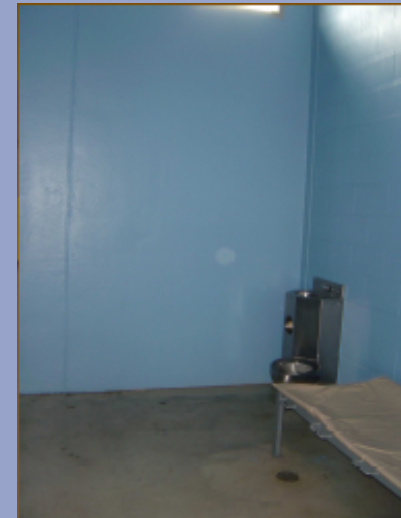
1. Global issue
2. Children's rights issue
3. Complex issue

# 1. Global issue

- At least 1 million children in detention; millions of children in institutions (UN Violence Study 2006)
- Differences in context and form
  - Deprivation of liberty (Rule 21.5 European rules for juvenile offenders etc.):  
  
‘any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will’
- Violations of human rights
  - Hazardous conditions (unhealthy, no education);
  - Violence by staff and other inmates / self harm;
    - CDCP/PC-CP Report ‘Violence in institutions for juvenile offenders’ (2014)
  - Denial of family contact;
  - Non-separation adults-children;
  - Solitary confinement;
  - ...
- Lack of data & lack of transparency

# Detention in JJ context

- Arrest & police custody
  - Large discretion
  - Critical phase
- Pre-trial detention
  - Judicial oversight, but still large discretion
  - Balancing various interests (truth finding, personal liberty, fair trial, early intervention/best interests of the child)
- Incarceration as a sentence
  - Imprisonment, custodial treatment orders etc.
  - Repressive & constructive objectives (cf. art. 40 (1) CRC)
- Welfare/child protection institutions
  - Alternative measure?
  - Intervention for children under MACR?



















Rijksinrichting voor Jongens "Den Hey-Acker" Locatie Breda

[www.heyacker.nl](http://www.heyacker.nl)









# Violence in institutions juvenile offenders

- Violence among juveniles / inmates
- Violence between staff and juveniles
- Self-inflicted violence

Report: CDPC/PC-CP, *Violence in Institutions for Juvenile Offenders*, 7 November 2014

- Prevalence/incidence, causes and prevention/ remedies

# 2. Children's Rights Issue

- Art. 37 CRC – core provision
  - Impact of detention on children (i.e. <18 years)
    - Last resort & shortest appropriate period of time (art. 37 (b) CRC)
  - Need for child specific, human rights approach
    - Rights holder, child specific approach, legal safeguards (art. 37 (c) and (d) CRC)
    - Contact with family & separation from adults (art. 37 (c) CRC)
- Children's/human rights framework
  - UN – Havana Rules / SMR for Treatment of Prisoners;
  - General Human Rights Law – e.g. art. 2, 3, 5 and 8 ECHR / art. 7, 9 and 10 ICCPR / CAT + OPCAT;
  - CoE instruments – 2008 European rules for juv. offenders etc. & 2010 Guidelines on child friendly justice;
  - CPT – Monitoring + CPT standards;
  - UN Committee on the Rights of the Child: General Comment No. 8, 10, 12 and 13.

# Last resort and s.a.p.t. (I)

## *Three levels of implementation*

- Level 1: Legislation
  - Grounds and reasons for use of detention; time limitations
  - Legal safeguards – child friendly mechanisms
  - Review mechanisms
- Level 2: Alternatives
  - Arrest & police custody
  - Pre-trial detention
  - Dispositions
  - Child protection / youth care as an alternative (?)



# Last resort and s.a.p.t. (II)

- Level 3: Decision making
  - Education and training (incl. tools) / awareness-raising & capacity building
  - Perceptions & assumptions
  - Transparency of the decision making
- Challenges
  - Drafting of legislation / lack of clear guidance from international law
  - Availability and use of alternatives
  - Perceptions (legislator, policy maker, decision maker)

# Legal status of child in detention

1. Child must be recognized as *rights-holder* entitled to all rights under international human rights law
2. Limitations of enjoyment of rights only if required by special condition the child is in (i.e. detention)
3. Full implementation of art. 3 CRC – best interests of child ‘a primary consideration’
4. Respect for right to be heard (art. 12 CRC) – *child friendly justice*
5. Effective remedy (*access to justice*)

# Minimum guarantees

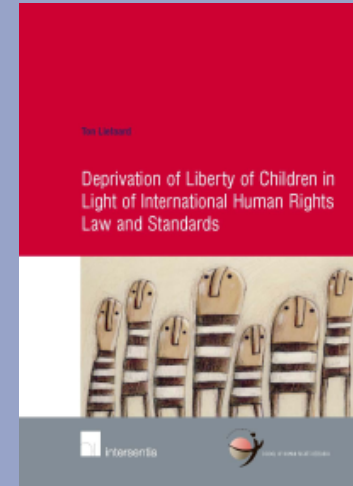
- Basic rights
  - Conditions of detention – accommodation, personal care etc.
  - Health care
  - Education
  - Family contact
- Special protection rights
  - Protection against ill-treatment / violence / prohibition of corporal punishment / prohibition of solitary confinement
  - Rules regarding disciplinary measures
  - Legal safeguards, incl. right to complaint
  - Inspection and monitoring
  - Contact with family
- Reintegration
  - Programmes & treatment / education / family contact / (semi-)open institutions

# 3. Complex issue

- Many standards, implementation falls behind
  - Focus: concrete implementation guidance ('bring the standards closer') / technical assistance / follow up
- Visibility and priority of children
  - Stigmatized groups of children
  - Serious threats for their well-being (short term / long term)
  - Lack of transparency and accountability
  - Focus: making children more visible in the system / child friendly mechanisms / fair treatment / connect with society (last resort & s.a.p.t.)
- Lack of (specific) data
  - Quantitative & qualitative data
  - Focus: qualitative data (via (local) monitoring, site visits, research involving children) / accessibility of data/research/reports etc. / definitions (e.g. solitary confinement)



Prof. Dr. T. (Ton) Liefwaard  
Professor of Children's Rights / UNICEF Chair  
Leiden University, Leiden Law School  
The Netherlands  
t.liefwaard@law.leidenuniv.nl



T. Liefwaard, *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards*, Antwerp/Oxford: Intersentia 2008.

CDPC/PC-CP, *Violence in Institutions for Juvenile Offenders*,  
Strasbourg, 7 November 2014 (prepared by T. Liefwaard, J. Reef & M.  
Hazelzet).