

Deprivation of Liberty of Children in
Light of International Human Rights Law and
Standards

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Deprivation of Liberty of Children in Light of
International Human Rights Law and Standards

Ton Liefwaard

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PREFACE

A person deprived of liberty suffers from a serious limitation of the exercise of her or his human rights in particular the freedom to move around and to interact with family, friends and other citizens. In addition there is a lot of well documented evidence that persons deprived of their liberty are often the victims of torture or other forms of cruel, inhuman and degrading treatment, abuse and exploitation.

All the above unfortunately applies also to children. According to estimates there are around one million children who are deprived of their liberty. But for children deprivation of liberty can be even more devastating than for adults. Not only is their healthy and harmonious development often seriously damaged, e.g. due to lack of adequate health care in often very unhealthy circumstances, or lack of education, sports and other activities; but these children are also often the victims of abuse by inmates and guards, including sexual abuse.

This particular vulnerability of children is clearly reflected in article 37 CRC requiring States Parties to make deprivation of liberty a measure of last resort and use it for the shortest appropriate period of time. Special standards for the protection of children deprived of liberty, the so called Havana rules, have been adopted by the UN General Assembly.

During the past decades a lot of efforts have been undertaken to limit deprivation of liberty and to protect persons deprived of liberty against abuse and exploitation *inter alia* through specific provisions in International Human Rights Law and the establishment of international standards. This book provides a so far unique compilation and comprehensive analysis of these provisions and standards as far as relevant for children. It results in an elaborated list of recommended actions not only for preventing and avoiding deprivation of liberty but also for the protection of children subject to it.

How these actions can take shape via a variety of legislative measures is illustrated by the developments in the Netherlands showing not only how adequate protection of children in institutions can be legislated, but also what the challenges are of the implementation of these legislative measures in the daily practice.

| Preface

The book is an important tool for understanding the various aspects of deprivation of liberty of children and a guidance for legislators, policy makers and practitioners in their efforts to ensure that children are deprived of their liberty only when necessary and as short as possible, and are well protected in full compliance with the CRC. May it be used by many.

Prof. Jaap E. Doek
Chairperson of the UN Committee on the Rights of the Child 2001-2007

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This book contains the results of an academic study, conducted at the VU University Amsterdam, regarding the implications of International Human Rights Law and Standards for the legal status of children deprived of their liberty.

During my research I had the opportunity to meet many people who have in one way or the other inspired me, supported me and/or provided me with information, insights, ideas and critical feedback. I am very grateful to them all. In particular, I would like to thank Jaap Doek and the members of the review committee: Matthias Borgers, Sharon Detrick, Bernardine Dohrn, Gerard de Jonge, Martin Kuijer and Ido Weijers. Furthermore, I would like to thank Defence for Children International, The Netherlands for the financial contribution to the publication of this book.

In addition, I am specifically grateful to the people I met in and around institutions where children are deprived of their liberty, in the Netherlands and abroad. These people confirmed to me that the quality of treatment of children in institutions is significantly determined by those working directly with or for these children. Their hard work and good intentions are vital. The people I met, generally, gave me a positive feeling and strengthened my belief in a future perspective in which the rights of children deprived of their liberty are fully respected. Even though there are too many who do a lot of harm to children (and to the reputation of institutional staff), one woman or man can make a significant difference by providing children deprived of their liberty with a role model and hope for the future.

Above all, I would like to thank the children I met in institutions, courts and their communities in the Netherlands and abroad. They provided me with information and insights, that I could never have received from adults. The curiosity, directness and unambiguous questions and answers of these children have proven to me that their rights should never be taken lightly.

Children deprived of their liberty have the right to be taken seriously, also in academic research. I would like to dedicate this book to them.

Ton Liefwaard
Amstelveen, August 2008

'Time is an ocean of endless tears'

Paul Simon & Derek Walcott (1997) – 'Songs From The Capeman'

