

# Deprivation of Liberty of Children

## *A Global, Children's Rights Perspective*

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The Netherlands

# Children deprived of their liberty

- Global issue
- Marginalized group of children  
+ most stigmatized groups of children
- Impact on well-being & development of child
- Risks for long-term interests of society
- Inadequate protection & denial of rights



# Deprivation of Liberty of Children

- Limitation of right to liberty
- Not only children in 'prisons'
- Many different forms and contexts



# Deprivation of liberty of children (II)

- ‘Everyone has the right to liberty (...) of person’ (art. 9 (1) ICCPR – see also regional treaties, e.g art. 7 ACHR)

- Deprivation of liberty (Rule 11 (b) Havana Rules):

‘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 public authority’















Rijksinrichting voor Jongens "Den Hey-Acker" Locatie Breda

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







# Forms of d.o.l.

- **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)

- **Incarceration as a disposition**

Imprisonment, custodial treatment orders etc.

Repressive and/or constructive objectives - art. 40 (1) CRC 'reintegration'

- **Welfare/child protection institutions**

Alternative measure?

Intervention for children under MACR?

# Forms of d.o.l. (ctd.)

- Immigration detention
  - Reception
  - Deportation
  - Unaccompanied / separated children
  - Children with family/relatives
- Mental health institutions
- ...

# Article 37 CRC – Core provision

## I. Impact of deprivation of liberty on children

- Last resort & shortest appropriate period of time - art. 37 (b)
- ‘alternatives for deprivation of liberty’
- Targets: legislation, policy & decision making

## II. Child specific, human rights approach if deprived of liberty

- Recognition of child as rights holder - art. 37 (c)

*\* basic rights, special protection, reintegration*

- Contact with family - art. 37 (c)
- Separation from adults - art. 37 (c)
- Procedural safeguards - art. 37 (d)





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

## *Three levels of implementation*

- Level 1: Legislation

- Grounds and reasons for use or non-use; time limits
- Legal safeguards
- Review mechanisms
- Minimum age for deprivation of liberty (?) – rule 11(a) Havana Rules

- Level 2: Alternatives

- Arrest & police custody
- Pre-trial detention
- Dispositions
- Child protection / welfare
- Immigration detention - ‘too low a standard?’ –  
see e.g. <http://website-pace.net/web/apce/children-in-detention>
- ...

# 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
- Availability and use of alternatives
- Perceptions (legislator, policy maker, decision-maker)
  
- Legislation vs. discretion – *trust in the professional*

# Art. 37 (c) CRC: Legal status of child

1. Child must be recognized as *rights-holder* entitled to all rights under CRC
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)
5. Effective remedy (*access to justice*)

# Minimum standards

- *Basic substantive rights:*

- Physical environment, accommodation, medical care, religion
- Education, vocational training and work
- Contact with the wider community and family

- *Special protection rights*

- Limitations of physical restraint and the use of force ( ‘exceptional cases’ )
- Cf. General Comment Nos. 8 and 13 – ‘no violence’
- Disciplinary measures/procedures (no ‘dark cell’/no solitary confinement)
- Regulation and/or abolition (?)
- Inspection and complaints / requests / effective remedies / access to justice
- Participation / information (art. 12 CRC)

- *Reintegration rights*

# Implementation challenges

- Complexity
  - \* context, different interests, discretion etc.
- Lack of flexibility
- Lack of interest
- Lack of awareness, knowledge and skills (among professionals)
- Lack of specific data
- Lack of visibility of children



# UN Study on Children Deprived of Liberty

- NGO panel
- UN GA Res. A/RES/69/157 – 18 Dec 2014
- Independent Expert – Prof. Manfred Nowak

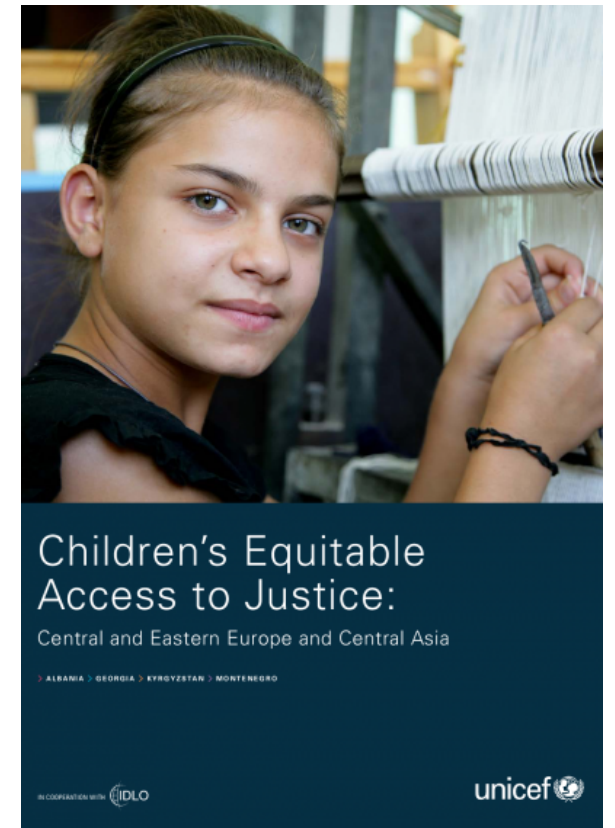
## Core objectives of study

- Assessment of magnitude of the phenomenon
- Good practices + capturing of views and experiences of children
- Promotion of change in stigmatizing attitudes and behavior towards children
- Recommendations for law, policy and practice.



# Concluding observations

- New, innovative forms of deprivation of liberty
  - Small-scale, (semi-)open
  - Community based
  - Multidisciplinary
- Deprivation of liberty as the alternative
  - Community based responses are key
  - Decision makers can make a difference
- Child-friendly justice
- Access to justice for children
- UN Global Study

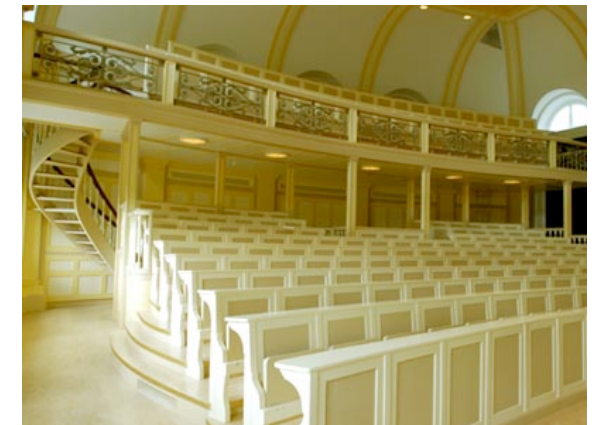


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# Child Law Education Leiden Law School



Photo: UNICEF

## Advanced Master / regular master

Master of Laws (LL.M): **Advanced Studies in International Children's Rights (Dutch) child law** - regular master program (*in Dutch*) - unique in the Netherlands

## Bachelor level

**Introduction to International children's rights** (*in English*)

**Introduction to Dutch child law** (*in Dutch*)

**Legal Aspects of Child Abuse** (*in Dutch; part of interdisciplinary minor on child abuse*)

## Summer School Programme 'Frontiers of Children's Rights'

**24-28 June 2019 – Leiden / The Hague – 7<sup>th</sup> edition**  
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