



# **VIOLENCE AGAINST CHILDREN IN CONFLICT WITH THE LAW**

A Study on Indicators and Data Collection in  
Belgium, England and Wales, France and the Netherlands

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## PREFACE

Children deprived of their liberty and placed in detention are at extreme risk of violence. This was one of the principal conclusions of the UN Secretary-General's Study on Violence against Children, which I had the privilege to lead. Our Study concluded that children deprived of their liberty are at great risk of violence by staff in detention institutions, while in custody of police and security forces, as well as violence by adult detainees and other children, and self-harm, including self-mutilation and suicide. This is true in both industrialized and developing countries.

One of the key problems our Study identified, was the dearth of data and information on the numbers of children deprived of their liberty and their conditions. The Committee on the Rights of the Child has also repeatedly expressed its concern about the lack of statistical data on the treatment of children in conflict with the law. It is against this background that I so much welcome the Study on Indicators and Data Collection on Children in Conflict with the Law, conducted by Defence for Children International and the Howard League for Penal Reform in four European countries.

This exemplary Study describes the prevalence of violence in detention institutions in the four countries. The need for better data and improved national data collection capacity is paramount. The existence of indicators can play a key part in this process. The Study recommends a set of 12 indicators, including six juvenile justice indicators previously developed by Unicef and the UN Office on Drugs and Crime. While the term itself frequently has different meanings within different contexts, at its core, an indicator simply provides a common way of measuring and presenting information. These indicators are fundamentally necessary in order to monitor violence against children in conflict with the law, and to monitor the effectiveness of any action undertaken.

I am extremely pleased to learn that the UN Study on Violence against Children inspired Defence for Children International and the Howard League for Penal Reform to prepare this Report and that the European Commission, through its DAPHNE Programme, had the foresight to provide the funding. The work we did on the UN Violence Study is only truly meaningful if followed up by concrete and immediate action, by Governments, by international organisations and by NGOs. This Report is a remarkable example of such action and it is my sincere hope that its most valuable findings, and the indicators presented, are further reviewed and adopted by judicial and child protection authorities, in Europe and elsewhere.

Paulo Sérgio Pinheiro  
Independent Expert  
UN Secretary-General's Study on Violence Against Children

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## GENERAL INTRODUCTION

*“Even though there are many overlaps and similarities (poor conditions, low quality of staffing, etc.), the institutional treatment of children regarded as being anti-social or criminal is likely to be more physically and psychologically punitive than that of other groups or in other environments. All the prejudices and discriminations attached to unwanted or family-less children are reinforced where the child is seen as a social nuisance, or worse.”<sup>1</sup>*

“Children deprived of their liberty and placed in detention are at extreme risk of violence”, according to the *UN Secretary-General’s Study on Violence against Children* (hereinafter: UN Study).<sup>2</sup> Based on its global research, the UN Study identifies the following as the main sources of violence in both industrialised and developing countries: violence by staff in detention institutions; violence while in custody of police and security forces; violence as a sentence; violence by adult detainees; violence by other children; and self-harm, including self-mutilation and suicidal behaviour.<sup>3</sup>

In England and Wales, for example, information obtained in November 2005 revealed frequent use of painful restraints in four privately-run Secure Training Centres, in which children aged between 12 and 17 were imprisoned. Painful restraining holds involving pressure to noses, thumbs and ribs were used 768 times in the year, causing injuries in 51 cases.<sup>4</sup> A 2005 report from the Chief Inspector of Prisons and the Youth Justice Board found that 21% of both boys and girls had been hit, kicked or assaulted by another young person.<sup>5</sup> In the United Kingdom, 30 children died in penal custody between 1990 and November 2007. Twenty-eight hanged themselves, the youngest aged 14, and one died while being restrained.<sup>6</sup>

Some sources estimate that, at any one time, at least one million children worldwide are deprived of their liberty.<sup>7</sup> This is certainly an underestimate and better data collection is urgently needed globally. The UN Study notes in this regard that “information is hard to find and data on children in... justice systems are not generally disaggregated.”<sup>8</sup> Similarly, the Committee on the Rights of the Child often expresses concern in its concluding observations on State Party reports about the provision of very limited statistical data on the treatment of children in conflict with the law.<sup>9</sup> The UN Study contains a set of 13 recommendations for action to effectively prevent and address violence against children in justice systems. One of the recommendations concerns the need to reduce the use of detention, and states that: “Governments should ensure that detention is only used for child offenders who are assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time, and following judicial hearing, with greater resources invested in alternative family and community-based rehabilitation and reintegration programmes.”<sup>10</sup> Another recommendation specifically addresses registration and data collection, and states that: “Governments should ensure that all placements and movements of children between placements, including detention, are registered and centrally reported. Data on children in detention and residential care should be systematically collected and published. At a minimum, such data should be disaggregated by sex, age, disability and reasons for placement. All incidents of violence should be recorded and centrally reported. Information on violence against children should also be collected through confidential exit interviews with all children leaving such institutions, in order to measure progress in ending violence against children.”<sup>11</sup>

Comprehensive and high quality information about juvenile justice systems, institutions and regimes is imperative if every child deprived of liberty is to be protected against any form of violence. This information must be widely available, not just to government officials and policy makers but also to those that scrutinise juvenile justice systems, such as NGOs, academics and, importantly, the general public. National policies and legislation on children in conflict with the law are improved if based on reliable and publicly accessible data. Effective reporting systems should be established in law. Competent bodies should have the power to demand ongoing information on treatment and conditions, and to investigate and address allegations of violence. All incidents of violence should be recorded by all facilities and institutions holding children. They should be reported to a central authority, and effectively collated, analysed and disseminated.

The research in this report shows that in all the participating countries, Belgium,\* England and Wales, France and the Netherlands, more effective and more transparent data collection and publication is required. The centrally collected juvenile justice data which are made publicly available, e.g. annual justice statistics published by Ministries of Justice, either do not include or include very little specific data relating to violence. A fundamental aim of this research was to develop a set of ‘violence indicators’ to improve data collection and analysis across Europe. Twelve indicators have been developed to this end and are presented in chapter 1 of this report. The primary objective of the set of violence indicators is to offer a clear definition of ‘baseline’ information that every country should be able to produce and publish. The indicators are not designed to provide complete information on all possible aspects of violence against children deprived of their liberty in a particular country. Rather, they represent a basic dataset and comparative tool that offers a starting point for the assessment, evaluation, service and policy development. Six of the identified indicators replicate those found in the set of 15 juvenile justice indicators recently published by Unicef and the UN Office on Drugs and Crime. It is hoped that the violence indicators developed here will enhance and complement the application of these juvenile justice indicators.

The UN Study adopts the definition of the child as contained in article 1 of the Convention on the Rights of the Child (CRC): “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” The definition of violence is that of article 19 of the CRC: “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.” This provision obliges States Parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence... while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.” Other articles of the CRC also assert the rights of children to physical and personal integrity, and establish high standards for protection. Article 34 obliges States Parties to protect children from all forms of sexual exploitation and sexual abuse. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment, as well as capital punishment and life imprisonment without possibility of release. Article 37 provides that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.” Article 40 on the administration of juvenile justice states that children who come into conflict with the law should be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth”. Other important international instruments include the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency.

\* This report provides information concerning the entire country of Belgium, where relevant and possible. However, given the complexity of the juvenile justice system and the division of competencies between the Belgian Communities, the situation in the French Community (Wallonia and Brussels) is particularly highlighted.



Chapter 2 of this report discusses the use of detention, imprisonment or other forms of deprivation of liberty in response to children in conflict with the law in Belgium, England and Wales, France and the Netherlands. In chapter 3, insight is given into the main concerns regarding the prevalence of violence in places where children in conflict with the law may be held in the four countries, for example, police cells, courts, prisons, detention facilities, and welfare and educational institutions. In all four countries, there are laws and regulations in place regarding the treatment of children deprived of their liberty. Chapter 4 contains an overview of these laws and regulations, particularly those rules aimed at protecting these children from any form of physical or mental violence.

National policies and legislation must reflect the State obligation to protect all children deprived of their liberty from all forms of violence. This encompasses the obligation to ensure that all places where children in conflict with the law may be held, cannot operate without accountability. Public scrutiny must be guaranteed in a number of ways, including ensuring access for children's families, NGOs, human rights institutions and ombudspersons, lawyers, media, and other elements of civil society, while respecting children's privacy and dignity rights. Chapter 5 describes the monitoring, inspection and complaints mechanisms which are in place in Belgium, England and Wales, France and the Netherlands. Chapter 6 provides information concerning the data collection systems with respect to children in conflict with the law in the four countries. Special attention is given to the question of whether and how instances of violence are recorded, centrally reported and published, and analysed. The 15 juvenile justice indicators, which have been developed by Unicef, the UN Office on Drugs and Crime, and other partners, are also discussed in this chapter.<sup>12</sup>

The discourse about the use of detention, imprisonment or other forms of deprivation of liberty in response to children in conflict with the law goes to the heart of views about child development,

In England and Wales, for example, up until 1994, custodial sentences were only possible for children aged 15-17 years, with the exception of younger children who had committed serious offences. Since then, stiffer penalties were introduced, including the Detention and Training Order which can be given to 12-17-year-olds. This order sentences the child to custody for a period of no less than four months and no more than two years.<sup>13</sup> Although recorded offending by children has been in decline, between 1994 and 2004, the number of children sentenced to custody increased by 90%.<sup>14</sup>

It has been claimed that the English and Welsh approach is more repressive than that of most other European countries.<sup>15</sup> Although Belgium and France, for example, struggle with growing repressive and punitive tendencies, they still have a system that is primarily directed at assistance and reintegration.<sup>16</sup> Nevertheless, in Belgium, 16- and 17-year-olds who are accused of serious offences can be tried and sentenced under adult criminal law.<sup>17</sup>

In France, education remains the official priority. However, legislative changes lean towards more repressive and constraining responses. Since 2002, the need for a specific treatment of children in conflict with the law, especially those aged 16-17 years, has been largely questioned. The specialised juvenile justice system is becoming less 'special' and getting closer to the adult criminal justice system, also considering the threat of lowering criminal majority to 16. The most recent changes include the creation of educational sanctions for children aged 10-17 years, and the creation of closed educational centres (CEF) for children aged 13-17 years. The most recent reform provides that 16-17-year-olds can be sentenced as adults, in cases of re-offending (after the third offence). The prevailing extenuating circumstance of age is becoming the exception, not the rule.<sup>18</sup>

In the Netherlands, policies have become more repressive and the capacity of youth custodial institutions (YCI) has grown exponentially. The numbers of children in YCIs have increased. The length of the sentence of youth detention has been increased for 12-15-year-olds from a maximum of six months to 12 months. For 16- and 17-year-olds, the maximum sentence increased from six months to two years. Sixteen- and 17-year-olds may also be tried and sentenced under adult criminal law.<sup>19</sup>

childrearing methods, the purpose of justice systems, and children's rights and responsibilities. The research for this report shows that in all the participating countries, Belgium, England and Wales, France and the Netherlands, the common discourse is essentially the same: There has been a substantial rise in juvenile crime and it is becoming more violent.<sup>20</sup> It is true that there was a substantial rise between 1950 and 1980 in most Western countries, but the bulk of it was non-serious property and petty crime. There is no evidence for a similar rise in the 1980s and 1990s. Indeed, for most European countries, juvenile crime rates have been stable over the last decade.<sup>21</sup> Nevertheless, juvenile justice reforms have been introduced in all of the four countries based on this premise of an escalating crime problem.<sup>22</sup>

Article 37(b) of the Convention on the Rights of the Child (CRC) explicitly states that "the arrest, detention and imprisonment of a child shall be used only as a measure of last resort, and for the shortest appropriate period of time." Meanwhile article 40(4) states that: "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence." The 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) state that: "Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response" (art. 17.1).

There is nothing new about the principle of 'last resort'. However, only a few regions of the world have shifted their entire juvenile justice systems towards making alternatives to deprivation of liberty the norm.<sup>23</sup> In the USA, studies examining recidivism among children sentenced to custody in juvenile detention facilities have found that 50-70% were re-arrested within one or two years after their release.<sup>24</sup> In contrast, recidivism rates for children placed in community-based programmes have been as low as 10%.<sup>25</sup>

Just a few weeks before this report went to press, an article appeared in a Dutch newspaper with the title 'Much is allowed in German youth prisons'.<sup>26</sup> One morning in November 2006, in the youth prison Siegburg, a 20-year-old prisoner was found dead in his cell. He had been tortured and finally killed by hanging. The perpetrators were three other prisoners, a 20-year-old, a 19-year-old and a 17-year-old, all of whom had drug and behavioural problems. The four had been put in one cell because of refurbishment work taking place within the prison. During the assault, the victim pushed an alarm button but the guard was reassured by the three assailants, who said nothing was going on. The murder shocked the nation and prompted discussion. Why was there so little supervision? Why were the prisoners put together in one cell? This has been going on for years, according to the German lawyer, Michael Bagnucki. "There's a law on everything in Germany, except on youth prisons. The youth prison here is just a juvenile version of a prison for adults", says Bagnucki, a criminal lawyer who defends juvenile delinquents. "From Thursday to Monday there are no activities and the prisoners stay in their cells. At most they're allowed to walk around for one hour." Bagnucki was also the lawyer who defended a case all the way up to the Constitutional Court in Karlsruhe. The case concerned disciplinary measures taken against his client. The Constitutional Court is now demanding new legislation on youth prisons in Germany.

## Notes

- 1 Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006, p. 190. [www.violencestudy.org](http://www.violencestudy.org).
- 2 *Ibid.*, p. 196.

- 3 Ibid., pp. 196-200.
- 4 See Children's Rights Alliance for England, *State of Children's Rights in England Annual Review*, 2005.
- 5 See HM Chief Inspector of Prisons, *Juveniles in Custody 2003-2004: an analysis of children's experiences in prison*, 2005.
- 6 See Chapter 3, section 3.2 England and Wales, below.
- 7 See Paulo Sérgio Pinheiro, note 1 above, p. 191. See also Cappelaere, G., Grandjean, A., Naqvi, Y., *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 44-45.
- 8 See Paulo Sérgio Pinheiro, note 1 above, p. 191.
- 9 All of the Committee's concluding observations on State Parties reports can be found at [www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm).
- 10 See Paulo Sérgio Pinheiro, note 1 above, p. 218.
- 11 Ibid.
- 12 See United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007.
- 13 See Junger-Tas, J., "Trends in Juvenile Justice: What Conclusions Can be Drawn?", in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 513-514. See also Chapter 2, section 2.2 England and Wales, below.
- 14 See Nacro, *A Better Alternative: Reducing Child Imprisonment*, London, 2005.
- 15 See Junger-Tas, J., note 13 above, p. 513.
- 16 Ibid.
- 17 Ibid., p. 516. See also Chapter 2, section 2.1 Belgium, below.
- 18 Ibid., pp. 515-516. See also Chapter 2, section 2.3 France, below.
- 19 Ibid., pp. 514-515. See also Chapter 2, section 2.4 The Netherlands, below.
- 20 See Junger-Tas, J., "Trends in Juvenile Justice: What Conclusions Can be Drawn?", in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 522-531.
- 21 Ibid., p. 522. For Belgium, this finding is confirmed by the works of Charlotte Vanneste of the INCC. See Vanneste, C., "La statistique 'nouvelle' des parquets de la jeunesse sous l'éclairage d'autres types d'indicateurs. Exercices de contextualisation", in: Vanneste, C. (Ed.), *La statistique 'nouvelle' des parquets de la jeunesse: regards croisés autour d'une première analyse - actes de la journée d'étude du 23.1.02007*, Gent, Academia press, 2008.
- 22 Ibid., pp. 513-515.
- 23 See Paulo Sérgio Pinheiro, note 1 above, p. 206.
- 24 See American Youth Policy Forum, *Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice*, Washington DC, 2001.
- 25 See Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, 2004.
- 26 "Veel toegestaan in Duitse jeugdgevangenissen", *Trouw*, 27 November 2007.



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## DEFINITIONS OF KEY CONCEPTS

### *Acquitted*

A child is acquitted where he/she is found not guilty of an offence by a competent authority.<sup>1</sup>

### *Administrative detention*

A child is held in administrative detention where he/she is held specifically under the power or order of the executive branch of government and is not subject to the usual juvenile justice or adult criminal justice system procedure.<sup>2</sup>

### *Adult criminal justice system*

The adult criminal justice system consists of the laws, procedures, professionals, authorities and institutions that apply to witnesses and victims, and to adults alleged as, accused of, or recognised as having committed a criminal offence.<sup>3</sup>

### *Aftercare*

Means the arrangements in place that are designed to assist children released from detention in returning to society, family life, education or employment after release.<sup>4</sup>

### *Arrest*

A child is arrested where he/she is placed under the custody of the police, military, intelligence or other security forces because of actual, perceived or alleged conflict with the law.<sup>5</sup>

### *Charged*

A child is charged with an offence where the police, a law enforcement authority, the public prosecutor or a competent authority formally accuses him/her of having committed a specific offence.<sup>6</sup>

### *Child*

A child is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier (see art. 1 of the Convention on the Rights of the Child (CRC)).

### *Child in conflict with the law*

A child in conflict with the law is any person below the age of 18 years who is alleged as, accused of, or recognised as having infringed the penal law (see art. 40 of the CRC). Depending on the local context, children may also be in conflict with the law where they are dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.<sup>7</sup>

### *Competent authority*

The competent authority is the part of the juvenile justice or adult criminal justice system that is responsible for making procedural or disposition decisions regarding a child's case.<sup>8</sup>

### *Complaints mechanism*

A complaints mechanism is any system that allows a child deprived of liberty to bring any aspect of the treatment that child has received, including violations of his/her rights, to the attention of the authority responsible for the place of detention, or any other official body established for such purpose.<sup>9</sup>

### *Convicted*

A child is convicted where he/she is found guilty of having committed an offence by the decision of a competent authority.<sup>10</sup>

*Data/information systems*

Data or information systems are internal methods or structures that enable bodies or institutions that deal with children in conflict with the law to systematically record, update and retain information about those children.<sup>11</sup>

*Deprivation of liberty*

The deprivation of liberty means 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 (see art. 11 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty). See also ‘detention facilities’ below.

*Detention facilities / place of detention / justice institutions*

The *UN Secretary-General’s Study on Violence against Children* uses the phrase ‘violence against children in justice institutions’.<sup>12</sup> The *Manual for the Measurement of Juvenile Justice Indicators* uses the term ‘place of detention’ for any public or private facility where a child is deprived of liberty.<sup>13</sup> In this report, use is made of the term ‘detention facilities’ to refer to all types and forms of facilities, where children are deprived of liberty due to being in conflict with the law, including police lock-ups or arrest cells, penal institutions such as prisons and detention facilities, as well as welfare and educational institutions or facilities.

The terms ‘detention centres’ and ‘prisons’ are frequently used interchangeably. However, according to the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, they have different meanings. According to the Body of Principles, a ‘detained person’ means any person deprived of personal liberty except as a result of conviction for an offence. Detention centres are generally places in which people are detained after a warrant or temporary measure has been granted but before a judgment on the merits has been pronounced by a judicial or administrative authority. An ‘imprisoned person’ means any person deprived of personal liberty as a result of conviction for an offence. Prisons are generally institutions in which people are imprisoned after a judgment on the merits has been pronounced. Other closed institutions, public or private, in which people are placed by order of a judicial, administrative or other public authority, and from which they cannot leave at will, include welfare, educational and psychiatric institutions.<sup>14</sup>

As stated above, the deprivation of liberty means 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. The adjective ‘closed’ is generally understood as referring to the circumstance of not being permitted to leave the facility at will. The 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides that open detention facilities for juveniles should be established (art. 30).

30. Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualised treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.

Source: 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113, annex.

*Diversion*

A child is diverted when he/she is in conflict with the law but has their case resolved through alternatives, without recourse to the usual formal hearing before the relevant competent authority. To benefit from diversion, the child and/or his/her parents or guardian must consent to the diversion of the child's case. Diversion may involve measures based on the principles of restorative justice.<sup>15</sup>

*Indicator*

An indicator provides a common way of measuring and presenting information that, amongst other things, can reveal whether applicable standards and norms are being met. This information can concern both quantitative values (e.g. the number of children in detention on a particular census date) and the existence of relevant policy.<sup>16</sup>

*Juvenile*

A juvenile is every person under the age of 18 (see art. 11 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

*Juvenile justice system*

The juvenile justice system consists of the laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically applicable to children in conflict with the law.<sup>17</sup>

*Non-custodial measure*

A non-custodial measure is a measure to which a child may be sentenced by a competent authority that does not include deprivation of liberty.<sup>18</sup>

*Offence*

A child commits an offence where he/she commits any act punishable by the law by virtue of the legal system in question.<sup>19</sup>

*Pre-trial/pre-sentence detention*

A child is held in pre-trial or pre-sentence detention where he/she is deprived of liberty and is awaiting a final decision on his/her case from a competent authority.<sup>20</sup>

*Prevention of juvenile delinquency*

Prevention involves the active creation of an environment that deters children from conflict with the law. Such an environment should ensure for the child a meaningful life in the community and foster a process of personal development and education that is as free from crime as possible.<sup>21</sup>

*Probation*

Probation is a non-custodial measure involving the monitoring and supervision of a child whilst he/she remains in the community. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation. Probation may be employed as a measure on its own, or following a custodial sentence.<sup>22</sup>

*Restorative justice programme*

A programme which uses any process in which the victim and the offender, and, where appropriate, any other individuals or community members, affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing criteria.<sup>23</sup>

*Sentence*

A competent authority passes a sentence when – notwithstanding any right of appeal – it makes a final decision about a child's case and rules that the child shall be subject to certain measures.<sup>24</sup>

*Serious offence against a person*

A serious person offence can be homicide, non-intentional homicide, kidnapping, rape, sexual assault or abuse, assault or an attempt to carry out any of these acts.<sup>25</sup>

*Serious property offences*

A serious property offence can be burglary, robbery or arson, or an attempt to carry out any of these acts. Burglary is the unlawful entry into someone else's premises with the intention to commit a crime. Robbery is theft of property from a person, overcoming resistance by force or the threat of force.<sup>26</sup>

*Violence against children*

The *UN Secretary-General's Study on Violence against Children* adopts the definition of the child as contained in article 1 of the CRC: "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." The definition of violence is that of article 19 of the CRC: "all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse." Article 19 obliges States Parties to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence... while in the care of parent(s), legal guardian(s), or any other person who has the care of the child." The UN Study also draws on the definition in the *World Report on Violence and Health* (2002): "the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child's health, survival, development or dignity."<sup>27</sup> Various other articles of the CRC also assert the rights of children to physical and personal integrity, and establish high standards for protection. Article 34 obliges States Parties to protect children from all forms of sexual exploitation and sexual abuse. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment, as well as capital punishment and life imprisonment without possibility of release. Article 37 provides that "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age." Article 40 on the administration of juvenile justice states that children who come into conflict with the law should be "treated in a manner consistent with the promotion of the child's sense of dignity and worth".

Notes

- 1 See Unicef and the United Nations Office on Drugs and Crime, *Manual for the Measurement of Juvenile Justice Indicators*, New York, 2007, p. 53.
- 2 - 11 Ibid.
- 12 See Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006.
- 13 See Unicef and the United Nations Office on Drugs and Crime, note 1 above, p. 53
- 14 See Cappelaere, G., Grandjean, A., Naqvi, Y., *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 30-31.
- 15 See Unicef and the United Nations Office on Drugs and Crime, note 1 above, p. 53
- 16 Ibid., p. 2.
- 17 See Unicef and the United Nations Office on Drugs and Crime, *Manual for the Measurement of Juvenile Justice Indicators*, New York, 2007, p. 54.
- 18 -24 Ibid.
- 25 Ibid., p. 55.
- 26 Ibid., p. 55.
- 27 Krug, E.G. et al. (Eds.), *World Report on Violence and Health*, World Health Organization, Geneva, p. 5.