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
African Commission	African Commission on Human and Peoples' Rights
African Committee	African Committee of Experts on the Rights and Welfare of the Child
American Declaration	American Declaration of the Rights and Duties of Man
Appeals Committee	Appeals Committee of the Council for the Administration of Criminal Justice and Youth Protection (Beroepscommissie van de RSJ)
Appl. No.	Application Number
Art.	Article
ASEAN	Association of Southeast Asian Nations
Banjul Charter	African Charter on Human and Peoples' Rights
Beijing Rules	UN Standard Minimum Rules for the Administration of Juvenile Justice
Body of Principles	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Bopz	(Dutch) Psychiatric Hospitals (Compulsory Admissions) Act (Wet Bijzondere opnemings psychiatrische ziekenhuizen)
CAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	UN Committee against Torture
CBS	Netherlands Statistics (Centraal Bureau voor de Statistiek)
CCP	(Dutch) Code of Criminal Procedure (Wetboek van Strafvordering)
CDCP	European Committee on Crime Problems (Council of Europe)
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
<i>Cf</i>	Confer
Code of Conduct	UN Code of Conduct for Law Enforcement Officials
COE	Council of Europe

List of Abbreviations

Comm.	Communication
Committee of Ministers Council	Committee of Ministers of the Council of Europe (Dutch) Council for the Administration of Criminal Justice and Youth Protection (Raad voor Strafrechtstoepassing en Jeugdbescherming)
CPT	European Committee for the Prevention of Torture
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CrimCo	(Dutch) Criminal Code (Wetboek van Strafrecht)
DCI	Defence for Children International
Declaration of 1959	1959 Declaration of the Rights of the Child
Declaration of Geneva	1924 Declaration of the Rights of the Child
DJI	(Dutch) National Agency for Correctional Institutions (Dienst Justitiële Inrichtingen)
DMC	Disproportionate Minority Confinement
DPKO	UN Department of Peacekeeping Operations
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECtHR	European Court on Human Rights
European Commission	European Commission of Human Rights
EPR	European Prison Rules
ESC	European Social Charter
GA	UN General Assembly
GC	General Comment (of the CRC Committee)
HALT	(Dutch) diversion programme by the police (‘Het ALternatief’; ‘The Alternative’)
HRC	Human Rights Committee
HRC GC	General Comment of the Human Rights Committee
IAYFJM	International Association of Youth and Family Judges and Magistrates
<i>Ibid.</i>	<i>Ibidem</i>
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IJJO	International Juvenile Justice Observatory
ILO	International Labour Organization
Inter-American Commission	Inter-American Commission on Human Rights

Inter-American Court	Inter-American Court of Human Rights
JDAI	Juvenile Detention Alternatives Initiative (Annie E. Casey Foundation)
JDLs	UN Rules for the Protection of Juveniles Deprived of Their Liberty
<i>JPF</i>	Jurisprudentie Personen- en Familierecht (Dutch Journal for Jurisprudence of Law of Persons and Family Law)
Kampala Declaration	Kampala declaration on Prison Conditions in Africa
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LJN	Landelijk Jurisprudentienummer (Dutch jurisprudence registration number)
MACR	Minimum age of criminal responsibility
NGO(s)	Non-Governmental Organization(s)
<i>NJ</i>	Nederlandse Jurisprudentie (Journal of Dutch Jurisprudence)
No(s).	Number(s)
OAS	Organisation of American States
OAU	Organisation of African Unity
OHCHR	Office of the UN High Commissioner for Human Rights
OMCT	World Organisation against Torture
OPCAT	Optional Protocol to the Convention against Torture
OTS	(Dutch) Family Supervision Order (Ondertoezichtstelling)
p.	Page
Para(s).	Paragraph(s)
PRI	Penal Reform International
Res.	Resolution
Riyadh Guidelines	UN Guidelines for the Prevention of Juvenile Delinquency
RSJ	Raad voor Strafrechtstoepassing en Jeugdbescherming (see also: Council)
SMR	See Standard Minimum Rules
Standard Minimum Rules	UN Standard Minimum Rules for the Treatment of Prisoners
STP	(Dutch) School and Training Programme (Scholings- en Trainingsprogramma)
Treatment order	(Dutch) Penal Measure of Placement in an Institution for Juveniles (Plaatsing in een inrichting voor jeugdigen; PIJ-maatregel)
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations

List of Abbreviations

UN Charter	Charter of the United Nations
UNDP	UN Development Programme
UN GA	UN General Assembly
UNICEF	UN Children's Fund
UNODC	UN Office on Drugs and Crime
US	United States of America
v.	Versus
Vienna Convention	Vienna Convention on the Law of Treaties
WODC	(Dutch) Research and Documentation Centre (Wetenschappelijk Onderzoeks en Documentatie- centrum)
YCIA	(Dutch) Youth Custodial Institutions Act (Beginselenwet justitiële jeugdinrichtingen)
YCIR	(Dutch) Youth Custodial Institutions Regulation (Reglement justitiële jeugdinrichtingen)