# 1 VIOLENCE INDICATORS

*“Researching and writing about violence will never be a simple endeavor. The subject is fraught with assumptions, presuppositions, and contradictions. Like power, violence is essentially contested: everyone knows it exists, but no one agrees on what actually constitutes the phenomenon.”<sup>1</sup>*

“Children deprived of their liberty and placed in detention are at extreme risk of violence”, according to the *UN Secretary-General’s Study on Violence against Children* (hereinafter: UN Study), including: violence by staff in detention institutions; violence while in custody of police and security forces; violence as a sentence; violence by adult detainees; violence by other children; and self-harm, including self-mutilation and suicidal behaviour.<sup>2</sup>

Some sources estimate that at least one million children worldwide are deprived of their liberty.<sup>3</sup> This is certainly an underestimate and better data collection is urgently needed globally. The UN Study notes that “information is hard to find and data on children in... justice systems are not generally disaggregated.”<sup>4</sup> Similarly, the Committee on the Rights of the Child often expresses concern in its concluding observations on State Party reports about the provision of very limited statistical data on the treatment of children in conflict with the law.<sup>5</sup> The UN Study contains a set of 13 recommendations for action to effectively prevent and address violence against children in justice systems. One of the recommendations specifically addresses registration and data collection, and states that: “Governments should ensure that all placements and movements of children between placements, including detention, are registered and centrally reported. Data on children in detention and residential care should be systematically collected and published. At a minimum, such data should be disaggregated by sex, age, disability and reasons for placement. All incidents of violence should be recorded and centrally reported. Information on violence against children should also be collected through confidential exit interviews with all children leaving such institutions, in order to measure progress in ending violence against children.”<sup>6</sup>

Comprehensive and high quality information about juvenile justice systems, institutions and regimes is imperative if every child deprived of liberty is to be protected against any form of violence. This information must be widely available, not just to government officials and policy makers but also to those that scrutinise juvenile justice systems, such as NGOs, academics and, importantly, the general public. National policies and legislation on children in conflict with the law are improved if based on reliable and publicly accessible data.

Effective reporting systems should be established in law. Competent bodies should have the power to demand ongoing information on treatment and conditions, and to investigate and address allegations of violence. All incidents of violence should be recorded by all facilities and institutions holding children, for example, police cells, courts, prisons, detention facilities, and welfare and educational institutions. They should be reported to a central authority, and effectively collated, analysed and disseminated.

The research in this report shows that in all the participating countries, Belgium, England and Wales, France and the Netherlands, more effective and more transparent data collection and publication is required. The centrally collected data on children in conflict with the law which are made publicly available, e.g. annual justice statistics published by Ministries of Justice, either do not include or include very little specific data relating to violence. A funda-

mental aim of this research was to develop a set of ‘violence indicators’ to improve data collection and analysis across Europe. Twelve indicators have been developed to this end. While the term itself frequently has different meanings within different contexts, at its core, an indicator simple provides a common way of measuring and presenting information.

The primary objective of the set of violence indicators is to offer a clear definition of ‘baseline’ information that every country should be able to produce and publish. The indicators are not designed to provide complete information on all possible aspects of violence against children deprived of their liberty in a particular country. Rather, they represent a basic dataset and comparative tool that offers a starting point for the assessment, evaluation, service and policy development. For each indicator there are suggested categories of disaggregation. This information concerns both quantitative values, such as the number of children in detention, and qualitative values concerning the existence of relevant policy. Six of the identified indicators replicate those found in the set of 15 juvenile justice indicators recently published by Unicef and the UN Office on Drugs and Crime.<sup>7</sup>

According to the *Manual for the Measurement of juvenile justice indicators* (United Nations Office on Drugs and Crime and Unicef, United Nations, New York, 2007), the utility of the juvenile justice indicators exists on a number of levels. This equally applies to the ‘violence indicators’.

#### **A global ‘baseline’ definition**

Firstly, the indicators offer a clear global definition of ‘baseline’ information that every country should be able to produce. The availability of reliable and consistent information within and between countries is essential for planning and monitoring policies and programmes, national and global advocacy, and providing focus for the different actors involved. The use of standard indicators allows comparison of the situation in different countries.

#### **Engagement of local actors**

A national juvenile justice information collection process that leads to measurement of the indicators engages local institutions such as police stations, magistrates’ courts and places of detention in information collection. Requiring local level institutions to develop, collect and report information about individual children for whom they are responsible, contributes to the protection of those children by ensuring that they do not ‘slip through the net’ and by causing the institution to consider and review its treatment of the child. The reporting of information introduces a level of accountability for the information source.

#### **Review of policy**

Measurement of the indicators also enables the exercise of relevant policies to be assessed, both by local institutions and at the national level. The indicators may be used as a starting point for national assessment of how children in conflict with the law are dealt with, and for the identification of areas of improvement or reform. Where indicators are measured over time, the introduction of new laws, standards or policies may be monitored. In addition, the indicators are able to support States parties in adhering to international standards. In this respect, States parties to the United Nations Convention on the Rights of the Child are encouraged to use the indicators, where possible, in State party reporting to the United Nations Committee on the Rights of the Child.<sup>8</sup>

## The 12 Indicators on Violence against Children Deprived of Liberty

| INDICATOR               |  | DEFINITION  |
|-------------------------|--|---|
| QUANTITATIVE INDICATORS |  |   |
| 1                       | Children in detention (I)                          | Number of children in detention per 100,000 child population  |
| 2                       | Child deaths in detention (II)                     | Number of child deaths in detention during a 12 month period, per 1,000 children detained   |
| 3                       | Self-harm  | Percentage of children in detention who are victims of self-harm during a 12 month period   |
| 4                       | Sexual abuse                                       | Percentage of children in detention who are victims of sexual abuse during a 12 month period  |
| 5                       | Separation from adults (III)                       | Percentage of children in detention not wholly separated from adults  |
| 6                       | Closed or solitary confinement                     | Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12 month period  |
| 7                       | Contact with parents and family (IV)               | Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months   |
| 8                       | Exit interviews                                    | Percentage of children released from detention receiving confidential exit interviews by an independent authority   |
| POLICY INDICATORS       |  |   |
| 9                       | Regular independent inspections (V)                | <ul style="list-style-type: none"> <li>- Existence of a system guaranteeing regular independent inspection of places of detention</li> <li>- Percentage of places of detention that have received an independent inspection visit in the last 12 months</li> </ul>  |
| 10                      | Complaints mechanisms (VI)                         | <ul style="list-style-type: none"> <li>- Existence of a complaints system for children in detention</li> <li>- Percentage of places of detention operating a complaints system</li> </ul>   |
| 11                      | Limitations of physical restraint and use of force | <ul style="list-style-type: none"> <li>- Existence of specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty</li> <li>- Percentage of children in detention who have experienced the use of restraint or force by staff at least once during a 12 month period</li> </ul> |
| 12                      | Specialised disciplinary measures and procedures   | <ul style="list-style-type: none"> <li>- Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty</li> <li>- Percentage of children in detention who have experienced a disciplinary measure at least once during a 12 month period</li> </ul>   |

(I) Juvenile Justice Indicator No. 2, (II) Juvenile Justice Indicator No. 6, (III) Juvenile Justice Indicator No. 7, (IV) Juvenile Justice Indicator No. 8, (V) Juvenile Justice Indicator No. 12, (VI) Juvenile Justice Indicator No. 13

| <b>INDICATOR 1: CHILDREN IN DETENTION</b> |  |
|---|--|
| <b>DEFINITION</b>                         | Number of children in detention per 100,000 child population.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>    | $\frac{\text{Number of children in detention}^*}{\text{Population of children} / 100,000}$   |
| <b>WHAT IT MEASURES</b>                   | This indicator provides information on the number of children in detention in relation to the overall child population. This includes the total number of children detained pre-trial, pre-sentence and post-sentencing in any type of facility (including police custody).  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>       | Children in detention are especially vulnerable to its negative influences, including loss of liberty and separation from the usual social environment and their greater risk of abuse. International standards clearly state that detention of children shall only be used as a measure of last resort. Measurement of the proportion of children in detention helps monitor progress towards reduction of the use of deprivation of liberty and informing policy change. In addition, countries can get further useful information about the appropriate use of detention by analysing what offence (if any) such children have or are accused of committing.  |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b> | <ul style="list-style-type: none"> <li>- "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." <i>Convention on the Rights of the Child (CRC), Article 37(b)</i>.</li> <li>- "The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period." <i>Beijing Rules, Article 19(1)</i>.</li> <li>- "Deprivation of liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases." <i>United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL), Article 2</i>.</li> </ul>   |
| <b>INFORMATION SOURCES</b>                | The numerator population is all children in detention on a particular date.* Information sources for this indicator may be sought from three information sources: (1) places of detention; (2) competent authorities; and (3) offices of the public prosecutor. The primary information source is likely to be places of detention. A place of detention should keep records of all children deprived of liberty in that institution. This should apply to all institutions, including police stations with holding cells, remand homes, prisons and secure rehabilitation facilities. In some countries however, additional information sources may have to be sought. The decision to place a child in detention (other than for a child held in a police cell) is almost always made by a competent authority, such as a magistrate who commits a child to pre-sentence detention, or a district court that sentences a child to detention. These authorities may also therefore be useful information sources for this indicator. Finally, offices of the public prosecutor may also maintain and update files on the status of children in conflict with the law, including information regarding detention status. |
| <b>DISAGGREGATION</b>                     | Gender, Age on census date, Ethnicity, District of origin, Category of offence, Detained pre-sentence or after sentencing, Type of detention institution.  |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 11.

\* As regards the numerator population, the research for this report found that in England and Wales, for example, it is also possible to use the figures throughout the year, i.e. the total number of receptions, or entries, in detention in a one-year period.

| <b>INDICATOR 2: CHILD DEATHS IN DETENTION</b> |   |
|---|---|
| <b>DEFINITION</b>                             | Number of child deaths in detention during a 12 month period, per 1,000 children detained.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>        | $\frac{\text{Number of child deaths in detention during the 12 month period}}{\text{Number of children in detention (total) / 1,000}}$  |
| <b>WHAT IT MEASURES</b>                       | By measuring the number of child deaths in detention during a 12 month period, this indicators provides a useful measure of the treatment and care of children during deprivation of liberty and reveals the most critical child protection matters.  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>           | Children deprived of liberty have the right to be detained in a facility that upholds their safety and promotes their physical and mental well-being, including through the provision of adequate medical care where necessary. Nonetheless, child deaths in detention may be caused by, amongst other things, illness (including HIV/AIDS related infections), lack of appropriate food, alcohol or drug intoxication, violence from other detainees or staff, suicide or accidental death. All of these causes raise severe child protection or related concerns, such that a high number of child deaths in detention indicate that the protective environment for detained children is markedly insufficient.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>     | <ul style="list-style-type: none"> <li>- "States Parties recognize that every child has the inherent right to life." <i>CRC, Article 6(1)</i>.</li> <li>- "Every juvenile shall receive adequate medical care, both preventative and remedial..." <i>JDL, Article 49</i>.</li> <li>- "Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel." <i>JDL, Article 54</i>.</li> <li>- "The director of the detention facility should notify the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours." <i>JDL, Article 56</i>.</li> <li>- "Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time." <i>JDL, Article 64</i>.</li> </ul> |
| <b>INFORMATION SOURCES</b>                    | The primary information sources for this indicator are all institutions identified as places of detention. Deaths amongst children detained both pre-sentence and after sentencing should be counted. It is possible to use the 'total number of children in detention' value collected for Indicator 1 (Children in detention) for the denominator.  |
| <b>DISAGGREGATION</b>                         | Gender, Age at time of death, Ethnicity, District of origin, Detained pre-sentence or after sentencing, Cause of death, Type of institution where child was detained.   |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 15.

| <b>INDICATOR 3: SELF-HARM</b>             |  |
|---|--|
| <b>DEFINITION</b>                         | Percentage of children in detention who are victims of self-harm during a 12 month period.   |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>    | $\frac{\text{Number of children in detention who are victims of self-harm during a 12 month period}}{\text{Number of children in detention} / 100}$  |
| <b>WHAT IT MEASURES</b>                   | By measuring the percentage of children in detention who are victims of self-harm during a 12 month period, this indicator provides a useful measure of the treatment and care of children during deprivation of liberty and reveals the most critical child protection matters.   |
| <b>WHY IT IS HELPFUL TO MEASURE</b>       | Children deprived of liberty have the right to be detained in a facility that upholds their safety, and promotes their physical and mental well-being, including through the provision of adequate medical care where necessary. Nonetheless, self-harm by children in detention, including self-mutilation and suicidal behaviour, may be caused by, amongst other things, violence, neglect, poor living conditions, prolonged or indefinite detention and isolation. All of these causes raise severe child protection or related concerns, such that the number of child victims of self-harm is indicative of a markedly insufficient protective environment for detained children.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b> | <ul style="list-style-type: none"> <li>- "States Parties recognize that every child has the inherent right to life." <i>CRC, Article 6(1)</i>.</li> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. ..." <i>CRC, Article 24</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. ..." <i>JDL, Articles 27-30</i>.</li> <li>- "Juveniles deprived of liberty have the right to facilities and services that meet all the requirements of health and human dignity. ..." <i>JDL, Articles 31-37</i>.</li> <li>- "Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated. ..." <i>JDL, Articles 49-55</i>.</li> <li>- "The family or guardian of a juvenile and any other person designated by the juvenile have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. The director of the detention facility should notify immediately the family or guardian of the juvenile concerned, or other designated person, in case of death, illness requiring transfer of the juvenile to an outside medical facility, or a condition requiring clinical care within the detention facility for more than 48 hours. Notification should also be given to the consular authorities of the State of which a foreign juvenile is a citizen." <i>JDL, Article 56</i>.</li> <li>- "Upon the death of a juvenile during the period of deprivation of liberty, the nearest relative should have the right to inspect the death certificate, see the body and determine the method of disposal of the body. Upon the death of a juvenile in detention, there should be an independent inquiry into the causes of death, the report of which should be made accessible to the nearest relative. This inquiry should also be made when the death of a juvenile occurs within six months from the date of his or her release from the detention facility and there is reason to believe that the death is related to the period of detention." <i>JDL, Article 57</i>.</li> <li>- "Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers,</li> </ul> |

| <b>INDICATOR 3: SELF-HARM (CONTINUED)</b> |  |
|---|--|
| <b>APPLICABLE INTERNATIONAL STANDARDS</b> | <p>psychiatrists and psychologists. ..." JDL, Article 81.</p> <p>- "All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required". <i>JDL, Article 87(d)</i>.</p> |
| <b>INFORMATION SOURCES</b>                | <p>The primary information sources for this indicator are all institutions identified as places of detention. Self-harm amongst children detained both pre-sentence and after sentencing should be counted. It is possible to use the 'total number of children in detention' value collected for Indicator 1 (Children in detention) for the denominator.</p>       |
| <b>DISAGGREGATION</b>                     | <p>Gender, Age, Ethnicity, Detained pre-sentence or after sentencing, Type of self-harm, Type of institution where child is detained.</p>  |

| <b>INDICATOR 4: SEXUAL ABUSE</b>          |   |
|---|---|
| <b>DEFINITION</b>                         | Percentage of children in detention who are victims of sexual abuse during a 12 month period.   |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>    | $\frac{\text{Number of children in detention who are victims of sexual abuse during a 12 month period}}{\text{Number of children in detention} / 100}$  |
| <b>WHAT IT MEASURES</b>                   | This indicator assesses the implementation of the child's right to be protected against any form of sexual abuse or sexual exploitation ( <i>CRC, Articles 19 and 34</i> ).   |
| <b>WHY IT IS HELPFUL TO MEASURE</b>       | Children deprived of liberty have the right to be detained in a facility that upholds their safety, and promotes their physical and mental well-being. Every child deprived of liberty has the right to be protected against all forms of sexual abuse and sexual exploitation. The sexual abuse of a child in detention raises severe child protection or related concerns and indicates that the protective environment for detained children is markedly insufficient.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b> | <ul style="list-style-type: none"> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. ..." <i>CRC, Article 34</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required". <i>JDL, Article 87(d)</i>.</li> </ul> |
| <b>INFORMATION SOURCES</b>                | The primary information sources for this indicator are all institutions identified as places of detention. Cases of sexual abuse of children detained both pre-sentence and after sentencing should be counted. It is possible to use the 'total number of children in detention' value collected for Indicator 1 (Children in detention) for the denominator.  |
| <b>DISAGGREGATION</b>                     | Gender, Age, Ethnicity, Detained pre-sentence or after sentencing, Perpetrator(s) (staff, detainee, other), Type of institution where child is detained, Type of abuse, Place where abuse occurred.   |



| <b>INDICATOR 5: SEPARATION FROM ADULTS</b> |  |
|--|--|
| <b>DEFINITION</b>                          | Percentage of children in detention not wholly separated from adults.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>     | $\frac{\text{Number of children in detention not wholly separated from adults}}{\text{Number of children in detention} / 100}$   |
| <b>WHAT IT MEASURES</b>                    | <p>This indicator measures the percentage of children in detention who are not completely separated from adults. It does this by counting all children detained in either of conditions (1) or (2) below.</p> <p>Children in different places of detention may experience different degrees of separation from adults. These may be described as follows:</p> <ol style="list-style-type: none"> <li>(1) There is no formal separation of adults and children. Children are held in the same rooms, wards or cells as adults.</li> <li>(2) Children are held in separate rooms or cells from adults but share facilities such as exercise, washing or dining areas with adults.</li> <li>(3) Children are held in a separate section from adults and have separate facilities. Children may or may not be both out of sight and out of earshot of detained adults.</li> <li>(4) The institution is for children only.</li> </ol> |
| <b>WHY IT IS HELPFUL TO MEASURE</b>        | The principle of separation from adults has two purposes: to protect children from exploitation, abuse and negative influences by adults; and to ensure that children are detained in facilities that cater for their special needs.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>  | <ul style="list-style-type: none"> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so..." <i>CRC, Article 37(c)</i>.</li> <li>- "Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults." <i>Beijing Rules, Article 26(3)</i>.</li> <li>- "In all detention facilities juveniles should be separated from adults, unless they are members of the same family..." <i>JDL, Article 29</i>.</li> </ul>   |
| <b>INFORMATION SOURCES</b>                 | The primary information sources for this indicator are all institutions identified as places of detention. Children detained both pre-sentence and after sentencing should be counted.   |
| <b>DISAGGREGATION</b>                      | Gender, Age on census date, Ethnicity, District of origin, Detained pre-sentence or after sentencing, Category of separation, District of detention, Type of detention institution.  |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 15.

| <b>INDICATOR 6: CLOSED OR SOLITARY CONFINEMENT</b> |   |
|--|---|
| <b>DEFINITION</b>                                  | Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12 month period.   |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>             | $\frac{\text{Number of children in detention who have experienced closed or solitary confinement at least once during a 12 month period}}{\text{Number of children in detention} / 100}$  |
| <b>WHAT IT MEASURES</b>                            | This indicator measures implementation of disciplinary measures constituting cruel, inhuman or degrading treatment.   |
| <b>WHY IT IS HELPFUL TO MEASURE</b>                | Children deprived of liberty have the right to be detained in a facility that upholds their safety, and promotes their physical and mental well-being. All disciplinary measures constituting cruel, inhuman or degrading treatment should be strictly prohibited ( <i>see CRC, Article 37(a)(c)</i> ).   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>          | <ul style="list-style-type: none"> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." <i>CRC, Article 37(a)</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person." <i>JDL, Article 66</i>.</li> <li>- "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. ..." <i>JDL, Article 67</i>.</li> </ul> |
| <b>INFORMATION SOURCES</b>                         | The primary information sources for this indicator are all institutions identified as places of detention, including both pre-sentence and after sentencing. It will be important to look at whether the use of closed or solitary confinement is actually recorded.  |
| <b>DISAGGREGATION</b>                              | Gender, Age, Ethnicity, Detained pre-sentence or after sentencing, Type of institution where child is detained, Length of isolation, Reason for isolation, Type of isolation, Used (on the same child) once only, Used (on the same child) occasionally, Used (on the same child) often.  |

| <b>INDICATOR 7: CONTACT WITH PARENTS AND FAMILY</b> |   |
|---|---|
| <b>DEFINITION</b>                                   | Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>              | $\frac{\text{Number of children in detention receiving or making at least one visit in the last 3 months}}{\text{Number of children in detention} / 100}$   |
| <b>WHAT IT MEASURES</b>                             | This indicator measures implementation of the child's right to regular visits or direct contact with his or her parents and to maintain contact with his or her family through visits.  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>                 | The child's right to regular contact with his or her parents and to maintain contact with his or her family can be seriously challenged during deprivation of liberty. Denial of contact between a detained child and his or her parents and family has a number of serious adverse consequences. Regular contact is of particular importance with respect to the reintegration of the child back into his or her family following release, and the well being and psychological health of the child during the period of detention.  |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>           | <ul style="list-style-type: none"> <li>- "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's interests." <i>CRC, Article 9(3)</i>.</li> <li>- "...every child deprived of liberty... shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances". <i>CRC, Article 37(c)</i>.</li> <li>- "In the interest and well-being of the institutionalised juvenile, the parents or guardian shall have a right of access." <i>Beijing Rules, Article 26(5)</i>.</li> <li>- "Detention facilities for juveniles should be decentralized and of such a size as to facilitate access and contact between the juveniles and their families." <i>JDL, Article 30</i>.</li> <li>- "Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel." <i>JDL, Article 60</i>.</li> <li>- "Juveniles should be allowed to... leave detention facilities for a visit to their home and family..." <i>JDL, Article 59</i>.</li> <li>- "...the restriction or denial of contact with family members should be prohibited for any purpose. ..." <i>JDL, Article 67</i>.</li> </ul> |
| <b>INFORMATION SOURCES</b>                          | The primary information sources for this indicator are all institutions identified as places of detention.  |
| <b>DISAGGREGATION</b>                               | Gender, Age on census date, Ethnicity, District of origin, Detained pre-sentence or after sentencing, Type of detention institution.*   |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 17.

\* Other categories of disaggregation could include: Relationship to visitor (i.e. parent, grandparent, sibling, legal guardian); Length of sentence; Frequency of visits within 3 month period; Type of visit (i.e. closed, open, private, home); and, Length of visit.

| <b>INDICATOR 8: EXIT INTERVIEWS</b>       |   |
|---|---|
| <b>DEFINITION</b>                         | Percentage of children released from detention receiving confidential exit interviews by an independent authority.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>    | $\frac{\text{Number of children released during a 12 month period who received an exit interview}}{\text{Total number of children released during the 12 month period} / 100}$  |
| <b>WHAT IT MEASURES</b>                   | This indicator measures the percentage of children released from detention who received a confidential exit interview by an independent authority.  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>       | <p>Children deprived of liberty have the right to be detained in a facility that upholds their safety, and promotes their physical and mental well-being. Incidents of violence raise severe child protection or related concerns, and are indicative of a markedly insufficient protective environment for detained children.</p> <p>Official reports of incidents of violence may be lacking for various reasons. Detained children may be reluctant to make formal complaints due to, amongst other things, fear of reprisals. Information obtained through confidential exit interviews may therefore be helpful in obtaining information, and learning about what the children themselves experience as violence.</p>  |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b> | <ul style="list-style-type: none"> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." <i>CRC, Article 12(1)</i>.</li> </ul> |
| <b>INFORMATION SOURCES</b>                | The primary sources of information for this indicator are all institutions identified as places of detention. In order to measure this indicator, it is necessary to know which children have been released from detention during the 12 month period, and which of those children received a confidential exit interview by an independent authority.  |
| <b>DISAGGREGATION</b>                     | Gender, Age at time of release, Ethnicity, Detained pre-sentence or after sentencing, Type of detention institution, Length of detention, Type of independent authority.  |

| <b>INDICATOR 9: REGULAR INDEPENDENT INSPECTIONS</b> |  |
|---|--|
| <b>DEFINITION</b>                                   | Existence of a system guaranteeing regular independent inspection of places of detention.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>              | $\frac{\text{Number of places of detention that have received an inspection visit in the last 12 months}}{\text{Number of places of detention (total) / 100}}$   |
| <b>WHAT IT MEASURES</b>                             | This indicator assesses the extent to which the principle that places of detention should receive regular inspection visits from qualified independent persons is codified in law or policy. The indicator is a Policy Indicator but may also be assessed in a quantitative form using the calculation above.  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>                 | A child in detention is deprived of his or her family environment and hence is in a particularly vulnerable situation. As a result, the state has an obligation to ensure special protection and assistance (see <i>CRC, Article 20</i> ). Monitoring of places of detention through inspection visits is an extremely important way for the state to ensure that such protection and assistance is provided in practice. This is because when places of detention receive inspection visits, a mechanism exists for scrutiny, leading to review and improvement of conditions of detention.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>           | <ul style="list-style-type: none"> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of person of his or her age." <i>CRC, Article 37(c)</i>.</li> <li>- "Qualified inspectors or an equivalent duly constructed authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis... and should enjoy full guarantees of independence in the exercise of this function." <i>JDL, Article 72</i>.</li> <li>- "After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them." <i>JDL, Article 74</i>.</li> </ul>  |
| <b>HOW TO MEASURE IT</b>                            | <p>As a Policy Indicator, this indicator asks whether a <i>system</i> is in place for guaranteeing regular independent visits. It is not concerned with the actual <i>number</i> of visits taking place.</p> <p>Information sources at central governmental level (such as within ministries of justice, interior or social welfare) should confirm the existence of a visits system and the structure of the system.</p> <p>Typically, inspection systems guarantee inspections either from: the competent authority (a magistrate or juvenile panel, for example); or persons appointed by a central government authority (such as a prisons commission, inspector of prisons, visiting committee or expert panel).</p> <p>In order to qualify for this indicator, the system should, at a minimum, specify that inspections are regular, independent (they are not carried out by staff of the institution for example), and that one of the purposes of the visits to evaluate compliance with rules and standards.</p> <p>The indicator should then be expressed using one of the four Levels below:</p> <p>Level 1 – System for independent inspections does not exist in law or policy<br/> Level 2 – System exists but is only weakly protected by law or policy<br/> Level 3 – System exists and is moderately protected by law or policy<br/> Level 4 – System exists and is extremely well protected by law or policy.</p> <p>Where the indicator is measured in quantitative form, the numerator population is all places of detention in the country that have received an inspection visit in the last 12 months. The denominator population is all places of detention for children in the country.</p> |
| <b>INFORMATION SOURCES</b>                          | Information for this indicator may be gathered from country legislation, governmental ministries such as ministries of justice, interior, home affairs or penal management, ombudspersons, and existing literature and reports at the central level, together with information sources at the local level such as local police stations, places of detention and magistrate or district courts.  |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 22.

\* In order to qualify for this policy indicator, the actual publication of inspection reports should also be taken into account, which is imperative.

| <b>INDICATOR 10: COMPLAINTS MECHANISMS</b> |  |
|--|--|
| <b>DEFINITION</b>                          | Existence of a complaints system for children in detention.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>     | $\frac{\text{Number of places of detention that operate a complaints system}}{\text{Number of places of detention (total) / 100}}$   |
| <b>WHAT IT MEASURES</b>                    | This indicator assesses the extent to which the principle that children in detention should have the right to present a complaint concerning any violation of their rights whilst deprived of liberty is codified in law or policy. The indicator is a Policy Indicator but may also be measured in a quantitative form using the calculation above.   |
| <b>WHY IT IS HELPFUL TO MEASURE</b>        | When children in detention do not have the right to complain about the treatment that they receive, violations of their rights can occur in silence and those responsible may escape with impunity. Where complaints systems do exist, they should ensure that the complaint is dealt with seriously and that action is taken if a violation of the rights of the child is found.  |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>  | <ul style="list-style-type: none"> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of person of his or her age." <i>CRC, Article 37(c)</i>.</li> <li>- "Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative." <i>JDL, Article 75</i>.</li> <li>- "Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay." <i>JDL, Article 76</i>.</li> <li>- "Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty." <i>JDL, Article 77</i>.</li> </ul>   |
| <b>HOW TO MEASURE IT</b>                   | <p>As a Policy Indicator, this indicator asks whether a complaints system for children in detention exists and is protected by law or policy.</p> <p>In different country contexts, an inspection system may be provided for in law or through government policy. Information sources at central government level (such as ombudspersons, or within ministries of justice, interior or penal management) should confirm the existence of a complaints mechanism and the structure of the system.</p> <p>Typical complaints mechanisms may allow complaints to be made to: the director of the place of detention; or outside authorities, such as a magistrate, inspectors, an ombudsman or even a governmental body (such as a ministry of justice).*</p> <p>The indicator should be expressed using one of the four Levels below:</p> <p>Level 1 – System for complaints does not exist in law or policy<br/> Level 2 – System exists but is only weakly protected by law or policy<br/> Level 3 – System exists and is moderately protected by law or policy<br/> Level 4 – System exists and is extremely well protected by law or policy.</p> <p>Where the indicator is measured in quantitative form, the numerator population is all places of detention in the country that operate a complaints system. The denominator population is all places of detention in the country.</p> |
| <b>INFORMATION SOURCES</b>                 | Information for this indicator may be gathered from country legislation, governmental ministries such as ministries of justice, interior, home affairs or penal management, ombudspersons, and existing literature and reports at the central level, together with information sources at the local level such as local police stations, places of detention and magistrate or district courts. It will be important to look at whether complaints are actually made and recorded, and whether any follow-up action has been taken in order to assess the efficiency of the system.  |

Source: United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 23.

\* In the research for this report, it was found that, in the measurement of the indicator, account should be taken of the requirements of both an internal and external complaints mechanism, and of having access to an independent and confidential complaints mechanism.

| <b>INDICATOR 11: LIMITATIONS OF PHYSICAL RESTRAINT AND THE USE OF FORCE</b> |   |
|---|---|
| <b>DEFINITION</b>   | Existence of specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>                                      | $\frac{\text{Number of children in detention who have experienced the use of restraint or force by staff at least once during a 12 month period}}{\text{Number of children in detention} / 100}$  |
| <b>WHAT IT MEASURES</b>   | This indicator measures whether specialised legislation or regulations exist which establish standards and norms concerning recourse to physical restraint and use of force by personnel with respect to children deprived of liberty in all places of detention. It assesses implementation of the child's right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (see <i>CRC, Article 37(c)</i> ). The indicator is a Policy Indicator but may also be assessed in a quantitative form using the calculation above.  |
| <b>WHY IT IS HELPFUL TO MEASURE</b>   | Children deprived of liberty have the right to be detained in a facility that upholds their safety, and promotes their physical and mental well-being. Recourse by personnel to restraint and force for any purpose should be prohibited, except in cases where the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards, and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>                                   | <ul style="list-style-type: none"> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.<br/>64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.<br/>65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained." <i>JDL, Articles 63-65</i>.</li> </ul> |
| <b>HOW TO MEASURE IT</b>  | As a Policy Indicator, this indicators asks whether specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty exist, and are protected by law. To qualify for this indicator, national legislation and regulations should be checked for specialisation concerning recourse to physical restraint and use of force by personnel with respect to children deprived of liberty, in compliance with <i>JDL, Articles 63-65</i> (see above). It will be important to look at whether staff of the facilities actually receive training on the applicable standards, and if members of the staff who use restraint or force in violation of the rules and standards are punished appropriately. The indicator should be expressed using one of the four Levels below:   |

| <b>INDICATOR 11: LIMITATIONS OF PHYSICAL RESTRAINT AND THE USE OF FORCE (CONTINUED)</b> |   |
|---|---|
| <b>HOW TO MEASURE IT</b>  | <p>Level 1 – Specialised norms on limitations of physical restraint and the use of force do not exist in law</p> <p>Level 2 – Specialised norms on limitations of physical restraint and the use of force exist in law but are not in compliance with <i>JDL, Articles 63-67</i></p> <p>Level 3 – Specialised norms on limitations of physical restraint and the use of force exist which are in full compliance with <i>JDL, Articles 63-67</i></p> <p>Level 4 – Specialised norms on limitations of physical restraint and the use of force exist which are in full compliance with <i>JDL, Articles 63-67</i>, and staff of the facilities receive training on the applicable standards.</p> <p>Where the indicator is measured in quantitative form, the numerator population is the total number of children in detention who have experienced the use of restraint or force by staff at least once during a 12 month period. The denominator population is the total number of children in detention (see Indicator 1).</p> |
| <b>INFORMATION SOURCES</b>  | Information for this indicator may be gathered from country legislation, governmental ministries such as justice, social welfare, or penal management, and existing literature and reports at the central level, together with information sources at local level such as places of detention.  |
| <b>DISAGGREGRATION</b>  | Gender, Age, Ethnicity, Detained pre-sentence or after sentencing, Type of institution where child is detained, Type of restraint or force, Used (on the same child) once only, Used (on the same child) occasionally, Used (on the same child) often.  |



| <b>INDICATOR 12: SPECIALISED DISCIPLINARY MEASURES AND PROCEDURES</b> |   |
|---|---|
| <b>DEFINITION</b>   | Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty.  |
| <b>NUMERATOR</b><br><b>DENOMINATOR</b>                                | $\frac{\text{Percentage of children in detention who have experienced a disciplinary measure at least once during a 12 month period}}{\text{Number of children in detention} / 100}$  |
| <b>WHAT IT MEASURES</b>   | This indicator measures whether specialised legislation or regulations exist which establish norms concerning disciplinary measures and procedures with respect to children deprived of liberty. It assesses implementation of the child's right to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (see <i>CRC, Article 37(c)</i> ). The indicator is a Policy Indicator but may also be assessed in a quantitative form using the calculation above.   |
| <b>WHY IT IS HELPFUL TO MEASURE</b>                                   | Children deprived of liberty have the right to be detained in a facility that upholds their rights and safety, and promotes their physical and mental well-being. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life, and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person. All disciplinary measures constituting cruel, inhuman or degrading treatment should be strictly prohibited.   |
| <b>APPLICABLE INTERNATIONAL STANDARDS</b>                             | <ul style="list-style-type: none"> <li>- "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." <i>CRC, Article 19(1)</i>.</li> <li>- "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. ..." <i>CRC, Article 37(c)</i>.</li> <li>- "66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.<br/>67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.<br/>68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles: <ul style="list-style-type: none"> <li>a) Conduct constituting a disciplinary offence;</li> <li>b) Type and duration of disciplinary sanctions that may be inflicted;</li> <li>c) The authority competent to impose such sanctions;</li> <li>d) The authority competent to consider appeals.</li> </ul> </li> <li>69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.</li> <li>70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.</li> <li>71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes." <i>JDL, Articles 66-71</i>.</li> </ul> |

| <b>INDICATOR 12: SPECIALISED DISCIPLINARY MEASURES AND PROCEDURES</b><br>(CONTINUED) |   |
|--|---|
| <b>HOW TO MEASURE IT</b>   | <p>As a Policy Indicator, this indicators asks whether specialised standards and norms concerning disciplinary procedures and measures with respect to children deprived of liberty exist, and are protected by law.</p> <p>To qualify for this indicator, national legislation and regulations should be checked for specialisation concerning disciplinary procedures and measures with respect to children in detention, in compliance with <i>JDL, Articles 66-71</i>.</p> <p>The indicator should be expressed using one of the four Levels below:</p> <p>Level 1 – Specialised disciplinary procedures and measures with respect to children in detention do not exist in law</p> <p>Level 2 – Specialised disciplinary procedures and measures with respect to children in detention exist in law but are not in compliance with <i>JDL, Articles 66-71</i></p> <p>Level 3 – Specialised disciplinary procedures and measures with respect to children in detention exist in law and are in full compliance with <i>JDL, Articles 63-67</i></p> <p>Level 4 – Specialised disciplinary procedures and measures with respect to children in detention exist in law and are in full compliance with <i>JDL, Articles 63-67</i>, and staff of the facilities receive training on the applicable standards.</p> <p>Where the indicator is measured in quantitative form, the numerator population is the total number of children in detention who have experienced a disciplinary measure at least once during a 12 month period. The denominator population is the total number of children in detention (see Indicator 1).</p> |
| <b>INFORMATION SOURCES</b>   | Information for this indicator may be gathered from country legislation, governmental ministries such as justice, social welfare, or penal management, and existing literature and reports at the central level, together with information sources at local level such as places of detention.  |
| <b>DISAGGREGATION</b>  | Gender, Age, Ethnicity, Detained pre-sentence or after sentencing, Type of institution where child is detained, Type of disciplinary measure, Used (on the same child) once only, Used (on the same child) occasionally, Used (on the same child) often.  |

## Notes

- 1 Robben, A. and Nordstrom, C., “The anthropology and ethnography of violence and socio-political conflict”, in: Nordstrom, C. and Robben, A. (Eds.), *Fieldwork Under Fire: Contemporary Studies of Violence and Survival*, University of California Press, Berkely, 1995, p. 5.
- 2 Paulo Sérgio Pinheiro, *World Report on Violence against Children, UN Secretary-General’s Study on Violence against Children*, Geneva, 2006, p. 196. [www.violencestudy.org](http://www.violencestudy.org). See also chapter 3, below.
- 3 Ibid., p. 191. See also Cappelaere, G., Grandjean, A., Naqvi, Y., *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 44-45.
- 4 Ibid., p. 191.
- 5 All of the Committee’s concluding observations on State Party reports can be found at [www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm).
- 6 See Paulo Sérgio Pinheiro, note 2 above, p 218.
- 7 See chapter 6, section 6.5, below.
- 8 United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 3.

## 2 THE USE OF DETENTION, IMPRISONMENT AND OTHER FORMS OF DEPRIVATION OF LIBERTY

### Introduction

*“Juveniles who enter the juvenile justice system can be profiled as being socially and economically vulnerable. They often experience familial problems (e.g. judicial interventions in the family, harmful family atmosphere) and their school career evolves adversely and involves problem behaviour, bad grades and truancy. Profiles also show an overrepresentation of boys especially of minority groups. These socio-demographic features are even more significant in case of the juveniles brought before court. Whether these profiles give rise to more delinquent behaviour, facilitate a referral to judicial authorities, or else a combination of both, cannot be determined.”<sup>1</sup>*

The discourse about the use of detention, imprisonment or other forms of deprivation of liberty in response to children in conflict with the law goes to the heart of views about child development, childrearing methods, the purpose of justice systems, and children’s rights and responsibilities. Chapter 1 gives information about their use in Belgium, England and Wales, France and the Netherlands.

In all four countries, the common discourse on children in conflict with the law is basically the same: There has been a substantial rise in juvenile crime and it is becoming more violent.<sup>2</sup> It is true that there was a substantial rise between 1950 and 1980 in most Western countries, but the bulk of it was non-serious property and petty crime. There is no evidence for a similar rise in the 1980s and 1990s. Indeed, for most European countries, juvenile crime rates have been stable over the last decade.<sup>3</sup> Nevertheless, juvenile justice reforms have been introduced in all of the four countries based on this the premise of an increasing crime problem.<sup>4</sup>

In England and Wales, for example, up until 1994, custodial sentences were only possible for children aged 15-17 years, with the exception of younger children who had committed serious offences. Since then, stiffer penalties were introduced, including the Detention and Training Order which can be given to 12-17-year-olds. It sentences the child to custody for a period of no less than four months and no more than two years.<sup>5</sup> The Youth Court can transfer cases to the Crown Court, which deals with both adults and children, including when a minor is charged with homicide, a serious offence for which an adult could be sentenced to at least 14 years imprisonment, or jointly with a person aged 18 or older.<sup>6</sup> Although recorded offending by children has been in decline, between 1994 and 2004, the number of children sentenced to custody increased by 90%.<sup>7</sup>

The English and Welsh approach is more repressive than that of most other European countries.<sup>8</sup> Although Belgium and France, for example, struggle with growing repressive and punitive tendencies, they still have a system that is primarily directed at assistance and reintegration.<sup>9</sup> In Belgium, children below the age of 18 have no criminal responsibility. Under the federal Youth Protection Act, only educational measures can be imposed, including the placement of children aged 12 years and above in public youth protection institutions. Placement in the Centre of Everberg, a closed federal institution, may be imposed as a provisional measure with respect to boys aged 14 and above. However, 16- and

17-year-olds who are accused of serious offences can be tried and sentenced under adult criminal law ('transfer to adult court').<sup>10</sup>

In France, juvenile justice is governed by the Ordinance concerning delinquent children of 2 February 1945, which gives priority to educational measures and sanctions, including placement under judicial supervision in an educational facility. The most recent changes include the creation of educational sanctions for 10-year-old children, and the creation of closed educational centres (CEF) for children aged 13-17 years. The CEFs accommodate children for a period of one month up to a year, through either a measure of placement under judicial supervision or a conditional custodial sentence. The term 'closed' refers to the fact that the placement is in the framework of judicial control and entails the threat of incarceration in prison if the minor attempts to escape from the centre. Children aged 16-17 years may be subjected to control by electronic monitoring. A prison sentence may only be imposed with respect to children aged 13-17 years, in exceptional cases. Children can be imprisoned in a special section for minors in a prison or in a specialised penal institution for minors (EPM).<sup>11</sup>

In the Netherlands, policies have become more repressive and the capacity of youth custodial institutions (YCI) has grown exponentially. The numbers of children in YCIs have increased. The length of the sentence of youth detention has been increased for 12-15-year-olds from a maximum of six months to 12 months. For 16- and 17-year-olds, the maximum sentence increased from six months to two years. Sixteen- and 17-year-olds may also be tried and sentenced under adult criminal law. The age of criminal responsibility is 12 years.<sup>12</sup>

The Convention on the Rights of the Child (CRC) sets out rules for the use of arrest, detention, and imprisonment. Article 37(b) provides that "the arrest, detention and imprisonment of a child shall be used only as a measure of last resort, and for the shortest appropriate period of time." Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, the right to challenge the legality of his/her liberty before a court, and the right to receive a prompt decision (article 37(d)). Article 40 states that children in conflict with the law shall be treated "in a manner consistent with the child's sense of dignity and worth... and which takes into account the child's age and the desirability of promoting the child's reintegration." While article 40(4) states that: "A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

Other relevant international instruments include the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the JDL Rules). Rule 17.1 of the Beijing Rules states that: "Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response."

According to the *UN Secretary-General's Study on Violence against Children* (hereinafter: UN Study), taking into account the best interests of the child and his/her long term special needs, deprivation of liberty should be used only for children who are assessed as posing a real danger to others, and then only for the shortest necessary time. It asserts that:

“Screening systems should be put in place to ensure that children are only detained if they are assessed as posing a real danger to others and following a judicial hearing at which they are represented. Police, judges, and appropriate government agencies should develop mechanisms to identify the least restrictive environment for each child, taking into account each child’s individual situation. Any child whose liberty is restricted has a right to speedy legal and other assistance to challenge the legality of their deprivation of liberty (CRC article 37d).”<sup>13</sup>

There is nothing new about the principle of ‘last resort’. However only a few regions of the world have shifted their entire juvenile justice systems towards making alternatives to deprivation of liberty the norm.<sup>14</sup> In the words of one expert who contributed to the UN Study, “it is not enough to repeat the same mantra, it must mean a radical change in the way the systems operate.”<sup>15</sup> In the USA, studies examining recidivism among children sentenced to custody in juvenile detention facilities have found that 50-70% were re-arrested within one or two years after their release.<sup>16</sup> In contrast, recidivism rates for children placed in community-based programmes have been as low as 10%.<sup>17</sup>

The UN Study includes the following set of recommendations for juvenile justice systems:

**Reduce detention** Governments should ensure that detention is only used for child offenders who are assessed as posing a real danger to others, and then only as a last resort, for the shortest necessary time, and following judicial hearing, with greater resources invested in alternative family and community-based rehabilitation and reintegration programmes.

**Legal reform** Governments should ensure that all forms of violent sentencing are prohibited for offences committed before the age of eighteen, including the death penalty, and all indeterminate and disproportionate sentences, including life imprisonment without parole and corporal punishment. Status offences (such as truancy), survival behaviours (such as begging, selling sex, scavenging, loitering or vagrancy), victimisation connected with trafficking or criminal exploitation, and anti-social or unruly behaviour should be decriminalised.

**Establish child-focused juvenile justice systems** Governments should ensure that juvenile justice systems for all children up to age 18 are comprehensive, child-focused, and have rehabilitation and social reintegration as their paramount aims. Such systems should adhere to international standards, ensuring children’s right to due process, legal counsel, access to family, and the resolution of cases as quickly as possible.<sup>18</sup>

## 2.1 Belgium

*“The new bill reflects a wide variety of paradigms and stated goals: protection, retribution and restoration. Yet, little is known about the practical outcomes of the present policies concerning the effective reduction of delinquency. Belgian authorities do not have a coherent (research) policy in order to develop ‘evidence based programs’ and to make prevention and intervention more effective and individual rights better respected. This is partially due to the complex division of competencies in the matter of juvenile justice between the Federal State and the Communities.”*<sup>19</sup>

Due to a federalisation process in the 1970s and 1980s, there is now a division of competencies regarding juvenile justice between the Federal State and the Communities. The judicial reaction to youth delinquency is a federal matter, while the implementation of the educational measures ordered by the youth courts or the public prosecutors is a community concern.

Juvenile justice is governed by the federal Youth Protection Act of 1965. A major law reform took place in 2006.<sup>20</sup> The preparatory work began years before, but the murder of a teenager, who was killed at Brussels Central Railway Station in April 2006 by two teenagers (a 16- and a 17-year-old) accelerated the process. The reform is still too recent for the outcomes to be accurately assessed. It aims to nurture and foster the pedagogical dimension of responses to juvenile offenders, but it also provides for a new large prison for 16- and 17-year-olds who have committed serious offences. It has been asserted that: “In the welfare [*protectionnel*] model, the measures have, by definition, an undetermined duration, considering they have to last as long as the minor’s condition requires treatment... However, the 2006 reform has completely reversed this principle, as now youth courts must indicate the maximum duration of every measure. All the measures are thus of a determined duration, which confirms that the applied model is no longer of an educational nature. The obligation to determine the duration of the measure belongs to a punitive or criminal model.”<sup>21</sup>

The Youth Protection Act makes a distinction between ‘minors accused of committing an act qualifying as offence’ and ‘minors in danger’.<sup>22</sup> Children below the age of 18 have no criminal responsibility.<sup>23</sup> The Youth Protection Act does not provide for penal sentences, only educational measures.<sup>24</sup> It states that: “The situation of the minors who have committed an act qualifying as offence requires supervision, education, discipline and guidance. However, their state of dependence, their degree of development and maturity create special needs which require listening to the child, counselling and assistance. Furthermore, within the framework of the supervision of the minors who have committed an act qualifying as offence, recourse is made, when possible, to alternative measures envisaged by the law, while taking into account the requirement of social protection.”<sup>25</sup>

Nevertheless, 16- and 17-year-olds who are accused of serious offences can be tried by the adult criminal court (‘transfer to adult court’).<sup>26</sup> Since 13 June 2006 the transfer is made to a specialised youth court where three judges, two youth judges from youth courts and one criminal court judge, hear the trial.<sup>27</sup> Penal law, including the law relating to pre-trial detention, and all of the penalties apply. However a sentence of life imprisonment is not allowed.<sup>28</sup> Approximately 3% of the cases brought before the youth court are referred to adult criminal court each year. However this transfer appears to be mainly used in the Brussels region.<sup>29</sup> The government is now planning a 200-place closed federal institution specifically for minors and young adults.<sup>30</sup> There are currently 123 children in adult prisons.<sup>31</sup> Some of the details regarding this future closed centre remain largely unknown. Not to mention the way and the extent to which it will be used, inasmuch as it will increase the availability of places in a closed regime.

Age is not a variable in police statistics, so there are no specific statistics available for the number of children who have come into contact with the police. No special rules exist about the arrest and police custody of children. The same rules as for adults apply, including the maximum of 24 hours custody.<sup>32</sup> The only provision regarding children dates from 5 August 1992, which stipulates that: “Any person who is the subject of an administrative arrest can ask that a person of confidence be informed. When the person deprived of his/her liberty is a minor, it is mandatory to inform the person in charge of him/her”.<sup>33</sup> The new article 48*bis* of

the Youth Protection Act reiterates this provision.<sup>34</sup> In 2002, the Supreme Court decided that, like in adult cases, the deprivation of liberty of a minor should be confirmed within 24 hours by a (youth) judge.<sup>35</sup>

Every judicial district has a specialised youth division. The public prosecutor has four options: dismiss the case; impose a measure (e.g. mediation); refer to Special Youth Services; or refer to the youth court. During the preliminary phase, before youth court proceedings, information is gathered on the circumstances of the offence, as well as the child's personality and home environment. A team of criminologists is involved in this process.

In the first instance, the youth judge can impose provisional measures. The second phase includes the trial. The youth judge can decide to nullify or re-enforce the provisional measures, or he/she can decide to impose another appropriate measure.<sup>36</sup> A wide range of educational measures is available to the youth court. They are outlined in the federal Youth Protection Act. The youth judge can impose the measure which he/she considers the most appropriate, taking into account the child's personality, the gravity of the offence, as well as other circumstances. The judge must justify the decision according to a list of criteria.<sup>37</sup> The implementation of the educational measures ordered by the youth court is a community matter. In the French Community, for example, the Decree of 4 March 1991 relating to youth assistance is applicable.

Preference must be given to measures where the child remains in his/her family environment,<sup>38</sup> and include:

- A reprimand;
- A supervision order, or a conditional supervision order with conditions such as school or guidance centre attendance, community service or educational training, completion of work remunerated in order to compensate the victims, participation in sensitising or training workshops on the consequences of the offence and impacts on the victim, prohibition to see certain people or attend certain places, participation in sports, social or cultural activities;
- A project proposed by the child (*projet écrit du jeune*);
- Community service;
- Restorative offer, including victim-offender mediation or family group conferences;
- Intensive educational accompaniment by a referent teacher;
- Ambulatory treatment (e.g. psychological or psychiatric treatment, sex education or qualified services regarding substance dependencies).

When a child is removed from a family environment, judges have five options:<sup>39</sup>

1. Placement in the care of a private individual;<sup>40</sup>
2. Placement in a suitable facility, including a therapeutic facility in cases of substance dependencies (e.g. drugs or alcohol);<sup>41</sup>
3. Placement in a psychiatric hospital, in open or closed regime;<sup>42</sup>
4. Placement in an open or closed public youth protection institution;
5. Placement in a closed federal institution.

The revision of the Youth Protection Act also introduced the integration of new provisions for mediation and collective restorative procedures.<sup>43</sup>

All educational measures may be imposed as provisional measures, with the exception of a reprimand, which may only be a final measure. The placement in a closed federal institution may only be imposed as a provisional measure (see below). As regards young people aged

16, for example, when their behaviour poses a danger to the child him/herself or society, measures can be prolonged up until the age of 20 or 23.<sup>44</sup>

Age thresholds for: placement in a public youth protection institution; placement in a closed federal institution; a prison sentence

|                           |  |
|---------------------------|--|
| Age of 12 years and above | <ul style="list-style-type: none"> <li>• Open public youth protection institution</li> <li>• Closed public youth protection institution but only on two conditions: dangerous behaviour and assault<sup>45</sup></li> <li>• Closed section of a psychiatric institution</li> </ul> |
| Age of 14 years and above | <ul style="list-style-type: none"> <li>• Closed public youth protection institution</li> <li>• Closed federal institution</li> </ul>   |
| Age of 16 years and above | <ul style="list-style-type: none"> <li>• Prison sentence following transfer to adult court</li> </ul>  |

The youth judge must indicate the maximum duration of the placement. All decisions may be revised upon the request of the judge or the public prosecutor. If the measure is placement in a public youth protection institution, it must be reviewed before the child has spent six months in that institution. The placement can only continue beyond six months if the child is judged to have persistently behaved badly or dangerously, or if the child's behaviour is still regarded as posing a danger to the child him/herself or society.<sup>46</sup> The youth judge may also shorten the duration of the child's placement in the institution.<sup>47</sup> In all but exceptional cases, educational measures end at the age of 18.<sup>48</sup>

The measure of placement in a private facility is only possible with respect to children aged 12 years old and above. A child can only be sent to a public youth protection institution (IPPJ) as a measure of last resort and in open conditions if possible.<sup>49</sup> Placement in an open public youth protection institution is available for children aged 12 years and over who have committed an act qualifying as an offence, or have re-offended after a past placement, or have not carried out a previous measure.<sup>50</sup> Placement in a closed public youth protection institution is only possible for children aged 14 years and above. The child's offence must be serious, or the child must have re-offended after a past placement. The child also risks this placement if he/she does not carry out an imposed measure. If the child behaves well, the youth judge can decide to transfer him/her to an open mode.<sup>51</sup>

There are five different categories of relevant private facilities and services:

1. The 'services of assistance and educational intervention' provide educational assistance to children and their families in the family environment or in autonomous housing;
2. The 'specialised reception centres' provide collective reception of children who require urgent and specialised assistance regarding violent or aggressive behaviour, serious psychological problems and delinquent acts;
3. The 'centres of observation and orientation' accommodate and educate children who have behavioural disorders, and need specialised help and observation apart from their families;
4. The 'emergency reception centres' offer collective reception to children who require emergency housing outside of their family environment, which is limited to a short period of time, and a supplementary programme to be set up following the reception;
5. The 'services of family placement' provide the reception and education of children who need specialised help apart from their families. They work, if possible, towards maintaining contact between the children and family members, and set up a supplementary programme aimed at the child's social reintegration in his/her family environment or in autonomous housing.<sup>52</sup>



In 2006, in the French Community (Wallonia and Brussels), there were a total of 150 authorised private facilities and services with 4,881 places. They are the direct responsibility of the Ministry of Youth Protection of the French Community.

In the French Community, there are five public youth protection institutions, which are the responsibility of the community Minister of Youth Protection.<sup>53</sup> The table below shows the number of places available in each institution and whether they are an open or closed institution. Currently, there are 203 places available: 110 places in open conditions for boys and 34 for girls; and 54 places in closed conditions for boys and five for girls.

Number of places in public youth protection institutions in the French community (2006)

|   | <b>BRAINE-LE-CHÂTEAU</b> | <b>FRAIPONT</b> | <b>JUMET</b> | <b>SAINTE-SERVAIS</b> | <b>WAUTHIER-BRAINE</b> |
|---|--------------------------|-----------------|--------------|-----------------------|------------------------|
| Reception - Open Mode                     |                          | 10              |              | 10                    | 10                     |
| Orientation - Open Mode                   |                          |                 | 10           |                       | 10                     |
| Education - Open Mode                     |                          | 36              | 12           | 24                    | 22                     |
| Observation and evaluation - Closed Mode  | 10                       |                 |              |                       |                        |
| Observation and orientation - Closed Mode |                          | 10 + 1          |              |                       |                        |
| Individual treatment – Closed Mode        |                          |                 |              | 4 + 1                 |                        |
| Education - Closed Mode                   | 30 + 3                   |                 |              |                       |                        |

Braine-le-Château is for boys aged 14-17 years, and in very exceptional cases for 12-13-year-old boys, who have committed serious offences, in closed conditions. It offers three types of care: three educational services (duration of the stay variable, according to the situation); one observation and evaluation service (30 days maximum); one ‘API’ service (post-institutional aftercare).

Fraipont has both open and closed conditions. It is divided into: the closed service (SOORF) for boys on a renewable three months basis; the reception service for boys for a maximum duration of 15 days; the educational service for boys for an unspecified duration of stay; and, the ‘API’ (post-institutional aftercare).

Wauthier-Braine is an open facility that provides various specialist educational projects for boys aged 14-17 years. Its services divide into: reception (15 days maximum for behavioural realignment and development of an assessment of the young person’s situation); orientation (40 days maximum for making intervention proposals on the basis of thorough analysis of the young person’s situation); education (for an unspecified time and aimed at re-socialisation, and re-integration into school); and, ‘API’ (post-institutional aftercare).

Jumet only has open conditions. It has an orientation service for boys aged 12-17 years (duration of placement: 40 days); an educational service for boys aged 12-17 years (duration of the placement is adapted to schooling); and, ‘API’ (post-institutional aftercare).

Sainte-Servais is the only IPPJ for girls and it provides both open and closed conditions. It has: a reception service which lasts for 15 days; the educational service for unspecified duration; the closed mode for young people over the age of 14 for 42 days duration; and, ‘API’ (post-institutional aftercare).

The Centre of Everberg, known as ‘De Grubbe’, was created by the Law of 1 March 2002. It is 25 kilometres from Brussels and falls under the responsibility of the federal Ministry of Justice. It is managed jointly by the three Communities and the Federal Authority, in accordance with Article 14 of the Agreement of 30 April 2002.<sup>54</sup> Each linguistic Community is responsible for educational matters, and the Federal Authority is in charge of security and disciplinary matters.<sup>55</sup> It is the only closed federal institution for boys aged 14 years and over who have committed serious offences. It is only used when there are no places available in the public youth protection institutions. Young people can only stay there for a maximum of two months and five days. Twenty-six places are available, for example, for French-speaking youngsters. The cumulative conditions for placement in the Centre of Everberg are as follows:<sup>56</sup>

- Placement in the closed federal centre is limited to boys;
- The young person must have been 14 years of age or over when the offence was committed, and there must be sufficient and serious proof of guilt;
- The act of the minor qualifying as an offence must be so serious that an adult would receive a custodial sentence of 5-10 years or more;
- There are serious, exceptional and pressing circumstances relating to the protection of public safety;
- Placement in a public youth institution as a provisional measure is not possible due to lack of capacity.<sup>57</sup>

Children who have committed offences and suffer from psychiatric problems can be placed in a child psychiatric facility in order to receive intensive treatment.<sup>58</sup> In the French Community, there are three eight-bed units (‘Project FOR-K’). These units are currently within the Hospital Complex ‘Jean Titeca’ near Brussels. They are for boys aged 12-17 years with severe psychological disorders resulting in delinquent behaviour. More units have been promised but the Ministry of Public Health is unable to say when this will happen.

In 2006, 1,245 children received a measure of placement in a private facility or a public youth protection institution of the French Community. This number does not include those placed in psychiatric institutions, which is not published. A total of 531 children were placed in the Centre of Everberg. A total of 123 minors received a prison sentence.

A statistical report on public youth protection institutions and the Centre of Everberg was recently issued by the Directorate-General for Youth Assistance of the Ministry of the French Community. The average age of placed children is calculated at the date of the first registered placement, considering that children can be subject of more than one placement. In 2006, of the 1,151 children for whom the birth date was available, the average age was 16 years and 2 months. The minimum age is slightly below the age of 12 and the maximum age is 19 years and 9 months.<sup>59</sup> Boys formed the majority.<sup>60</sup> The average length of the duration of placement in closed conditions was 51.86 days (one month and 20 days). The minimum was 0 day and the maximum was 716 days (almost two years).

Gender of the children placed in IPPJs or Everberg (2006)<sup>61</sup>

|       | <b>TOTAL</b> | <b>PERCENTAGE</b> |
|-------|--------------|-------------------|
| Boys  | 944          | 81                |
| Girls | 216          | 19                |
| Total | 1,160        | 100               |

Most children were placed either in a closed public youth protection institution or the Centre of Everberg for property offences (38.7%), followed by offences against a person (38.2%), and a further 14.6% for drugs connected offences.

Types of offences (2006)

|                    | CLOSED MODE |
|--------------------|-------------|
| Property connected | 128         |
| People connected   | 123         |
| Drugs              | 38          |
| Others             | 17          |
| Total              | 306         |

Placement movements by institution (2006)

|                   | SITUATION ON 1 JANUARY | ENTRIES | RELEASES | SITUATION ON 31 DECEMBER |
|-------------------|------------------------|---------|----------|--------------------------|
| Braine-le-Chateau | 47                     | 126     | 126      | 48                       |
| Everberg          | 22                     | 221     | 218      | 18                       |
| Fraipont          | 50                     | 342     | 331      | 50                       |
| Jumet             | 21                     | 64      | 63       | 32                       |
| Saint-Servais     | 30                     | 276     | 268      | 32                       |
| Wauthier-Braine   | 43                     | 387     | 385      | 35                       |
| Total             | 201                    | 1,416   | 1,391    | 227                      |

Placement movements in open or closed mode (2006)

|             | SITUATION ON 1 JANUARY | PLACEMENTS BEGINNING AND FINISHING IN 2006 | PLACEMENTS STILL IN COURSE ON 31 DECEMBER 2006 | PLACEMENTS BEGINNING BEFORE 1 JANUARY 2006 AND STILL IN COURSE |
|-------------|------------------------|--|--|--|
| Open mode   | 101                    | 985  | 97   | 6  |
| Closed mode | 43                     | 170  | 51   | 1  |
| Everberg    | 22                     | 221  | 18   | 0  |
| Total       | 166                    | 1,376                                      | 166  | 7  |

## 2.2 England and Wales

*“The sheer scale of child imprisonment in England and Wales, together with the corrosive impact of penal regimes on children, have generated consistent critique from a wide-range of authoritative sources... Despite the weight and authority of such critique, however, successive governments since 1993 – both Conservative and New Labour – have continued to pursue a ‘tough’ line with regard to criminal justice in general and youth justice in particular.”<sup>62</sup>*

Up until 1994, custodial sentences were only possible for children aged 15-17 years, with the exception of younger children who had committed serious offences. The introduction of the Detention and Training Order meant that 12-17-year-old children could be sentenced to custody for a period of no less than four months and no more than two years.<sup>63</sup> Since 1994, juvenile custodial population has risen and an altogether more punitive response to offending by children has developed.<sup>64</sup> Although recorded offending by children has declined between 1994 and 2004, the number of children sentenced to penal custody increased by 90% over the same time period.<sup>65</sup>

Juvenile justice is primarily governed by the Crime and Disorder Act 1998, section 41 of which established the Youth Justice Board for England and Wales (YJB). It is an executive non-departmental public body. The YJB claims to “work to prevent offending and re-offending by children under the age of 18, and to ensure that custody for them is safe, secure, and addresses the causes of their offending behaviour”.<sup>66</sup> As well as working with all children in conflict with the law, the YJB also deals with those considered at risk of offending, through targeted prevention and early intervention.<sup>67</sup>

The minimum age of criminal responsibility is 10 years of age.<sup>68</sup> Children aged 10-17 years who are charged with an offence will appear before a Youth Court. Under certain circumstances, the Youth Court will transfer the case to the Crown Court, which deals with both adults and children. These circumstances include being charged with homicide, with a serious offence for which an adult could be sentenced to at least 14 years imprisonment, or jointly with a person aged 18 or older. Children who have committed a minor offence for the first time can usually be dealt with by the police and local authority outside of the court system, using a variety of orders and agreements. There is a Youth Offending Team (YOT) in every local authority in England and Wales.<sup>69</sup>

The Children Act 2004 required police authorities and chief officers to cooperate with arrangements to improve the well-being of children with regards to their physical and mental health, and protection from harm and neglect. The custody officer must ensure that concerns arising from the detention of a child or young person are communicated to the appropriate agency. Information sharing is required when a child is to be released from police custody if:

- There are concerns about their welfare arising from risk assessments or other available information;
- There is a risk of significant harm to the child;
- This information may be relevant and allow agencies to protect the welfare of a child.<sup>70</sup>

In England and Wales, responses to children who offend can be divided into:

- Pre-court disposals,<sup>71</sup> anti-social behaviour measures and other measures;<sup>72</sup> and
- Sentences in the community and custodial sentences.<sup>73</sup>

In cases where the child goes to court and pleads guilty or is convicted of an offence, he/she is sentenced to either a community sentence or a custodial sentence.

If pre-court disposals are not appropriate, a child is remanded on bail or remanded in custody. If a court chooses remand on bail, it can be conditional or unconditional bail. A child remanded on ‘unconditional bail’ is required to return to court on a specific day at a specific time, but apart from this requirement there are no other conditions attached. ‘Conditional bail’ can range from a fairly low level where a child has to report to a police station to much more demanding levels where the child is supervised by a YOT on a bail support and supervision programme. Electronic tagging and/or Intensive Supervision and Surveillance Programmes can be included as part of bail supervision and support programmes.

‘Custodial remand’, or pre-trial detention, is used by courts for children aged 10 and above whose offences are particularly serious or who have offended frequently. Remanding a child to local authority accommodation involves the child being looked after by the local authority. As with bail, conditions can be applied to remands to local authority accommodation. Unless the type of accommodation is a condition of the remand, the local authority can choose what type of accommodation it provides for the child. Normally, an initial remand to custody will be for a maximum of eight days, but in exceptional circumstances this can be extended to 28 days. Remands to police custody are for a maximum of 24 hours, unless the defendant is 17, in which case it may be up to three days. The maximum period for which a juvenile can be held on remand (whether to local authority accommodation or to penal custody) is 70 days, although in theory the prosecution can apply to the court for an extension.<sup>74</sup> The average time spent on remand in custody is between 36-38 days.<sup>75</sup>

The Detention and Training Order (DTO) sentences a child to custody. It can be imposed on 12-17-year-olds, for not less than four months and no more than two years. The first half of the sentence is spent in custody while the second half is spent in the community under the supervision of the YOT. The court can also require the child to be on an Intensive Supervision and Surveillance Programme (ISSP) as a condition of the community period of the sentence. A DTO should only be used as a measure of last resort for offences that are considered so serious as to warrant a custodial sentence or, where a violent or sexual offence has been committed, to protect the public. The sentence must be for the shortest period of time and the time spent on remand must be taken into account.

If a child is convicted of an offence for which an adult could receive at least 14 years in custody, e.g. robbery or rape, they may be sentenced under the Powers of Criminal Courts (Sentencing) Act 2000. This sentence can only be given in the Crown Court. If the conviction is for homicide, the sentence falls under Section 90, otherwise the sentence will be under Section 91. The length of the sentence can be anywhere up to the adult maximum for the same offence, which for certain offences may be life imprisonment. A child who commits murder will receive a mandatory indeterminate sentence of ‘long-term detention’.

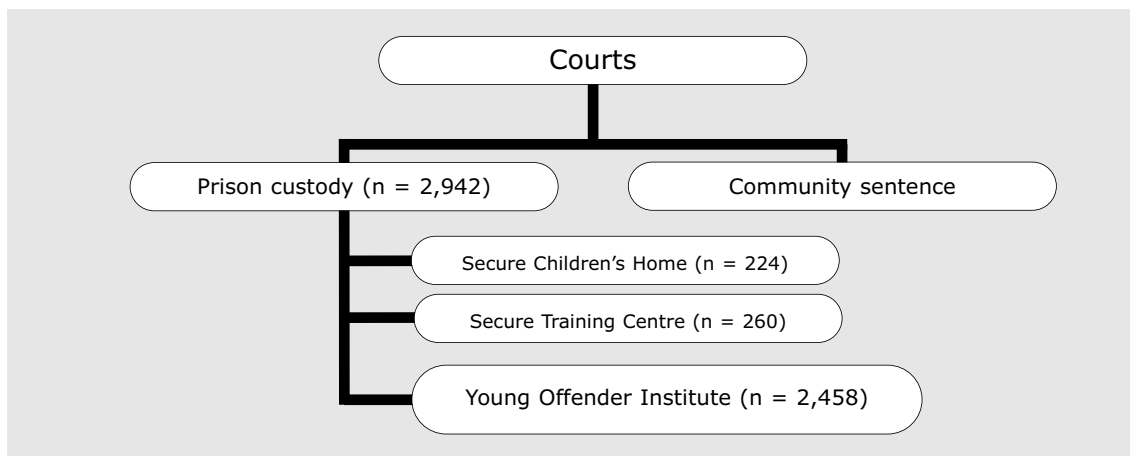
If a child is sentenced to less than four years, they will leave custody at the halfway point of their sentence and be supervised on licence by their supervising officer until the three-quarters point. If certain conditions apply, the child may be released on an electronic tag up to 134 days earlier, under the Home Detention Curfew scheme. For children sentenced to four years or more, if they are successful at their parole hearing they will leave custody at the half-way point. If they are unsuccessful, they will leave at the two-thirds point. In both cases, they will be monitored by their supervising officer until the three-quarters point.

Of the 110,113 recorded offences committed by children sentenced in 2004-2005, 83.5% were committed by White people, 7% by Black people, 3% by Asian people, 2.8% by those of mixed race, 0.5% by Chinese and other, and 3.1% by those whose ethnicity was unknown. Of the 1,835 15-17-year-olds in penal custody on 30 June 2005, 77% were White, 11% were Black, 6% were of mixed race, 5% Asian, with the remaining 1% made up of Chinese, unknown and ‘others’.<sup>76</sup> Data just released concerning children sentenced in 2005-2006 confirms that, from a total of 117,707 offences, 83.8% were committed by White people, 6.9% by Black people, 2.9% Asian, 3.5% Mixed, 0.4% Chinese and other, and 2.5% unknown.<sup>77</sup>

During 2006, the average population of children in penal custody in England and Wales was 2,904. The majority of children in penal custody are routinely held in prison service accommodation, Young Offender Institutions (YOIs), two of which are privately managed. A

smaller number are held in privately managed Secure Training Centres (STCs) and Local Authority secure children's homes (LASCHs).

Children in custody



On 20 July 2007 there were 2,942 children in penal custody. This total figure can be broken down as follows:

| BOYS IN CUSTODY       |        |        |        |        |        |        |            |
|-----------------------|--------|--------|--------|--------|--------|--------|------------|
| Type of accommodation | Age 12 | Age 13 | Age 14 | Age 15 | Age 16 | Age 17 | Total boys |
| SCH                   | 4      | 36     | 74     | 39     | 21     | 1      | 175        |
| STC                   | 0      | 1      | 66     | 49     | 29     | 5      | 150        |
| YOI                   | 0      | 0      | 0      | 294    | 736    | 1,354  | 2,384      |
| Total                 | 4      | 37     | 140    | 382    | 786    | 1,360  | 2,709      |

| GIRLS IN CUSTODY      |        |        |        |        |        |        |             |
|-----------------------|--------|--------|--------|--------|--------|--------|-------------|
| Type of accommodation | Age 12 | Age 13 | Age 14 | Age 15 | Age 16 | Age 17 | Total girls |
| SCH                   | 0      | 4      | 5      | 15     | 24     | 1      | 49          |
| STC                   | 0      | 1      | 8      | 30     | 56     | 15     | 110         |
| YOI                   | 0      | 0      | 0      | 0      | 0      | 74     | 74          |
| Total                 | 0      | 5      | 13     | 45     | 80     | 90     | 233         |

#### Secure Training Centres

On 20 July 2007, 9% of children in custody were held in Secure Training Centres (STCs). These are purpose-built centres for children up to the age of 17. They are run by private operators under contracts. The Medway STC was opened in Kent in 1999. There are now three more STCs in operation: Hassockfield (in County Durham); Oakhill (in Milton Keynes); and Rainsbrook (in Rugby). Until 2003 inspections of STCs were carried out by the Department of Health, but they are now the responsibility of the Commission for Social Care Inspections and OFSTED, the Office for Standards in Education, Children's Services and Skills.

|                |   |
|----------------|---|
| Size of units  | Units of 58-87 places, with a maximum of 8 places per house within the STC  |
| Staffing       | High staff to young people ratio, but lower than secure children's homes  |
| Staff training | A few qualified social workers, but the contracts require all staff to complete a nine-week training programme specified by the YJB |

*Local Authority secure children's homes*

On 20 July 2007, 8% of children in custody were held in Local Authority secure children's homes. These are run by local authority social services departments, overseen by the Department of Health and the Department for Education and Skills. Local Authority secure children's homes aim to provide children with support tailored to their individual needs. To achieve this, they have a high ratio of staff to children and are generally small facilities, ranging in size from six to 40 beds. Secure children's homes are generally used for 12-14-year-olds, girls up to the age of 16, and 15-16-year-old boys who are assessed as vulnerable. Secure children's homes in England and Wales are governed by regulations identified within the Children Act 1989, and inspected by the Commission for Social Care Inspection (CSCI) and its Welsh equivalent (CISW). There are currently 15 secure children's homes being run under contract to the Youth Justice Board.<sup>78</sup>

|                |  |
|----------------|--|
| Size of units  | 6-36 children accommodated in small house units                |
| Staffing       | High staff to young people ratio                               |
| Staff training | Most staff are qualified to NVQ Level 3 or above in child care |

*Young Offender Institutions*

The majority of children in custody (83%) are held in Young Offender Institutions (YOIs). YOIs generally have lower ratios of staff to young people than STCs and LASCHs, and accommodate larger numbers of children. Consequently, the Youth Justice Board acknowledges that YOIs are less able to address the individual needs of children and are generally considered to be inappropriate accommodation for vulnerable children with high risk factors, such as mental health or substance misuse needs.<sup>79</sup> The Youth Justice Board currently places children in 18 different prison service establishments. Sixteen of these YOIs are managed by the Prison Service, with an additional two prisons (Ashfield and Parc) managed by private contractors.<sup>80</sup> YOIs are regulated by Prison Service Orders and inspected by Her Majesty's Inspectorate of Prisons.

|                |   |
|----------------|---|
| Size of units  | Units for males: 28-360 children, with each wing accommodating 30-60                  |
|                | Units for females: 16-24 places   |
| Staffing       | 3-6 officers per wing   |
| Staff training | Prison officer training, plus Juvenile Awareness Staff Programme (JASP) <sup>81</sup> |

Placements should be determined by age, gender, vulnerability and home location, although in practice they are usually determined by availability of places. In this context, 'vulnerability' is defined according to a series of factors, including: risk of self-harm; having been bullied,

abused, neglected or depressed; separation, loss or care episodes; risk taking; substance misuse; other health-related needs. Figures from the Youth Justice Board (YJB) show that during the period April 2004 to March 2005, 3,370 children who had been assessed as vulnerable by the YJB were nevertheless placed in prison.<sup>82</sup> In 1999, Paul Boateng, the then Minister for State for Prisons announced that by 2000, 15- and 16-year-old girls would be placed in local authority care, rather than in prisons. He also promised that 17-year-old girls would, in the “longer term”, be placed outside of prison custody.<sup>83</sup> However, there are currently 74 girls held in prison custody. At present, there are seven specialist units for girls: five within the Prison Service at Downview, Cookham Wood, Eastwood Park, New Hall and Foston Hall, and two within Secure Training Centres at Rainsbrook and Hassockfield. Hassockfield has a mother and baby unit.

The table below sets out by gender, age and vulnerability the type of place that the Youth Justice Board (YJB) claims to allocate a young person when sentenced to remand or custody. However, the YJB acknowledges: “When the population in custody is high, it is not always possible to place young people in the type of establishment identified below or as close to their home as we would wish because there are a limited number of places of each type”.<sup>84</sup>

| GENDER, AGE AND VULNERABILITY            | STATUS  | TYPE OF CUSTODIAL ESTABLISHMENT    |
|--|---|------------------------------------|
| Males and females aged 12-14             | Court-ordered secure remand or sentenced to custody | Secure children’s home or STC      |
| Vulnerable males aged 15-16              | Court-ordered secure remand or sentenced to custody | Secure children’s home or STC      |
| Non-vulnerable males aged 15-16          | Remanded or sentenced to custody                    | YOI                                |
| Females aged 15-16                       | Court-ordered secure remand or sentenced to custody | Secure children’s home or STC      |
| Males and females aged 17                | Remanded to custody                                 | YOI                                |
| Vulnerable males and females aged 17     | Sentenced to custody                                | YOI, secure children’s home or STC |
| Non-vulnerable males and females aged 17 | Sentenced to custody                                | YOI                                |

Source: www.yjb.gov.uk

### 2.3 France

Juvenile justice is governed by the Ordinance concerning delinquent children of 2 February 1945 (*Ordonnance n°45-174 du 2 février 1945, relative à l’enfance délinquante*). This ordinance is based on three principles: primacy of educational responses over penalties; specialised jurisdiction; and, mitigated criminal responsibility due to age. It has undergone many modifications over the years. The most recent changes include the introduction of educational sanctions for minors aged 10 years and above, and the creation of closed educational centres where 13-17-year-olds can be placed in certain circumstances.<sup>85</sup>

“Children deemed capable of discerning between right and wrong are responsible for [offences] of which they have been proven guilty” (art. 122-8 of the Penal Code). The age of criminal responsibility is not specified. A child can be held criminally responsible from



the age of understanding, which is usually found to be at 7 or 8 years.<sup>86</sup> The judge determines the child's level of understanding. When considering the mitigated criminal responsibility of children due to age, the judge takes into account the child's personality, the circumstances of the offence, and the type of offence. The Supreme Court has stipulated that it is necessary for the child "to have understood and wanted" to commit the alleged offence.<sup>87</sup>

The juvenile judge has a dual competence. The judge's civil competence is referred to as 'assistance éducative'. It is meant to protect children at risk, "if the health, safety or morality of a non-emancipated minor are in danger, or if the conditions for his/her education are seriously compromised."<sup>88</sup> In such cases, the judge may impose educational measures.<sup>89</sup> For many years, the tendency was to open a civil file for educational assistance, rather than a criminal file for minor offences, based on the idea that a delinquent child was above all a child at risk.<sup>90</sup>

The judge's criminal competence is based on the Ordinance concerning delinquent children (2 February 1945).<sup>91</sup> The ordinance distinguishes between three kinds of responses. 'Measures of protection, assistance, supervision and education' (educational measures) for children of all ages who are deemed capable of discerning between right and wrong, and are recognised as having committed an offence. Educational sanctions can be used for children aged 10 years and above.<sup>92</sup> Educational sanctions include the measure of placement in a (public or private) educational institution or facility, and placement in a boarding-school (art. 15-1 Ord. 1945). Children aged 13-17 years may be sentenced to penalties (*peines*),<sup>93</sup> taking into account their mitigated criminal responsibility due to age.<sup>94</sup>

The Penal Code refers to serious offences (*crimes*), indictable offences (*délits*) and minor offences (*contraventions*) (art. 111-1 of the Penal Code). The type of offence determines what kind of penalty can be imposed. An indictable offence (*délit*) is punishable by a prison sentence of up to 10 years or a fine of at least 15,000 euros. A serious offence carries a longer prison sentence. A minor offence is punishable by a fine. For example, rape is a serious offence for which a prison sentence of 15 years can be given. In cases where the rape victim is below the age of 15, the penalty is 20 years of imprisonment.<sup>95</sup> Possession or sale of illegal drugs are offences punished by a 10-year prison sentence. All of these penalties refer to the sentences which can be given to adults. The sentences given to children must take into account the extenuating circumstance of age (*excuse de minorité*), in accordance with the principle of mitigated criminal responsibility.

The principle is to give a child a sentence that cannot exceed half of the sentence incurred by adults. With the introduction of the so-called '*peines planchers*' ('minimum penalties'), when a child is found guilty of committing a serious offence punishable for adults by life imprisonment, for example, he/she must be given a prison sentence of at least one year.<sup>96</sup> The most recent reform of the Ordinance concerning delinquent children (2 February 1945) has made it easier to impose harsher penalties (*peines*), in particular to re-offending children aged 16 years and above.<sup>97</sup> In case of a crime, a 16-17-year-old child may be sentenced to seven years of imprisonment.<sup>98</sup> The extenuating circumstance of being a minor is not statutory with respect to 16-17-year-olds, meaning that the incurred sentence is the same as for adults.

Children aged 13-17 years can be put on probation. Depending on the case, this is either handled by the juvenile judge, the examining magistrate or the judge of liberties and detention (*juge des libertés et de la détention*).<sup>99</sup> The possible obligations of a child on probation are stipulated in the law as follows: to submit to the educational measure implemented by the Judicial Youth Protection Service (PJJ),<sup>100</sup> or a licensed private facility.<sup>101</sup>

Table: Age thresholds and brackets for educational measures and sanctions, and penalties

| <b>MEASURES, SANCTIONS AND PENALTIES</b>   |                              |   |   |
|--|------------------------------|---|---|
| <b>CHILDREN BELOW 10</b>   | <b>10-12-YEAR-OLDS</b>       | <b>13-15-YEAR-OLDS</b>  | <b>16-17-YEAR-OLDS</b>  |
| <i>I Police investigation:</i>   |                              |   |   |
| detention not possible   | judicial detention           | police custody  |   |
| <i>II Preliminary enquiry by juvenile court judge or investigating magistrate:</i> |                              |   |   |
| <b>PROVISIONAL EDUCATIONAL MEASURES</b>  |                              |   |   |
|  |                              | In the case of 'crimes', judicial supervision or pre-trial detention.<br>In the case of 'crimes' and/or 'délits', placement under judicial supervision in a closed educational centre (CEF).<br>In the case of a violation of the rules relating to this placement, possibility of pre-trial detention. | In the case of 'crimes' and/or 'délits', judicial supervision or pre-trial detention.<br>In the case of 'crimes' and/or 'délits', placement under judicial supervision in a closed educational centre (CEF).<br>In the case of a violation of the rules relating to this placement, possibility of pre-trial detention. |
| <i>III Trial / Judgment:</i>   |                              |   |   |
| <b>EDUCATIONAL MEASURES</b>  |                              |   |   |
|  | <b>EDUCATIONAL SANCTIONS</b> |   |   |
| -  |                              | Penalty with statutory extenuating circumstance of age.   | Penalty with or without statutory extenuating circumstance of age.  |

The juvenile judge can impose provisional educational measures, as defined by article 8 of the Ordinance of 2 February 1945. The juvenile court (*Tribunal pour Enfants* (TPE)) deals with offences by children, as well as serious offences by children below the age of 16.<sup>102</sup> Serious offences by minors aged 16-17 years are tried by the juvenile assizes court.<sup>103</sup>

A child cannot be held in police custody without the agreement of the public prosecutor's office (*parquet*).<sup>104</sup> Children below the age of 13 cannot be held in police custody, no matter how serious the offence is. However, "on an exceptional basis, a minor of age 10-13 against whom there is serious or concordant evidence that he/she has committed or attempted to commit a serious felony or an offence punishable by at least five years imprisonment can, for the needs of the inquiry, be held in the custody of a judicial police officer [judicial detention] with the prior agreement and under the control of a prosecutor or an examining magistrate specialised in juvenile protection or a juvenile court judge, for a period determined by the prosecutor, but which cannot exceed twelve hours."<sup>105</sup> This period can be extended for a maximum additional 12 hours. A child under 10 can also be held in a police station to be heard by an officer or for protection until collected by the parents.

Judicial detention (*retenue judiciaire*) only applies to minors under 13 years, while police custody (*garde à vue*) applies to children aged 13-17 years and adults.<sup>106</sup> Children aged 13-15 years can be kept in police custody for 24 hours. This is renewable once, for the same duration, but only in the case of 'crimes' or 'délits' carrying a penalty of at least five years

imprisonment. If the minor is below 16 years of age, he/she must also be examined by a doctor. Children aged 16-17 years can be kept in police custody under the same conditions as adults. This means that they can be kept for up to 72 hours: 24 hours renewable twice. In all cases, the child's parents must be informed at the very onset, unless there has been an exceptional decision by the public prosecutor or examining magistrate. In certain cases, police custody of 16-17-year-olds can be extended by the public prosecutor for up to 96 hours, e.g. in cases concerning organised gangs or drug trafficking<sup>107</sup>. The child can request a lawyer and must be informed of this right. The hearings must be videotaped (art. 4 of the Ordinance of 2 February 1945).<sup>108</sup> This provision is also applicable to adults.

Pre-trial detention (Article 11 of the Ordinance of 2 February 1945)

| PRE-TRIAL DETENTION IN THE CASE OF 'CRIMES' (SERIOUS OFFENCES) |            |                                |              |
|--|------------|--------------------------------|--------------|
| AGE  | DURATION   | DURATION OF POSSIBLE EXTENSION | MAXIMUM TIME |
| Below 13   | Impossible | Impossible                     | -            |
| 13-15  | 6 months   | 6 months                       | 1 year       |
| 16-17  | 1 year     | 2x 6 months                    | 2 years      |

| PRE-TRIAL DETENTION IN THE CASE OF 'DELITS' (OFFENCES) |                   |                        |                                |              |
|--|-------------------|------------------------|--------------------------------|--------------|
| AGE  | INCURRED SENTENCE | DURATION               | DURATION OF POSSIBLE EXTENSION | MAXIMUM TIME |
| Below 13   | -                 | Impossible             | Impossible                     | -            |
| 13-15  | Under 5 years     | 15 days <sup>109</sup> | 15 days                        | 1 month      |
|  | 5 years or more   | 1 month <sup>110</sup> | 1 month                        | 2 months     |
| 16-17  | Up to 7 years     | 1 month                | 1 month                        | 2 months     |
|  | Over 7 years      | 4 months               | 2x 4 months                    | 1 year       |

As a provisional measure, and in exceptional circumstances, a child can be placed in pre-trial detention. The use of pre-trial detention is limited according to age and the seriousness of the charge. The reasons may be to further the investigation. Sixteen- and 17-year-olds can be held in pre-trial detention if under suspicion of an indictable offence or a serious offence punishable by a prison sentence of three years or more. Children aged 13-15 years can be held in pre-trial detention if they are charged with a serious offence, or after the revocation of the measure of placement in a closed educational centre (judicial supervision).

The measure of placement of a child who has committed an offence in a closed educational centre (CEF) is considered to be an alternative to imprisonment or detention, and may only be used after full consideration has been given to the possibility of educational measures.<sup>111</sup> The majority of CEFs are managed by licensed private associations. Two CEFs are directly under the direction of the Judicial Youth Protection Service (*Protection judiciaire de la jeunesse*) at the Ministry of Justice.

A child aged 13-17 years can be sentenced to a penalty, where considered necessary taking the circumstances of the offence and the child's personality into account. As regards children aged 13-15 years, the penalty may not exceed half of the fine or sentence incurred by an adult for the same kind of offence.<sup>112</sup> A distinction is usually made between penalties

involving deprivation of liberty, including imprisonment, and others such as fines, control by electronic monitoring,<sup>113</sup> and community service work, which is only possible for 16-17-year-olds. A prison sentence may be imposed in exceptional cases and only to children aged 13 and over. A prison sentence longer than half that of the sentence that would be incurred by an adult can be imposed if this is considered necessary taking into account the personality of the child, the circumstances of the offence, or if the child is a re-offender. The maximum sentence is 20 years for 13-15-year-olds. Children can be imprisoned in a special section for minors in a prison (*quartier des mineurs* (QM) and/or *Centre de Jeunes en detention* (CJD)), or in a specialised penal institution for minors (*Etablissement pénitentiaire pour mineurs* (EPM)). EPMS were only recently established. The first two opened in the spring of 2007. Before the introduction of EPMS, which are for both boys and girls, girls were incarcerated together with women, as there are no special sections for girls in women's prisons.

On 1 January 2006, there were a total of 729 incarcerated children: 690 boys and 39 girls. Ninety children were under the age of 16, and a total of 639 were aged 16-17 years. Sixty-three per cent had the penal status of defendant, a total of 461, and had not yet been convicted. As regards the nature of the offences, 131 cases concerned offences against people, 108 cases concerned property offences, 7 cases involved violations of the Law on narcotics, and 22 cases concerned other types of offences. Of the 268 convicted children, 168 were sentenced to under six months imprisonment, 57 from six months to 1 year, 30 from 1-3 years, 11 from 3-5 years, and two for over five years.<sup>114</sup>

The Judicial Youth Protection Service (PJJ) manages non-residential facilities for educational assistance and various types of residential facilities, namely secure educational centres (CER), emergency placement centres (CPI) and closed educational centres (CEF). It is difficult to determine the exact numbers of children placed in residential facilities due to measures taken under the Ordinance of 2 February 1945, because no distinction is made in the official statistics between civil and penal placements or the types of facilities. All facilities, whether public or private, are considered as social or medical-social facilities.<sup>115</sup> Except for the secure educational centres (CER) and closed educational centres (CEF), they are for children placed through either a civil court order (*en assistance éducative*), or a penal order (*au pénal*).

Secure educational centres (CER) provide treatment to marginalized or delinquent children who are at risk of recidivism and imprisonment. They work on the danger of disintegration from an educational perspective. The objective is to create, through the discovery of a new way of life outside their normal environment, the conditions for a transformation of their image of the adult world and life in society. The sessions usually last from 3-6 months, with a group of 5-7 youths. Forty-seven CER are currently operational.

Emergency placement centres (CPI) cope with emergency placements of children, particularly delinquents, for a period of 3-4 months. The objective is to put them in a situation that breaks away from the environment and lifestyle that led them into delinquency, and to enable the services involved to evaluate the child's situation and make proposals leading to long-term educational solutions. To date, 37 CPIs have been set up.

Closed educational centres (CEF) hold children aged 13-17 years for a period of one month up to a year (renewable), through either a measure of placement under judicial supervision or a conditional detention sentence. The term 'closed' refers to the fact that the placement is under judicial control and entails the threat of incarceration in prison if the minor attempts to escape from the centre. Twenty-five CEF were operational in November 2007.

## 2.4 The Netherlands

Since the mid-1990s stiffer penalties for juvenile offenders have been introduced,<sup>116</sup> and more punishments are handed down.<sup>117</sup> The length of the sentence for youth detention increased for children aged 12-15 years from a maximum of six months to a maximum of 12 months. For 16- and 17-year-olds, the maximum sentence increased from six months to two years. Under article 77b of the Criminal Code, it became possible to try and sentence 16- and 17-year-olds according to adult criminal law.<sup>118</sup> At the time of writing, children subject to the criminal and civil law are held in the same youth custodial institutions (YCI). This is due to change in January 2008 when they will be separated. However the legal position of juveniles deprived of their liberty has improved through the introduction of the Youth Custodial Institutions Act (YCI Act) of 2 November 2000.

Both the Criminal Code and the Code of Criminal Procedure contain a special section concerning juvenile criminal law. The minimum age of criminal responsibility is 12 years.<sup>119</sup> In certain cases, as mentioned above, minors aged 16-17 years can be tried and sentenced under adult penal law.<sup>120</sup> Depending on the circumstances of the offender, and the circumstances and gravity of the offence, persons of 18 up to 21 years can be sentenced under juvenile criminal law.<sup>121</sup>

The police can issue a warning or reprimand (police dismissal or reprimand) and take no further action. They can refer a case to child support services.<sup>122</sup> Cases involving vandalism or minor property offences should be referred to 'Halt', a diversion service for first offenders, where juveniles who confess guilt can carry out up to 20 hours of restorative or other types of activities, or possibly damage compensation.<sup>123</sup> In other cases, the police issues a summons and sends this to the public prosecution service for further handling. Many cases are (conditionally) dismissed by the public prosecutor, or are dealt with by imposing an alternative sanction, e.g. in an out-of-court-settlement.<sup>124</sup> An indictment is only issued in a minority of cases.

Children can be heard by the police at any age.<sup>125</sup> There are no special rules regarding children in police custody. Children are kept in the same police cells as adults. Usually they are kept alone in a cell. The Protocol on Studio Hearings contains safeguards for child friendly hearings, although the presence of parents or a lawyer is not legally required. Police hearings are not recorded. When a child is arrested, the parents and the Council for Child Protection are informed. They can be held in a police cell for interrogation for a maximum of six hours, which can be extended with six hours if the child does not give his/her identity.<sup>126</sup> Where children are suspected of a serious offence and older than 12 years, this period can be extended to a maximum of three days and 15 hours. Children below the age of 12 can be arrested by the police and may be interrogated at the police station for six hours.<sup>127</sup> The police are permitted to search children's bodies and clothing, and possessions can be confiscated. Article 16 of the Youth Custodial Institutions Act allows young people over 16 to be held in police custody for a maximum of ten days when he/she is waiting for placement in a YCI. Children under the age of 16 can be held in a police cell for three days maximum awaiting their placement.

The *nota Kalsbeek 2001* claimed that the volume of juvenile delinquency had stabilised, but that the nature and seriousness of the crimes committed by juveniles had become more severe.<sup>128</sup> In 2007, juvenile offending is still stable, but the numbers of juveniles dealt with by the police has increased.<sup>129</sup> In 1999, nearly 48,000 child suspects were heard by the police, of which 6,700 were girls.<sup>130</sup> In 2006, this number has climbed to 70,389 juveniles, of which 12,281 were girls.<sup>131</sup>

Data on criminal proceedings are annually published by the public prosecution service and are further analysed by the Research and Documentation Centre (WODC). According to the WODC, of a total population of 1,202,779 children aged 12-17 years, there were a total of 33,650 criminal proceedings brought against children in this age group in 2006.<sup>132</sup>

Research and Documentation Centre (WODC) statistics on criminal proceedings brought against minors (2003-2006)

| WODC  | 2006   |
|---|--------|
| Juvenile criminal proceedings   | 33,650 |
| Police custody ( <i>inverzekeringstelling</i> )   | 2,360  |
| Police custody followed by pre-trial detention ( <i>inverzekeringstelling gevolgd door voorlopige hechtenis</i> ) | 4,170  |

Between 2002 and 2006, the number of criminal proceedings against children by the public prosecution service has risen by 30%. According to these statistics, in 2002, 27,694 12-17-year-olds were arrested and appeared before the public prosecutor, of which 4,292 were girls. In 2006, there were a total of 35,538 cases, of which 5,974 were girls.<sup>133</sup> In 2002, a total of 10,717 children were brought before the juvenile judge, this rose to 14,273 in 2006.<sup>134</sup>

Statistics published by the Public Prosecution Service Megafile 2002-2006<sup>135</sup>

| STATISTICS PUBLIC PROSECUTOR 2002-2006 <sup>136</sup> | 2002   | 2006          |
|---|--------|---------------|
| Intake by public prosecution of minors                | 27,694 | 35,538        |
| Police custody ( <i>inverzekeringstelling</i> )       | 5,627  | 6,759 (total) |
| Pre-trial detention ( <i>voorlopige hechtenis</i> )   | 3,431  | 4,196         |

Crimes resulting in pre-trial detention of children (2006)

|  |       |
|--|-------|
| Violence   | 71.8% |
| Crimes concerning money and property             | 20.3% |
| Vandalism and destruction / disturbance of peace | 5.5%  |
| Narcotics  | 2.3%  |

Source: www.dji.nl

The juvenile courts have several sentences at their disposal including alternative sanctions such as unpaid community service and educational programmes.<sup>137</sup> In the case of an offence, for example shoplifting or illegal possession of fireworks, the child can be sentenced to a fine or community service. Deprivation of liberty can only be imposed when serious crimes are committed such as burglary, act of violence, assault and battery, and homicide. The offences attract the following sentences: a prison sentence; youth detention; a fine; community service.<sup>138</sup> Penal youth measures include:<sup>139</sup> placement in a YCI for treatment (PIJ); confiscation; damage compensation.<sup>140</sup> Besides the principal sentences, additional punishments exist, such as confiscation of illegally obtained goods or sums of money. Children can also be supervised by the rehabilitation service.<sup>141</sup>

Children aged 12-17 years who are accused of a crime can be placed in pre-trial detention for the purposes of public safety and further investigation. Pre-trial detention can last for a maximum of 110 days. Night detention can be imposed as a form of pre-trial detention, during which juveniles are allowed to go to school or work during the daytime. Juveniles in pre-trial detention are held in YCIs, or in a youth section of an adult penal institution.<sup>142</sup> The standards for treatment under the Youth Custodial Institutions Act are not guaranteed in adult prisons.

Youth detention can be imposed on children considered criminally accountable for the crime they committed. Placement in a YCI for treatment (PIJ) can be imposed on children considered not fully accountable for their crime, e.g. children with a development disorder. A combination of youth detention and a PIJ measure is also possible. Children aged 16-17 years can be sentenced to a maximum of two years detention. Children below the age of 16 can be sentenced to a maximum of one year detention. Placement through a PIJ measure can last for up to two years, with the possibility of lengthening it for a further two years. Children with psychiatric problems can be given a PIJ measure for a maximum of six years. The advice of two experts is required for PIJ measures. The Youth Custodial Institutions Act provides that juveniles should not have to wait longer than a period of three months for treatment through a PIJ measure. In practice, YCIs for treatment have long waiting lists and many juveniles have to wait in detention before they can be placed in a treatment facility.

Children aged 16-17 years who have received a prison sentence under adult criminal law can be imprisoned in an adult penal institution. In 2005, the Ministry of Justice stated that 21 children were held in an adult prison in pre-trial detention. Fifteen served (part of) their sentence in an adult prison. Statistics for 2006 show that 11 juveniles were incarcerated in an adult prison.<sup>143</sup> Prison sentences of up to 30 years are possible when a juvenile is convicted under adult criminal law.

A government official of the Ministry of Justice selects the YCI where the juvenile is to be detained.<sup>144</sup> Due to long waiting lists, juveniles may go to institutions far away from the place where they normally live. There are public and private YCIs. All of the institutions fall under the supervision of the government, through the Ministry of Justice. The private institutions are designated by the Minister of Justice and are subsidised by the Ministry of Justice.

Currently, there are a total of 14 YCIs: six public institutions and eight private institutions. There are two different types: detention centres and treatment centres. Detention centres accommodate young people in pre-trial detention, youth detention and juveniles on the waiting list for treatment. Some of them accommodate foreign children while they are waiting to leave the Netherlands. Treatment centres accommodate those sentenced to a youth measure of placement for treatment (PIJ). At the time of writing, the YCIs still accommodate children placed by a civil order (family supervision or child protection) as well as those sentenced under criminal law. Eight YCIs, in particular the OG Helderstichting (Zetten), het Keerpunt (Cadier en Keer), Harreveld (Almelo), het Poortje (Groningen), Rentray (Eefde), De Heuvelrug (Lindenhorst), Den Engh (Ossendrecht) and Den Engh (Den Dolder), will be totally or partially turned into institutions for civil placements with closed conditions.

Overview of youth custodial institutions in the Netherlands in 2007

| 14 YOUTH CUSTODIAL INSTITUTIONS |  | DEPARTMENT  | PUBLIC OR PRIVATE | DETENTION AND/OR TREATMENT   | YOUTH CUSTODIAL INSTITUTION OR CIVIL CLOSED MODE JANUARY 2008   |
|---------------------------------|--|---|-------------------|--|---|
| 1.                              | DEN HEY-ACKER<br>BREDA                                       | <i>Ginneken<br/>De Leij</i>   | Public            | Detention and treatment  | Youth custodial institution   |
| 2.                              | DEN ENGH<br>DEN DOLDER                                       | OSSENDRECHT,<br><i>section<br/>maritime</i>   | Public            | Treatment  | Civil closed mode   |
| 3.                              | DE DOGGERSHOEK<br>DEN HELDER                                 | ZWAAG,<br><i>section youth<br/>adult penitentiary<br/>facility Noord-<br/>Holland Noord</i> | Public            | Detention and treatment  | Youth custodial institution   |
| 4.                              | DE HARTELBORGT<br>SPIJKENISSE                                | KRALINGEN,<br><i>dependance</i>   | Public            | Detention and treatment  | Youth custodial institution   |
| 5.                              | DE HEUVELRUG<br>ZEIST  | <i>Eikenstein<br/>Lindenhorst<br/>Overberg</i>  | Public            | Eikenstein:<br><i>detention</i><br>Lindenhorst:<br><i>treatment</i><br>Overberg:<br><i>treatment</i> | - Eikenstein, Overberg:<br><i>youth custodial<br/>institution</i><br>- Lindenhorst:<br><i>civil closed mode</i> |
| 6.                              | DE HUNNERBERG<br>NIJMEGEN                                    | <i>De Maasberg</i>  | Public            | Detention  | Youth custodial institution   |
| 7.                              | HARREVELD<br>HARREVELD                                       | <i>'t Anker<br/>Prisma<br/>ALMELO<br/>Alexandra</i>   | Private           | Treatment  | - 't Anker, Prisma:<br><i>youth custodial insti-<br/>tution</i><br>- Alexandra:<br><i>civil closed mode</i>     |
| 8.                              | Jongeren Opvang-<br>centrum (JOC)<br>AMSTERDAM               |   | Private           | Detention  | Youth custodial institution   |
| 9.                              | JJI HET KEERPUNT<br>CADIER EN KEER                           |   | Private           | Detention and treatment  | Civil closed mode   |
| 10.                             | HET POORTJE<br>GRONINGEN                                     | <i>De Waterpoort<br/>De Veenpoort</i>   | Private           | Detention and treatment  | Civil closed mode   |
| 11.                             | DE SPRENGEN<br>ZUTPHEN                                       | <i>Wapenveld</i>  | Private           | Detention and treatment  | Youth custodial institution   |
| 12.                             | RENTRAY<br>ZUTPHEN   | Eefde<br>REKKEN<br>FLEVOLAND  | Private           | Treatment  | - Rekken, Flevoland:<br><i>youth custodial<br/>institution</i><br>- Eefde:<br><i>civil closed mode</i>          |
| 13.                             | FORENSISCH<br>CENTRUM<br>TEYLINGEREIND<br>SASSENHEIM         |   | Private           | Detention  | Youth custodial institution   |
| 14.                             | ORTHOPEDEGOGIC<br>CENTRE O.G.<br>HELDRINGSTICHTING<br>ZETTEN |   | Private           | Treatment  | Civil closed mode   |



The Ministry of Justice has purchased 100 places in the Hoenderloogroep Glenn Mills School in Wezep. This school is not a youth custodial institution, but judges can refer juveniles sentenced to a PIJ measure to the Glenn Mills School. The school focuses on boys who belong to a criminal group or gang and is known for having a tough regime inspired by an American equivalent. During 2003, 43 boys were sentenced to the school. On 1 February 2004, 69 of the 100 justice places were occupied.<sup>145</sup>

In 2006, 1,404 children were sentenced to a fine. In 11,756 cases, another measure was handed down such as community service.<sup>146</sup> On 1 January 2006, a total of 2,497 children were held in YCIs. Over the whole year, a total number of 7,313 children had been placed in YCIs (civil and penal placements). A total of 4,726 juvenile offenders entered a youth custodial institution. A total of 252 juveniles were given a placement measure for treatment (PIJ). Adult penal law was applied in 62 cases.

| <b>TITLES OF PLACEMENT ON 31 DECEMBER 2006 IN YCIs</b> |       |       |
|--|-------|-------|
| Pre-trial detention                                    | 406   | 35.7% |
| Civil (OTS)  | 492   | 43.3% |
| Waiting for treatment (PIJ)                            | 109   | 9.6%  |
| Youth detention  | 80    | 7%    |
| Minor aliens in detention (civil)                      | 41    | 3.6%  |
| Custody (civil)  | 8     | 0.7%  |
| Total  | 1,136 |       |

Source: [www.dji.nl](http://www.dji.nl)

| <b>TITLES OF PLACEMENT ON 31 DECEMBER 2006 IN YCI TREATMENT CENTRES</b> |       |       |
|---|-------|-------|
| Civil (OTS)   | 766   | 59.8% |
| Treatment (PIJ)   | 479   | 37.4% |
| Custody (civil)   | 35    | 2.7%  |
| Total   | 1,280 |       |

Source: [www.dji.nl](http://www.dji.nl)

The capacity of the YCIs is two times higher than ten years ago and four times higher than twenty years ago. In the 1980s, the YCIs had a capacity of 650 places. In 1997, 1,410 places, which had grown to 2,753 places in 2006. On the other hand, major budget cuts were made and staffing decreased. In 2002, a total of 1,827 persons were working in YCIs. In 2006, this had decreased to 1,554.

| <b>NUMBER OF CHILDREN IN YOUTH CUSTODIAL INSTITUTIONS (2002 AND 2006)</b> |             |             |
|---|-------------|-------------|
| <b>INDICATORS MINISTRY OF JUSTICE</b>                                     | <b>2002</b> | <b>2006</b> |
| Juveniles in youth custodial institutions (total)                         | 5,491       | 7,313       |
| - Criminal record   | 3,900       | 4,726       |
| - Civil   | 1,591       | 2,440       |
| - Other   | -           | 147         |
| Formal capacity   | 2,346       | 2,753       |
| Juveniles present 1 January in YCIs                                       | 1,858       | 2,497       |
| - Criminal record   | 1,052       | 1,177       |
| - Civil   | 806         | 1,320       |
| Present in youth custodial institution for treatment                      | 1,774       | 2,441       |
| - Criminal record   | 595         | 802         |
| - Civil   | 1,179       | 1,599       |
| Present in YCIs for detention   | 4,373       | 5,862       |
| - Criminal record   | 3,560       | 4,282       |
| - Civil   | 813         | 1,473       |
| - Other   | -           | 107         |
| Multiple offenders  |             | 86          |
| Within YCIs: sentenced to measures that year                              | 156         | 174         |
| Within YCIs: actual number of measures                                    | 544         | 618         |

Source: www.dji.nl

| <b>ANNUAL REPORT 2006<br/>NATIONAL AGENCY FOR CORRECTIONAL INSTITUTIONS OF THE MINISTRY OF JUSTICE<sup>147</sup></b> |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Staff in YCI   | 1,827       | 1,747       | 1,717       | 1,644       | 1,554       |
| Average capacity YCI   | -           | 2,326       | 2,495       | 2,581       | 2,674       |
| Occupation YCI   | -           | 93.7%       | 92.3%       | 92.3%       | 90.8%       |
| Inflow <sup>148</sup>  | -           | 4,225       | 4,692       | 4,883       | 4,816       |
| Number of PIJ placements receiving treatment on time   | -           | 3.5%        | 0%          | 11%         | 35%         |
| Number of escapes  | -           | 17          | 13          | 8           | 12          |

The National Agency for Correctional Institutions of the Ministry of Justice publishes data on the age, gender and nationality of juveniles in detention.

| <b>AGE, GENDER AND NATIONALITY (2006)</b> |                             |                             |
|---|-----------------------------|-----------------------------|
| <b>2006</b>                               | <b>YCI DETENTION CENTRE</b> | <b>YCI TREATMENT CENTRE</b> |
| Total of placements                       | 1,160                       | 1,325                       |
| Under 13 years                            | 56                          | 40                          |
| 14-15 years                               | 332                         | 278                         |
| 16-17 years                               | 613                         | 625                         |
| 18 years and above                        | 159                         | 382                         |
| Boys                                      | 901                         | 889                         |
| Girls                                     | 259                         | 436                         |
| Dutch nationality                         | 941 (81.1%)                 | 1,177 (88%)                 |
| Dutch background <sup>149</sup>           | 457 (39.4%)                 | 674 (50.9%)                 |

Source: www.dji.nl

The database Statline of the Central Bureau of Statistics comprises statistics on the crimes committed by juveniles who are sentenced to youth detention.

| NUMBER OF SENTENCES TO NON-SUSPENDED YOUTH DETENTION AND TYPES OF OFFENCES |             |                             |        |
|--|-------------|-----------------------------|--------|
|  | 2006        |                             | 2006   |
| Number of sentences  | 615         | Extortion                   | 5      |
| Violence   | 240         | Property crimes and forgery | 250    |
| Rape and other sexual assaults   | 10 + 5 + 10 | Fraud and fencing           | 5 + 30 |
| Threat (of violence)   | 25          | Vandalism and destruction   | 110    |
| Crimes against life  | 15          | Discrimination              | 0      |
| Assault and battery  | 55          | Dangerous crimes            | 15     |
| Theft and robbery  | 110         | Other crimes                | 5      |
| Aggravated theft   | 165         | Driving offences            | 5      |
| Simple theft   | 35          | Narcotics (hard drugs)      | 15     |

Source: <http://www.cbs.nl/nl-NL/menu/cijfers/statline/default.htm>

| NUMBER OF SENTENCES TO UNSUSPENDED YOUTH DETENTION AND TYPES OF OFFENCES |              |                               |             |
|--|--------------|-------------------------------|-------------|
|  | 2006         |                               | 2006        |
| Number of sentences  | 1,360        | Property crimes               | 440         |
| Violence   | 685          | Fraud and fencing             | 10 + 5 + 30 |
| Rape and other sexual assaults   | 15 + 20 + 15 | Vandalism and destruction     | 180         |
| Threat (with violence)   | 40           | Discrimination                | 5           |
| Crimes against life  | 50           | Dangerous crimes              | 50          |
| Abuse and battery  | 90           | Other crimes                  | 5           |
| Theft and robbery  | 430          | Narcotics (hard drugs)        | 45          |
| Aggravated theft (gekwalficeerde diefstal)                               | 360          | Law for weapons and munitions | 10          |
| Simple theft   | 30           | Other laws                    | 5           |
| Extortion  | 20           | Crime unknown                 | 5           |

Source: <http://www.cbs.nl/nl-NL/menu/cijfers/statline/default.htm>

So far, all YCIs had a different treatment programme for juveniles sentenced to a PIJ measure. In 2005, a commission was installed for testing the effectiveness of behavioural interventions according to the 'What Works' criteria and information was provided to all the institutions.<sup>150</sup> In 2006 and 2007, the Minister of Justice made proposals to improve the quality of treatment in the institutions and of aftercare.<sup>151</sup> At first, the recommendations were made by the government programme *Jeugd terecht*. In October 2007, the State Secretary for Justice, Ms. Albayrak, concluded that improvement of treatment is necessary based on the results of inspections and research in 2006.<sup>152</sup> All of the YCIs agreed upon the use of the social competence method and Equip. In these programmes, juveniles are rewarded for good behaviour.

The Commission for the Recognition of Behaviour Interventions of the Ministry of Justice recently acknowledged two treatment methods, ‘Agression regulation made to measure’ and ‘Tools4U/Training’.<sup>153</sup> Three others are provisionally acknowledged: ‘Multi System Therapy’ (MST); ‘New Perspectives returning to society’ (NPT); and, ‘Social skills made to measure’. Youth custodial institutions participate in the Work Wise programme, which aims to develop a method to accompany juveniles after release in finding an appropriate job or vocational training. In 2000, the National Framework for After Care was set up.<sup>154</sup> There are educational and training programmes (STP) for juveniles after release, but up to 2006 only a very small group actually receives such training.<sup>155</sup> Research shows that recidivism is high. Six years after leaving a YCI, 78% came into conflict with the law again.<sup>156</sup>

## Notes

- 1 Van Dijk, C., Dumortier, E., Eliaerts, C., “Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice”, in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 187-223 at p. 192.
- 2 See Junger-Tas, J., “Trends in Juvenile Justice: What Conclusions Can be Drawn?”, in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 522-531.
- 3 Ibid., p. 522.
- 4 Ibid., pp. 513-515.
- 5 Ibid., pp. 513-514. See also section 2.2 England and Wales, below.
- 6 See section 2.2 England and Wales, below.
- 7 See Nacro, *A Better Alternative: Reducing Child Imprisonment*, London, 2005.
- 8 See Junger-Tas, J., note 2 above, p. 513.
- 9 Ibid.
- 10 Ibid., p. 516. See also section 2.1 Belgium, below.
- 11 Ibid., pp. 515-516. See also section 2.3 France, below.
- 12 Ibid., pp. 514-515. See also section 2.4 The Netherlands, below.
- 13 Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General’s Study on Violence against Children, Geneva, 2006, p. 209. [www.violencestudy.org](http://www.violencestudy.org).
- 14 Ibid., p. 206
- 15 Ibid.
- 16 See American Youth Policy Forum, *Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice*, Washington DC, 2001.
- 17 See Coalition for Juvenile Justice, *Unlocking the Future: Detention Reform in the Juvenile Justice System*, 2004.
- 18 Paulo Sérgio Pinheiro, note 13 above, pp. 218-219.
- 19 Van Dijk, C., Dumortier, E., Eliaerts, C., “Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice”, in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 187-223 at p. 220.
- 20 See Law of 8 April 1965, relating to Youth Protection, supervision of minors who have committed acts qualifying as offences and the repairing of the damaged caused by this act, modified by the laws of 15 May and 13 June 2006. In French, *Loi du 8 avril 1965 relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait, modifiée par les lois du 15 mai et du 13 juin 2006*.
- 21 Moreau, T., “La réforme de la protection de la jeunesse”, *JDJ*, No. 260, Liège, 2006, p. 28.
- 22 See Article 36 of the Law of 8 April 1965 relating to Youth Protection and the supervision of minors who have committed acts qualifying as offences and the repairing of the damage caused by this act:  
“The Youth Court recognizes: ...  
2° the requests from the public prosecutor related to minors whose health, safety or morality is endangered, because of the environment where they are raised, the activities they are involved in, or whose conditions of education are compromised by the behaviour of the persons who are responsible for them; ...  
4° the requests from de public prosecutor towards persons prosecuted for a act qualifying as an offence, committed before the age of 18.”
- 23 See e.g. *Le droit pénal des mineurs en Europe, Irresponsabilité pénale et majorité pénale*, Ministry of Justice [of France], Department of European and International Affairs, Paris, 2007.
- 24 See Preliminary title of the Law of 8 April 1965, inserted by the Law of 13 June 2006.
- 25 Art. 5 of the preliminary title of the Law of 8 April 1965, modified by the Law of 13 June 2006.
- 26 See Art 57bis of the Law of 8 April 1965, modified by the Law of 13 June 2006. The gravity of the offence, as well as the personality of the minor and other circumstances are taken into account. Recidivism is considered to serve as proof of the failure of any past measure(s). The juvenile judge must ask for expert opinions (except in exceptional circumstances, see art. 21(2)), in particular to determine whether the minor could still benefit from educational measures. The experts must undertake a psychological and social inquiry, as well as a medical examination.
- 27 See Arts. 57bis and 21 of the of the Law of 8 April 1965 and art. 101 of the Judicial Code, modified by the Law of 13 June 2006.
- 28 See Art. 12 of the Criminal Code, modified by the Law of 15 May 2006.
- 29 See Nuytiens, A., Christiaens, J., Eliaerts, C., *Ernstige jeugddelinquenten gestraft? Praktijk van de uithandegiving*, Gent, Academia Press, 2005; Detry, I., Vanneste, C. “Une image chiffrée du recours au dessaisissement”, *JDJ*, Liège, January 2004.

- 30 See *Rapport annuel 2006-2007 du Délégué général de la Communauté française aux droits de l'enfant*, DGDE, Brussels, 2007, pp. 90-92.
- 31 See SPF Justice - DG EPI - *Cellule d'analyse des données* - Source: SIDIS/Greffé.
- 32 See art. 32 of the Law of 5 August 1992 relating to the function of police.
- 33 Arts. 32 and 33*quater* of the Law of 5 August 1992 relating to the function of police.
- 34 See art. 48*bis* of the of the Law of 8 April 1965, modified by the Law of 15 May 2006 related to the modification of the Law of 8 April 1965 on Youth Protection, of the Code of Criminal Instruction, of Criminal Law, of Civil Law, on the new Communal Law and on the Law of 20 April 2003 on the reform of adoption.
- 35 See *Cour de Cassation*, 15 May 2002.
- 36 The youth court is also competent in cases of children in need of care and deviant behaviour (e.g. truancy). According to research, almost half of the children subjected to educational measures due to committing acts qualifying as offences (45.7%) do not have their primary school degree (CEB). As regards their family situation, 47.6% have divorced or separated parents, and 11.8% have lost at least one parent. Judges usually tend to impose placement measures in cases where the minor does not live with both parents. See Vanneste, C., *Les décisions prises par les magistrats de la jeunesse du parquet et les juges de la jeunesse à l'égard des mineurs délinquants*, Research Report, INCC, Department of Criminology, Brussels, 2001; Hougardy, L., *Institutions Publiques de Protection de la Jeunesse et Centre fermé provisoire d'Everberg. Rapport statistique intégré 2006*, Ministry of the French Community, Directorate-General for Youth Assistance, Coordination Service of the youth protection institutions, 2007.
- 37 See art. 37(1) of the of the Law of 8 April 1965, modified by the Law of 13 June 2006. These criteria include the personality and the degree of maturity of the child, the child's background and environment, past measures and results, the gravity and circumstances of the offence, damages and consequences for the victims, the safety of the child, and public safety.
- 38 See art. 37 of the Law of 8 April 1965, modified by the Law of 13 June 2006.
- 39 *Ibid.*
- 40 *Ibid.*
- 41 Placement in facilities specialised in the treatment of substance dependencies can be ordered by the juvenile judge in order to keep the minors out of the youth protection institutions where they do not belong.
- 42 Minors suffering from psychoses who have committed an act qualifying as an offence can be placed in a psychiatric hospital on the basis of a duly drawn up child psychiatric report. Since the reform, these minors fall, anew, under the Law of 8 April 1965, modified by the Law of 13 June 2006, namely art. 43.
- 43 See arts. 37*bis* and 45*quater* of the of the Law of 8 April 1965, inserted by the Law of 15 May 2006 and the Law of 13 June 2006.
- 44 See arts. 52(9) and 37(3) of the Law of 8 April 1965. The age of 20 concerns provisional measures, and the age of 23 concerns measures imposed after the age of 16.
- 45 See art. 37*quater*, para. 2, of the Law of 8 April 1965, modified by the Law of 13 June 2006: "people from 12 to 14 who seriously made an attempt on someone's life or health, and whose behaviour is particularly dangerous".
- 46 See art. 60 of the Youth Protection Act of 1965.
- 47 *Ibid.*
- 48 See art. 37(3) of the Youth Protection Act of 1965.
- 49 *Institution publique de protection de la jeunesse (IPPJ)*.
- 50 The public youth protection institutions accommodate children who have been found to have committed an act qualifying as an offence according to arts. 37(2), 8°, and 2*quater*, of the Youth Protection Act of 1965. See also arts. 16, sub-paragraph 2, and 18 of the Decree of the French Community of 4 March 1991 relating to youth assistance.
- 51 "Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community" (1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 30).
- 52 Private facilities may also accommodate 'children accused to have committed an act qualifying as offence', which constitute 15% of the average population of those facilities. 'Children in danger' constitute 85% of the average population. See Mulkay, F., *Study of the OEJAJ, on the basis of data from the DGJAJ*, November 2007.
- 53 The public youth protection institutions usually comprise the following staffing: educational staff; teachers; counsellors; security guards; psychological-medical-social staff; and medical staff.
- 54 This agreement, initially concluded for a duration of three years, is tacitly prolonged if it is not denounced six months before its expiration date.
- 55 See art. 8 of the Agreement of 30 April 2002.
- 56 See art. 3 of the Law of 1 March 2002 relating to the provisional placement of minors who have committed acts qualifying as an offence.
- 57 See arts. 37, 52 and 52*quater* of the Youth Protection Act of 1965.
- 58 See art. 43 of the Youth Protection Act of 1965, modified by the Law of 13 June 2006.
- 59 See Hougardy, L., *Institutions Publiques de Protection de la Jeunesse et Centre fermé provisoire d'Everberg. Rapport statistique intégré 2006*, Ministry of the French Community, Directorate-General for Youth Assistance, Coordination Service of the youth protection institutions, 2007, pp. 59-74. This average has remained stable over the years when considering the *Statistical data over the period of 1997 to 2002: young people, decisions, foster families*, where it is noted that the average age of children being subjected to a first placement in a public youth protection institution is 16 years and two months.
- 60 *Ibid.*, p. 60.
- 61 This table and the following tables are based on: Hougardy, L., *Institutions Publiques de Protection de la Jeunesse et Centre fermé provisoire d'Everberg. Rapport statistique intégré 2006*, Ministry of the French Community, Directorate-General for Youth Assistance, Coordination Service of the youth protection institutions, 2007, pp. 20, 22, 60, 83.
- 62 Goldson, B, "Damage, harm and death in child prisons in England and Wales: Questions of abuse and accountability", 45 *The Howard Journal* 5, 2006, pp. 449-467 at pp. 450-451.

- 63 See e.g. Graham, J.; Moore, C., "Beyond Welfare Versus Justice: Juvenile Justice in England and Wales", in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 65-81 at p. 65.
- 64 Ibid.
- 65 See Nacro, *A Better Alternative: Reducing Child Imprisonment*, London, 2005.
- 66 www.yjb.gov.uk.
- 67 The most common forms of these programmes can be summarised as follows:
- Youth Inclusion Programmes (YIPs), established in 2000, are tailor-made programmes for 8-17-year-olds, who are identified as being at high risk of involvement in offending or anti-social behaviour. The programme gives children somewhere safe to go where they can learn new skills, take part in activities with others, and get help with their education and careers guidance.
  - Youth Inclusion and Support Panels (YISPs) aim to prevent anti-social behaviour and offending by 8-13-year-olds who are considered to be at high risk of offending. Panels are made up of a number of representatives of different agencies (e.g. police, schools, health and social services). The main emphasis of a panel's work is to ensure that children and their families, at the earliest possible opportunity, can access mainstream public services.
  - Parenting programmes provide parents with an opportunity to improve their skills in dealing with the behaviour that puts their child at risk of offending. They provide parents/carers with one-to-one advice as well as practical support in handling the behaviour of their child, setting appropriate boundaries and improving communication. Parents with a child who has become involved with the youth justice system may be offered the opportunity to voluntarily attend a parenting programme by the local Youth Offending Team (YOT), if they consider that it would be useful. However, if voluntary participation cannot be achieved, a parenting order can be sought by the YOT, which compels the parents/carers of a child at risk to attend.
  - Safer School Partnership (SSP) programme enables local agencies to address significant behavioural and crime-related issues in and around a school. A result of the YJB's proposal to develop a new policing model for schools, the SSP programme was launched as a pilot in September 2002, and brought into mainstream policy in March 2006. Initially, SSPs provided a focused approach to address the high level of crime and anti-social behaviour committed in and around schools in some areas – crime committed *by* and *against* children. All schools involved in the Safer School Partnerships initiative have a police officer based in their school. The school-based officer works with school staff and other local agencies.
  - Mentoring pairs a volunteer with a young person at risk of offending. The volunteer's role is to motivate and support the young person on the scheme through a sustained relationship, over an extended period of time. The relationship is built upon trust and a commitment to confidentiality and equality between the mentor and the child.
- 68 See Section 50 of the Children and Young persons Act 1993, which states that: "It shall be conclusively presumed that no child under the age of ten can be guilty of an offence." In 2005, the Human Rights Commissioner of the Council of Europe called on the Government of the United Kingdom to increase the minimum age of criminal responsibility, in order to bring it in line with the rest of Europe. Despite this recommendation, it remains at 10 years of age. See *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to the United Kingdom 4th - 12th November 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly*, Office of the Commissioner for Human Rights, 2005. It has been argued that the definition of a child in the juvenile justice system in England and Wales departs significantly from the spirit and meaning of the United Nations Convention on the Rights of the Child: children are considered fully culpable for offences at the age of 10; there are provisions in statute for the routine imprisonment of children as young as 12 years, who are detained in privately owned and managed penal facilities; 17-year-olds are treated as adults under the Police and Criminal Evidence Act 1984 and for the purposes of remand. See Howard League for Penal Reform, *Children in the Criminal Justice System: An Independent Submission to the United Nations Committee on the Rights of the Child*, London, 2007.
- 69 These teams are made up of representatives from the police, Probation Service, social services, health, education, drugs and alcohol misuse and housing officers. Since 2003 YOTs have been subject to inspections by HM Inspectorate of Probation.
- 70 See Association of Chief Police Officers, *Guidance on the Safer Detention and Handling of Persons in Police Custody*, National Centre for Policing Excellence / Home Office, London, 2006, pp. 95-96.
- 71 Pre-court disposals include: Reprimand (a formal verbal warning given by a police officer to a child who admits they are guilty of a minor first offence.); Final Warning (a formal verbal warning given by a police officer to a child who admits their guilt for a first or second offence. Children are also assessed to determine the causes of their offending behaviour and a programme of activities is identified to address them).
- 72 Anti-social behaviour measures include:
- Acceptable Behaviour Contract (ABC): Given when a local authority and Youth Offending Team identify a child who is behaving anti-socially at a low level. With the child and their parents/carers, they agree a contract under which the child agrees to stop the patterns of behaviour that are causing nuisance to the local community and undertake activities to address their offending behaviour.
  - Anti-Social Behaviour Order (ASBO): An ASBO stops the child from going to particular places or doing particular things. If they do not comply with the order, they can be prosecuted. Local authorities, police forces, registered social landlords and housing trusts can apply for an order.
  - Individual Support Order (ISO): Can be attached to 'stand alone' ASBOs and impose conditions on the child to address the underlying causes of the behaviour that led to the ASBO. An ISO may last up to six months and can require a child to attend up to two sessions a week under the supervision of the Youth Offending Team. Breach of an ISO is a criminal offence which may be punished by way of a financial penalty.
- Other measures include: Local Child Curfew (a local authority or local police force can ban children under 16 from being in a public place during specified hours (between 9pm and 6am) unless under the control of a responsible adult.); Child Safety Order (under a Child Safety Order, a social worker or officer from the Youth Offending Team supervises the child. If the order is not complied with, the parent can be made the subject of a parenting order).
- 73 Sentences in the community:
- Supervision Order: Children receiving a Supervision Order are also required to take part in activities set by the Youth Offending Team, which could include repairing the harm done by their offence either to the victim or the community and programmes to address their offending behaviour.
  - Community Rehabilitation Order: Equivalent to a supervision order but specifically for children of 16 or 17 years of age.
  - Community Punishment Order: A community punishment order is for children aged 16-17 years. It requires a child to

- complete unpaid community work for a period of between 40-240 hours.
- Action Plan Order: An intensive programme lasting three months and specifically tailored to the risks and needs of the child. It can include repairing the harm done to the victim of the offence or the community, education and training, or a variety of other programmes to address a child's offending behaviour.
  - Attendance Centre Order: This order sentences a child to attend an attendance centre, where programmes concentrate on group work to give attendees basic skills.
  - Referral Order: A Referral Order is given to a child who pleads guilty to an offence when it is his/her first time in court. When a child is given a Referral Order, he/she is required to attend a youth offender panel, which is made up of two volunteers from the local community and panel adviser from a youth offending team. Together with the child, their parents/carers and the victim (where appropriate), the panel agrees a contract lasting between three and 12 months. The aim of the contract is to repair the harm caused by the offence and address the causes of the offending behaviour. Once the contract has been successfully completed, the conviction is 'spent' which means it does not have to be disclosed by the child when applying for work.
  - Reparation Order: This order requires a child to repair the harm caused by the offence either directly to the victim (this can involve victim/offender mediation if both parties agree) or indirectly to the community.
  - Fine: The size of a fine reflects the offence committed and the offender's financial circumstances. For a person under 16 years of age, the payment of the fine is the responsibility of their parents/carers.
  - Conditional Discharge: A child receiving a Conditional Discharge receives no immediate punishment. A period of between six months and three years is set and, as long as the child does not commit a further offence during this period, no punishment will be imposed. However, if the child commits another offence during this period, they can be brought back to court and re-sentenced.
  - Absolute Discharge: A child is given an Absolute Discharge when they admit guilt or are found guilty, but no further action is taken against them.
- 74 See Criminal Justice and Police Act 2001.
- 75 See Graham, J.; Moore, C., "Beyond Welfare Versus Justice: Juvenile Justice in England and Wales", in: Junger-Tas, J., Decker, S. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 65-81 at p. 77.
- 76 See Home Office, *Statistics on Race and the Criminal Justice System 2005*, London, 2006.
- 77 See Home Office, *Statistics on Race and the Criminal Justice System 2006*, London, 2007.
- 78 Aldine House Secure Children's Centre (Sheffield), Atkinson Unit (Exeter), Aycliffe Secure Services (County Durham), Barton Moss Secure Care Centre (Manchester), Clayfields House Secure Unit (Nottingham), East Moor Secure Children's Home (Leeds), Gladstone House Secure Children's Home (Liverpool), Hillside Secure Centre (South Wales), Kylee House Secure Children's Home (Northumberland), Lincolnshire Secure Unit (Lincolnshire), Orchard Lodge (London), Red Bank Community Home (Merseyside), Sutton Place Safe Centre (Hull), Swanwick Lodge (Southampton), and Vinney Green Secure Unit (Gloucestershire).
- 79 See [www.yjb.gov.uk/en-gb/yjs/Custody/YoungOffendersInstitutions/](http://www.yjb.gov.uk/en-gb/yjs/Custody/YoungOffendersInstitutions/).
- 80 The locations of the YOIs are as follows: Ashfield (Bristol), Brinsford (Wolverhampton), Castington (Northumberland), Cookham Wood (Rochester), Downview (Surrey), Eastwood Park (Gloucestershire), Feltham (Middlesex), Foston Hall (Derby), Hindley (Wigan), Huntercombe (Oxfordshire), Lancaster Farms (Lancaster), New Hall (Yorkshire), Parc (Glamorgan), Stoke Heath (Shropshire), Thorn Cross (Cheshire), Warren Hill (Suffolk), Werrington (Stoke on Trent), Wetherby (Yorkshire).
- 81 However, Prison Service Order 09/2003 details the abolition of mandatory training for prison staff.
- 82 See Howard League for Penal Reform, *Children in the Criminal Justice System: An Independent Submission to the United Nations Committee on the Rights of the Child*, London, 2007.
- 83 See Wilson, D., *Death at the Hands of the State*, Howard League for Penal Reform, London, 2005.
- 84 Youth Justice Board, *Placing Children and Young People in Custody*, <http://www.yjb.gov.uk/en-gb/yjs/Custody/PlacingChildrenandYoungPeopleinCustody/>. Last accessed 30 September 2007.
- 85 See Law No. 2002-1138 (9 September 2002). The placement in a closed educational centre is a measure of judicial control during the examination of the case (art. 10 Ord. 1945), or a sentence following conviction (art. 20 Ord. 1945).
- 86 See Rosenczveig, J., "Le dispositif français de protection de l'enfance", *Ed. Jeunesse et droit*, Paris, 2005, p. 794.
- 87 *Arrêt Laboube, Chambre de cassation criminelle*, 13 December 1956.
- 88 See art. 375 of the Civil Code.
- 89 See arts. 375-3 and 375-4 of the Civil Code.
- 90 The public prosecutor has the legal authority to prosecute a minor. Guided by the judicial police officer (OPJ) or police investigator, he/she takes into consideration the seriousness of the charge, the minor's record and personal situation, as well as other factors. The prosecutor may decide to drop the penal charges and to deal with the case under civil law (*assistance éducative*). For the same reasons, the juvenile judge can consider that it is not necessary to open a penal file, and release the child from prosecution. But, if the judge considers the child to be 'at risk', he/she may automatically deal with the case under '*Assistance Educative*'.
- 91 See art. 1 of the Ordinance of 2 February 1945 ("*Les mineurs auxquels est imputée une infraction qualifiée crime ou délit ne seront pas déférés aux juridictions pénales de droit commun, et ne seront justiciables que des tribunaux pour enfants ou des cours d'assises des mineurs.*").
- 92 Educational sanctions include: confiscating an item belonging to the child and linked to the offence; interdiction to frequent certain places or people (victims or co-authors of the offence); the obligation to follow a civic training course; an assistance measure; restitution or compensation, measure of placement in an educational institution or facility, private or public, that is near to the child's residence; placement in a boarding-school (art. 15-1 Ord. 1945).
- 93 See art. 18 Ord. 1945.
- 94 The applicability of the extenuating circumstance of age is not mandatory concerning children aged 16-17, for example, in cases of re-offending of serious offences (art. 20-2 Ord. 1945).
- 95 See arts. 222-23 and 222-24 of the Penal Code.
- 96 See art. 20-2(2) of the Ordinance of 2 February 1945 as modified by Law No. 2007-1198 (10 August 2007).
- 97 See art. 132-18 of the Penal Code as modified by art. 3 of Law No. 2005-1549 (12 December 2005).

- 98 See arts. 132-18-1 and 132-19-1 of the Penal Code.
- 99 See art. 145 of the Code of Criminal Procedure (CPP).
- 100 “Created in 1945 under the name of ‘monitored education’ (*Education surveillée*), this administration of the Ministry of Justice aims at giving to courts every legal, technical, methodological and human means necessary to protect children at risk or delinquent children.” Rosenczveig, J.-P., “Le dispositif français de protection de l’enfance”, *Jeunesse et droit*, Paris, 2005, p. 1072.
- 101 Private facilities are licensed by the PJJ (*Protection judiciaire de la jeunesse*) at the Ministry of Justice.
- 102 The juvenile court is composed of the youth court judge, who presides, and two assessors (non-professional magistrates).
- 103 The juvenile assizes court is composed of three professional magistrates (a chief magistrate and two assessors who are youth court magistrates of the court district) and a jury of citizens.
- 104 In France, there are two types of police: ‘*la Police*’ and ‘*la Gendarmerie*’. Police custody is under the control of the public prosecutor. The exercise of this control can vary from one court to another. For example, a court in the Paris suburbs makes it mandatory for police investigators to contact the prosecutor on duty whenever they decide to place a minor in custody, even during the night. The prosecutor of this court has also established a custody inspection duty for the deputy prosecutors. They have to inspect the police register (indicating names, custody hours, break times, meals, hearings), the state of the custody cells, blankets, etc.
- 105 Ordinance of 2 February 1945, art. 4, I, modified by Law 2002-1138, art. 16. Before this modification, the delay of judicial detention was 10 hours and the offence punishable by seven years of detention.
- 106 See art. 4 of the Ordinance of 2 February 1945, and arts. 706-788 of the Code of Criminal Procedure for children aged 16-17 years. If a person cannot identify him/herself through formal identity papers, the police can detain this person to check it out through formal channels. However, in cases concerning children, the public prosecutor must be informed as soon as the custody starts. The minor has the right to legal assistance.
- 107 See arts. 706-788 of the Code of Criminal Procedure, and art. 4, VII, of the Ordinance of 2 February 1945, introduced by Law No. 2004-204 (9 March 2004).
- 108 Recently the Supreme Court overturned a police investigation because the taping of the hearing of the child had been cancelled for technical reasons (*Chambre de cassation criminelle*, 3 April 2007, No. 06-87264).
- 109 Or in cases where the child violates the rules relating to the judicial supervision.
- 110 *Ibid.*
- 111 Definition given by INSEE: CEFs are meant for re-offending children subject to probation. This type of placement constitutes an alternative to deprivation of liberty and always take place after the failure of educational measures. The term ‘closed’ refers to the legal rules defining the placement, meaning that misconduct may lead to imprisonment.
- 112 See art. 20-2 Ord. 1945.
- 113 See Law No. 2005-1549 (12 December 2005).
- 114 See *Annuaire statistique de la Justice*, 2007.
- 115 Their duties and responsibilities are laid down in Law No. 2002-2 (2 January 2002).
- 116 See Law 7 July 1994, which came into force on 1 September 1995.
- 117 See Weijers, I., Liefwaard, T., “Jong vast - 1995 tot 2005, Vrijheidsbeneming in het Nederlandse jeugdstrafrecht-deel 2”, *Proces 2007/5*, p. 205.
- 118 *Ibid.*, p. 204.
- 119 See art. 486 of the Code of Criminal Procedure. A child below the age of 12 can, however, be referred by the police to a Halt bureau for a ‘Stop reaction’, a diversion service (see further below).
- 120 See art. 77b of the Criminal Code.
- 121 See art. 77c of the Criminal Code.
- 122 Whether and how often the police refer cases to support service institutions or to the Council for Child Protection cannot be determined from the recording systems.
- 123 The juvenile can participate in a project instead of being prosecuted (art. 77e Criminal Code). The Halt completion and the Stop reaction fall under the responsibility of the public prosecutor. The Stop reaction is for children below the age of 12. This is a pedagogical activity which lasts a maximum of 10 hours. The Halt completion aims at minors older than 12 and lasts a maximum of 20 hours. Over 40% of all children under the age of 18 arrested by the police due to an offence are referred to a Halt bureau. The bureaus cooperate with the police, judicial and child welfare authorities. When a Halt completion is successful the case will not be sent back to the public prosecutor. When an offence is more severe or when Halt has failed, the juvenile’s case will be discussed in the Judicial Case Consultation between the police, the public prosecution service and the Council for Child Protection.
- 124 See art. 74 of the Criminal Code. The public prosecutor can come to an agreement for an out-of-court-settlement with the juvenile in certain circumstances. Alternative sanctions include unpaid community service and educational programmes.
- 125 See art. 53 of the Code of Criminal Procedure.
- 126 See art. 61 (sub 1-2) of the Code of Criminal Procedure
- 127 See art. 61 of the Code of Criminal Procedure.
- 128 See Kamerstukken II 2001/2002, 28292, nr. 2 (Lower House, *Nota Kalsbeek: Vasthoudend en effectief. Versterking van de aanpak van jeugdcriminaliteit*).
- 129 See speech of Minister of Justice, Final Conference *Jeugd Terecht*, 1 February 2007.
- 130 De Jonge, G., Van der Linden, A.P., *Jeugd en strafrecht*, Kluwer, Deventer, 2004, p. 5.
- 131 See Table: *Aantal gehoorde verdachten, minderjarige mannen en minderjarige vrouwen in 2006*, Statline CBS, [www.statline.cbs.nl](http://www.statline.cbs.nl).
- 132 It should be taken into account that more than one criminal proceeding can be brought against a child in the course of one year in cases where a child re-offends.
- 133 See Megabestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, pp. 1, 21.
- 134 See Megabestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, pp. 3, 21.
- 135 See [http://www.om.nl/dossier/organisatie\\_beleid\\_om/\\_organisatie\\_beleid\\_om\\_persberichten/31605](http://www.om.nl/dossier/organisatie_beleid_om/_organisatie_beleid_om_persberichten/31605).



- 136 See MEGAbestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, pp. 2, 21.
- 137 Alternative sanctions also include *Individuele Traject Begeleiding* (ITB): A juvenile who commits a severe crime gets guidance for 6-12 months. Purposes are set on various topics such as education, work, income, environment and relationship with parents. A plan of action is made to realise the goals. Juveniles who quit or commit a new crime will be sent to prison after all.
- 138 See art. 77h (sub 1, 2, 3) of the Criminal Code.
- 139 See art. 77h (sub 4) of the Criminal Code.
- 140 See De Jonge, G.; Van der Linden, A.P., *Jeugd en Strafrecht*, Kluwer, Deventer, 2004, p. 83. Juveniles are tried by the juvenile judge. In cases of a crime, when the public prosecutor has asked for a sentence of detention of over six months or a PIJ measure, the three-judge penal section of the juvenile court will try the case.
- 141 *Ibid.*, p. 103.
- 142 For example, in the adult penal facility Noord-Holland Noord, location Zwaag, section youth.
- 143 Information received upon request for the purposes of this research report from the Ministry of Justice, DJI.
- 144 See art. 16 (sub 3) of the Youth Custodial Institutions Act.
- 145 See DSP-groep, *Programma-evaluatie van de Glen Mills School*, Amsterdam, 1 October 2004, [http://www.dsp-groep.nl/cms/uploadedfiles/Programma-evaluatie\\_van\\_de\\_Glen\\_Mills\\_School.pdf](http://www.dsp-groep.nl/cms/uploadedfiles/Programma-evaluatie_van_de_Glen_Mills_School.pdf).
- 146 See MEGAbestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, pp. 4, 21.
- 147 See <http://www.dji.nl/hipe/uploads/070802115736/Jaarbericht%202006%20ENGELS.pdf>.
- 148 Juveniles can be mentioned more than one time by inflow due to recidivism.
- 149 Other countries mentioned are Morocco, Suriname, the Dutch Antilles and Turkey. Any others are not specified.
- 150 See Lower House, *vergaderjaar 2005-2006*, 24 587 en 28741, nr. 183, p. 5.
- 151 See Lower House, *vergaderjaar 2005-2006*, 24 587 en 28741, nr. 183.
- 152 See Youth Care Inspectorate et al., *Veiligheid in justitiële jeugdinrichtingen een opdracht met risico's*, September 2007; Netherlands Court of Audit TK, 2007-2008, 31215, nrs. 1-2.
- 153 *Erkenningscommissie Gedragsinterventies Justitie*.
- 154 Members are the Council of Child Protection, Vedivo, Probation Service and YCIs.
- 155 See Netherlands Court of Audit, *Detentie, behandeling en nazorg criminele jeugdigen*, October 2007.
- 156 See *Kamerstukken II 2004/05*, 30 023, nr. 1, p. 3.



### 3 THE PREVALENCE OF VIOLENCE

#### Introduction

“Children deprived of their liberty and placed in detention are at extreme risk of violence”, according to the *UN Secretary-General’s Study on Violence against Children* (hereinafter: UN Study).<sup>1</sup> Violence against children in conflict with the law is more common than violence against children who are placed in closed institutions for other reasons: “Even though there are many overlaps and similarities (poor conditions, low quality of staffing, etc.), the institutional treatment of children regarded as being anti-social or criminal is likely to be more physically and psychologically punitive than that of other groups or in other environments. All the prejudices and discriminations attached to unwanted or family-less children are reinforced where the child is seen as a social nuisance, or worse.”<sup>2</sup>

Children with mental health problems and girls appear to be particularly vulnerable groups.<sup>3</sup> Studies in England and Wales indicate that between 46% and 81% of young prisoners (aged between 15-21 years) have mental health problems.<sup>4</sup> Other research claims that about 80% of children in penal custody suffer from at least two mental disorders.<sup>5</sup> It is widely accepted that children with intellectual impairments and mental health problems are at increased risk of conflict with the law.<sup>6</sup> Children with mental health problems or who have emotional problems should receive treatment. Staff in correctional facilities are often not trained to deal with such children, who are also more likely to be victimised by other children.<sup>7</sup>

Fewer girls than boys tend to be detained. However, girls are at particular risk of physical and sexual abuse when held in mixed-sex or adult facilities.<sup>8</sup> Facilities holding girls should not be lacking in female staff.<sup>9</sup> In the USA it has been reported that male staff often engage in ‘sanctioned sexual harassment’, including improper touching during searches, or watching girls while they dress, shower, or use the toilet.<sup>10</sup> There are also reports of male staff using their positions of authority to demand sexual favours, and committing sexual assault and rape.

Based on its global research, the UN Study identifies the following as the main sources of violence against children in detention and police custody:

- Violence by staff in detention institutions;
- Violence while in custody of police and security forces;
- Violence as a sentence;
- Violence by adult detainees;
- Violence by other children;
- Self-harm.<sup>11</sup>

#### *Violence by staff*

Violent practices, including as a form of control or punishment, were found by the UN Study in both industrialised and developing countries.<sup>12</sup> In England and Wales, for example, information obtained in November 2005 revealed frequent use of painful restraints in four privately-run Secure Training Centres, in which children aged between 12 and 17 were imprisoned. Painful restraining holds involving pressure to noses, thumbs and ribs were used 768 times in the year, causing injuries in 51 cases.<sup>13</sup>

#### *Violence while in custody of police and security forces*

The UN Study received many reports of violence committed against children whilst formally

in the custody of police and security forces, for example, during arrest, interrogation, or while being held in police cells, either by other prisoners or law enforcement officials.

#### *Violence as a sentence*

Violent sentences include corporal punishment, punishments such as flogging, stoning and amputation, capital punishment and life imprisonment without the possibility of release.<sup>14</sup> Such sentences are also prohibited under the Convention on the Rights of the Child (art. 37(a)). At least 15 countries have laws allowing a life sentence without the possibility of release but, according to the UN Study, “only a handful impose the sentence in practice”.<sup>15</sup> Outside the USA, there are about a dozen children known to be serving life sentences.<sup>16</sup>

#### *Violence by adult detainees*

In most countries, there are separate detention facilities for children. This is to reduce negative influences of adult offenders and to safeguard the well-being of juveniles in an institutional setting.<sup>17</sup> Nevertheless, detention with adults still occurs. Children should also be separated from adults during transfer from one facility to another. Since 2001, the Council of Europe’s Committee for the Prevention of Torture (CPT) has recorded its concern about young people being kept in the same cells as adults in at least three Council of Europe countries.<sup>18</sup> In countries where it is allowed to try, sentence and detain children as adults, incarceration in adult prisons occurs, either together with adults or in a special section for children.<sup>19</sup>

#### *Violence by other children*

The UN Study claims that children in detention facilities are vulnerable to violence from their peers, particularly when conditions and staff supervision are poor. Lack of privacy, frustration, overcrowding, and a failure to separate particularly vulnerable children from the other children often lead to peer-on-peer violence.<sup>20</sup> In England and Wales, for example, a 2005 report from the Chief Inspector of Prisons and the Youth Justice Board found that 21% of both boys and girls had been hit, kicked or assaulted by another young person.<sup>21</sup>

#### *Self-harm*

The UN Study also asserts that children in detention are at heightened risk of self-mutilation and suicidal behaviour. This may be due to violence, neglect, or poor living conditions. Prolonged or indefinite detention and isolation may also contribute to poor mental health and the risk of self-harm.<sup>22</sup> In the USA, 110 youth suicides are reported to have occurred in juvenile facilities nationwide from 1995 to 1999. In 2002, a total of 122 juvenile detention facilities reported transporting at least one child to a hospital emergency room because of a suicide attempt.<sup>23</sup> In the United Kingdom, 30 children died in penal custody between 1990 and November 2007. Twenty-eight hanged themselves, the youngest aged 14, and one died while being restrained.<sup>24</sup>

The UN Study claims that the main factors contributing to violence against children in care and justice institutions include the following:

- Low priority is accorded to the most disadvantaged children in society, including children in conflict with the law, in government policies, which also results in low levels of funding leading *inter alia* to a lack of properly qualified professionals;
- The institutions suffer from inadequate staffing, in particular unqualified and poorly remunerated staff and under-staffing;
- There is a lack of monitoring and oversight;<sup>25</sup>
- Many institutions fail to segregate more vulnerable children (e.g. due to age, size, sex or other characteristics) from other children.<sup>26</sup>

The UN Study adopts the definition of the child as contained in article 1 of the Convention on the Rights of the Child (CRC): “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” The definition of violence is that of article 19 of the CRC: “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.” Article 19 obliges States Parties to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence... while in the care of parent(s), legal guardian(s), or any other person who has the care of the child.”

The UN Study also draws on the definition in the *World Report on Violence and Health* (2002): “the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity.”<sup>27</sup>

Various other articles of the CRC also assert the rights of children to physical and personal integrity, and establish high standards for protection. Article 34 obliges States Parties to protect children from all forms of sexual exploitation and sexual abuse. Article 37 prohibits torture or other cruel, inhuman or degrading treatment or punishment, as well as capital punishment and life imprisonment without possibility of release. Article 37 provides that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.” Article 40 on the administration of juvenile justice states that children who come into conflict with the law should be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth”.

### 3.1 Belgium

There are few reports of mental or physical violence against children in public youth protection institutions, or in other facilities. Two of the reasons for this are the ‘welfare approach’ to children who offend and the good level of staff training. However, this does not apply to police custody and police behaviour as a whole. The most reliable information is contained in a CPT report of 2006 and in a number of reports of the Standing Police Monitoring Committee.<sup>28</sup> The last CPT report follows its visit to Belgium in 2005, when it visited three police stations (central police station of Brussels and police stations of Anderlecht and Molenbeek) and the closed federal institution ‘De Grubbe’ in Everberg. The CPT reported a limited number of allegations of physical maltreatment by law enforcement officials. Allegations were made by children suspected of having committed an offence and concerned the moment of arrest, as well as during subsequent interrogations. Allegations were made of “slaps, fist blows and blows inflicted by means of an object [in particular a baton], as well as tight handcuffing”.<sup>29</sup> The CPT delegation met with a 17-year-old boy during its visit to the Centre of Everberg. He had been arrested a few days before by the Sambreville police and taken to the police station for interrogation. The boy said he was forced to remain on his knees for approximately two hours, and was hit by police officers, who had covered his head with his own shirt.

In 2003, the Standing Police Monitoring Committee received “with the regularity of a metronome” complaints on the behaviour of police officers with regard to children, including: random identification control; racial discrimination; rough behaviour; insults and coarse use of language; and, not notifying parents of the child’s arrest.<sup>30</sup> In 2004, “certain services of the police force continued to intervene in an unacceptable way towards minors.”<sup>31</sup> When children are kept in police custody, there is usually no separation from adults, and treatment and

conditions may be described as poor, including crude language by police officers, prohibition of access to toilet, lack of food. In 2006, there was a reported case of a child who was held in a police cell for 27 hours.<sup>32</sup>

As regards the Centre of Everberg, the CPT report noted that measures such as “separation from the group” or “a setting aside of the minor in his/her room” can last up to 24 hours. It was noted that these measures were not regulated by law.<sup>33</sup> It was also reported that a child had been placed in an isolation cell for seven days. The initial and official reason was that he allegedly smuggled in a lighter.<sup>34</sup> During a CPT visit in 2001, criticisms were made about the Jean Titeca Hospital Complex,<sup>35</sup> where isolation and instruments of physical restraint were frequently used.<sup>36</sup>

In 2005, the CPT delegation did not come across any allegations of physical maltreatment by the staff of the Centre of Everberg. However, the director of the centre indicated that, a few months before, he had addressed a penal complaint to the public prosecutor for acts of violence against a child. It involved a supervisor who was accused of having exceeded the limits of self-defence.<sup>37</sup> The CPT delegation did, however, receive a limited number of allegations from children of provocative or scolding behaviour or language by staff towards them.

QUOTE

“To a 15 year old boy it is nevertheless a form of violence to be placed between four walls. The room, and it is really necessary to lie down on the bed, to me it mostly resembles a prison.”

*Staff member (2007)*

The last visit by the CPT to public youth protection institutions dates back to 2001.<sup>38</sup> The report noted allegations of verbal provocations, particularly racial, from members of the educational staff. They also criticised the systematic use of isolation as a disciplinary sanction. During the CPT’s visit to Braine-le-Château, several minors refused to meet and speak with the CPT delegation for fear of reprisals by the educators.<sup>39</sup> There are also reports by minors of:

- Staff provocation to push the child’s limits and make him ‘crack’;
- Staff behaviour intended to provoke the child and allow the staff member to resort to an isolation measure;
- Longer periods of time in their room than expected;
- Tension caused by the distinction between educators’ and guards’ duties;
- Deprivation of visits, pocket money, provisional release, due to ‘bad conduct’;
- Transfer from one institution to another without any notice or explanation.<sup>40</sup>

At the Centre of Everberg, children have reported: a lack of educational and leisure activities; that the isolation room is sometimes used as a normal room due to lack of space; and that French-speaking minors are placed in the Dutch-speaking section, and vice versa, due to lack of places. They also complain about the complete body strip-search. Similar complaints have been made by children about its frequent and systematic use in public youth protection institutions.<sup>41</sup>

Finally, there are reports of children with psychiatric disorders being placed in public youth protection institutions (IPPJ), sometimes based upon ‘pretext’ offences, because of shortage of places in psychiatric units. Apart from the fact that an IPPJ is not organised and designed to cope with psychiatric problems, placements and transfers seem to be made for disciplinary, economic or even ‘managerial’ reasons. Cases show that some justifications are more connected with staff or institutional interests, rather than the best interests of the child.

**16-year-old (2007)**

- "At Everberg, it is different. Over there, it is more strict. There are agents which supervise us, everywhere we go, they look at us. Every time one of us leaves a room, he's strip-searched."
- "When I arrived, they put to me in a room and said to me: "Get undressed". Then I said: "What do you mean, undressed?" They said to me: "It is necessary to strip-search you". Then I left my boxer on, but they asked me to remove it. And I didn't want to, then they went to look for the head of section. He said to me: "You remove it or I'll remove it myself". Then I did it, and I was extremely embarrassed to remove it in front of four guards. It really shocked me. You should not do that with a young person, to put him naked and ask him to squat to check if we are smuggling anything in our private parts."
- "At Everberg, it was enough to say a curse word to be put in isolation room. Here, that occurs sometimes, but before putting us in isolation room, we discuss it first with the educators."
- "Everberg, it's like a prison. There are barriers of 10m. You're locked up in your room all the time, they strip-search us all the time. There is a little bit of sport, school and leisure, but just the bare essentials."

**15-year-old (2007)**

- "The screws, their job is to give blows, I would say. While the teachers, they are there to help put us on the right track."
- "The hardest thing is that we do not have enough visits. Here we have a right to one visit per week. And we come to look forward to this visit as if it were our release."
- "We have a right to two telephone calls per week. And one can also gain some or lose some. Me I find that harsh to come 'to gain' telephone calls to your family."
- "I already remained 27 hours in the cell of a police station. I had fled from an emergency reception centre, and they caught me. And they left me there for 27 hours."
- "Once you are in the police cell, they forget you, they don't give a shit about you anymore. You're nothing more than crap for them."
- "I'm asking myself, is it useful for me to hit people, to be too drunk on the street? Does it bring me anywhere? Except to the police cell. You have easy money but actually you have nothing. I want to have my wage, my work, my girlfriend. This is what I learned here, that it brings up nothing to look for shit all the time."

**15-year-old (2007)**

- "I'm perhaps a young minor, but I'm not a delinquent. I may have been in deep trouble, but I've been quiet for a year now. I'm not a delinquent anymore."
- "I spent some time in isolation. But it's not really a proud thing to end up there. Isolation, it is to be locked up, apart from everyone, really all alone. You get the impression that time does not pass. You get the impression that it lasts an eternity."
- "Once when I was in isolation, I hit my fist in the wall. And they left me two days with my broken hand, as if I were a dog. To finish, after two days, they took me to the hospital for my hand. Then they sent me back to isolation."
- "Once I was in my room, I took a glass and I completely tore open my veins. I wanted to leave my head, I wanted to leave from all at the same time. I didn't wanted to remain in a situation like that."
- "I mucked around because of certain people with whom I was drifting with in my neighbourhood. I saw that they were stealing and I wanted to show them that I also could do it. But eventually it is useless. These people there don't give a shit that I'm locked up in here. And anyway everyone is able to steal!"

**16-year-old (2007)**

- “The hardest thing here, it’s to be away from my family. When you’re outside, you can see them whenever you want, call them whenever you want. Then when you see them here, you know that you are seen by camera.”
- “In open regime, it’s as if you’re outside. You’re free to move, to do what you want. In closed regime, you’re more strictly looked after and that makes you think more about the consequences of your acts.”
- “Considering you’re together all the time with the others, sometimes you have small moments of tension. It’s normal, considering you feel a little hatred to be here, therefore you’re a little more nervous and thus the others are too.”

### 3.2 England and Wales

*“It comes in waves, it depends who’s on the wing. You get kids bullying each other, you get staff bullying kids and you get staff bullying staff.”<sup>42</sup>*

In spite of the fact that recorded offending by children has been in decline in recent years,<sup>43</sup> increasing numbers of children are being sent to prison. Between 1994 and 2004, the number of children sentenced to penal custody in England and Wales increased by 90%.<sup>44</sup> In addition to criticism about the high numbers, it has been argued that children are being deprived of their liberty for longer than is necessary. The Howard League for Penal Reform has represented children who have been denied early release and served additional time in penal custody, solely for want of suitable accommodation in the community.<sup>45</sup> In November 2002, it was successful in bringing a judicial review against the Home Office to ensure that the Children Act 1989 applied to children in penal custody (*The Queen (Howard League for Penal Reform) v Secretary of State for the Home Department and Department of Health, 2002*). As a result of the judgment, local authorities retained their statutory duties to safeguard the welfare of children even if they are in penal custody. Prison Service Order 4950 relating to children in penal custody was re-written to reflect the change in the law and the Youth Justice Board placed social workers in Young Offenders Institutions to oversee the protection of children.<sup>46</sup> Nonetheless, the treatment and conditions for children held in prison service accommodation remain a grave concern. Concerns about the use of physical restraint, strip-searching and segregation have been raised by Her Majesty’s Chief Inspector of Prisons and by members of the House of Lords.<sup>47</sup>

According to Goldson, “prisons and other penal institutions in which children are held in England and Wales are very ‘successful’ at imposing damage and harm (emotional, psychological and physical) and, at the extremes, at taking life.”<sup>48</sup> Results from a survey of children in Young Offenders Institutions revealed that 28% of the surveyed children reported being victimised by another child or group of children, and 19% had been victimised by a member of staff.<sup>49</sup> Fifty-nine per cent of those surveyed believed that if they told a member of staff about an incident of victimisation they would not be taken seriously. Research has found that children in penal custody are often concerned that there will be implications if they make a complaint about mistreatment,<sup>50</sup> and there is little evidence that children are making complaints about mistreatment, such as injuries following restraint or forcible strip-searching, despite evidence that such practices occur.<sup>51</sup> Children in penal custody are in the care of the state, yet recent research has concluded that they are being subjected to emotional, psychological and/or physical abuse, by staff and/or by other prisoners: “The closed and isolated nature of prisons can offer the



opportunity for abusive actions to be committed with impunity, sometimes in an organised manner and at other times because of the actions of individual members of staff. There is a danger that in countries or institutions where the punitive function of prisons is given priority, actions which amount to torture or ill-treatment, such as routine unlawful use of force and beatings, can come to be regarded by staff as ‘normal’ behaviour.”<sup>52</sup>

Research in England and Wales tends to focus on two key areas. The first is that of interpersonal prison violence, that is, incidents that arise between individual prisoners.<sup>53</sup> The second key area of research focus concerns suicides and self-harm in prison.<sup>54</sup> A 2002 joint report on safeguarding children, authored by the Commission for Health Improvement alongside the Chief Inspectors of Social Services, the Constabulary, Crown Prosecution Service, Magistrates Court Service, Schools, Prisons, and Probation, concluded that: “Young people in Young Offender Institutions still face the gravest risks to their welfare, and this includes those children and young people who experience the greatest harm from bullying, intimidation and self-harming behaviour.”<sup>55</sup>

A recent thematic report published by Her Majesty’s Inspectorate of Probation has explored the role of Youth Offender Teams in the safeguarding of children from ‘from arrest to sentence’, which draws attention to the threats to safety at the stages and processes following arrest. And whilst most reports concerning safety are based on experiences after sentencing, concerns have also been raised in relation to the treatment of children in police custody: “The management of young people following their appearance at a police station raises concerns. The scarcity of council remand placements is a factor in some young people being detained inappropriately overnight in police cells... There is also uncertainty about responsibility for ensuring a discharged young person gets home safely and for providing appropriate clothing when his or her own clothes are kept for forensic examination.”<sup>56</sup>

There is a lack of training for staff working with children in penal custody. Although it has been recommended that compulsory training should focus on children’s rights, communicating positively with children and child protection, the only compulsory component of prison officer training is physical control and restraint.<sup>57</sup> Her Majesty’s Inspectorate of Prisons has stated that training is not adequate to equip staff with the skills and expertise to manage challenging adolescent behaviour. Staff in Secure Training Centres are legally authorised to physically restrain children. The approved methods of restraint are set out in the Prison Service manual and include the deliberate infliction of pain through nose rib and thumb so-called ‘distraction’ techniques.<sup>58</sup>

Prisons are institutions designed for security rather than care. The basic structure of a prison, such as the size of units and low levels of staffing, mitigates against delivering child-centred care. The staff child ratio in prisons ranges from three to six staff to between 40 and 60 children.<sup>59</sup>

An independent inquiry commissioned by the Howard League for Penal Reform found that some of the treatment experienced by children in prisons and Secure Training Centres (STCs) would, in any other setting, be considered abusive and trigger a child protection investigation, and could be unlawful. One example cited by the inquiry was the use of methods of restraint that deliberately inflict pain on children. Between November 2005 and October 2006, pain compliant methods of restraint were used 3,732 times on boys and 3,036 times on boys and girls in STCs.<sup>60</sup> Between January 2005 and October 2006, restraint was used on 676 occasions on boys at Huntercombe Young Offender Institution. On 134 occasions it resulted in injuries to the child.<sup>61</sup> Key recommendations of the inquiry included:

- Mechanical restraints like handcuffs should never be used;

**14-year-old-girl**

- “I have been in custody twice. I have been in two secure training centres and two local authority secure children’s homes. I have no idea how many times I have been restrained but is probably over one hundred times. On my first sentence I was in custody for two months. On my second sentence I was in custody for about four months. While in the secure training centres I got restrained between 3 times a day and 3 times a week. Restraint is horrible. The worst thing about restraint is how they throw neck down into your chest and hold it there and it really hurts.

As a result of restraint I have had a broken front tooth, had fits (I have a heart problem where my heart beat can become irregular), injury to my neck from my legs being pushed over my neck, blotches and bruises on my face. Most times it made me low inside; sometimes it made me cry and sometimes it made me feel like self-harming – and sometimes I did actually self harm after restraint.

In the secure training centres the staff are younger and seem to be more keen to restrain as soon as possible. It felt like the same people turned up to restrain me most times and it felt like they liked doing it.

In the secure children’s homes it is really clear that the staff don’t like restraining: it happens much less often – so in my last local authority secure children’s home it happened about twice a week compared to every day or more at the secure training centre. Firstly, staff at the local authority secure children’s homes don’t wind you up so much as in the secure training centres and they try to use other ways to calm you down.

I can understand why they sometimes have to do it – and sometimes it is to protect me from myself – but I feel like they do it too often.

The other thing is that if you have it too much, you get used to it – you learn how to get out of the restraint – you get more attention when you are restrained and everyone knows you. You get to know the staff more. When you are good, staff forget you. After a while, you can use it to get your anger out and sometimes you can miss it – even though it is horrible.

I am worried about going home where I will not get restrained and will not be sure how to get my anger out anymore.”

- The use of physical interventions must be severely restricted;
- Physical force should never be used to secure compliance or as punishment;
- Stripping children during searches should end;
- Prison segregation units should not be used for children;
- Solitary confinement should never be used as a punishment;
- The Children’s Minister, not the Home Office, should have overall responsibility for children in the penal system.<sup>62</sup>

Restraint against children in Secure Training Centres

| STC          | BOYS  | GIRLS | TOTAL |
|--------------|-------|-------|-------|
| Hassockfield | 421   | 221   | 642   |
| Medway       | 735   | 313   | 1,048 |
| Oakhill      | 383   | 538   | 921   |
| Rainsbrook   | 252   | 173   | 425   |
| Total        | 1,791 | 1,245 | 3,036 |

Source: Lords written answers nos: HL560-563, 12 December 2006

The figures presented in the table above indicate that, on average, restraint was used more than once a month per child in a STC. Between 2004 and 2006, 27% of the boys and 19% of the girls in penal custody had been physically restrained by staff.<sup>63</sup> Between November 2005 and October 2006, restraint was used on 1,791 boys and 1,245 girls in the four privately run STCs, despite the fact that they only hold 250 children.<sup>64</sup>

Strip-searching is standard practice when children are first received into penal custody. Children are also liable to be strip-searched on discharge, following a room search or after a visit. Between January 2005 and October 2006, 100 boys were forcibly strip-searched under control and restraint.<sup>65</sup> Between January 2005 and October 2006, a total of 6,832 strip-searches were carried out on boys at Huntercombe Young Offender Institution, which holds up to 368 boys.<sup>66</sup>

Between January 2005 and December 2006, 2,010 boys were held in segregation units in five Young Offender Institutions: Ashfield, Lancaster Farms, Warren Hill, Stoke Heath and Thorn Cross. Of these, 521 boys were held there for between seven and 28 days and 29 boys were held for more than 28 days.<sup>67</sup> There is evidence that children in Young Offender Institutions spend more than 22 hours a day in isolation in other locations within the prison, such as healthcare, without being formerly segregated.<sup>68</sup>

Handcuffs were used by staff at the privately run Hassockfield Secure Training Centre and inspectors found one child who had had handcuffs on for five hours.<sup>69</sup> Inspectors found that physical restraint was used to ensure compliance at Rainsbrook Secure Training Centre and that staff locked children in their rooms as a punishment but failed to record the events.<sup>70</sup>

A 14-year-old boy and a 15-year-old boy both died in 2004, following the use of physical restraint by staff in two of the county's four Secure Training Centres.<sup>71</sup> At the high profile inquest into the 14-year-old's death, the jury heard that in the hours before he had committed suicide, the child been restrained by staff using a 'nose distraction technique'. The 15-year-old child choked and died while being restrained by three officers at Rainsbrook Secure Training Centre. The inquest into his death heard that, while he was being restrained, the 1.47-metres-tall teenager, who weighed less than 45 kg., was ignored when he tried to warn staff that he could not breathe.

The method of restraint used in Young Offender Institutions (YOIs) is 'Control and Restraint' (C&R), which was originally designed for adults.<sup>72</sup> Its techniques are based on the martial art of aikido, and it is a pain-compliant technique which immobilises the arms by using arm and wrist locks. There is a series of manoeuvres, depending on the circumstances and young person's response, including taking the individual to the floor in a face-down position. As well as physical restraint, YOIs also use segregation or solitary confinement, and mechanical restraints can also be used. All incidents must be documented, recorded and audited.

Secure Training Centres (STCs) use 'Physical Control in Care' (PCC). This is based on the Price (Protecting Rights in the Care Environment) technique, designed for children aged 12-14. It has four phases: prevention, restraint, holding and breakaway. PCC was designed by the Prison Service. It is described as non-pain compliant. However, it has three escalating phases of distraction methods based on a series of holds, with increasing numbers of staff involved in each phase. These are basically pain-inflicting techniques, which involve bending the thumb forwards and down towards the palm of the hand, pushing the knuckles into the lower rib or pushing the outside of the hand against the child's septum. STCs also have

the option of single separation, where a child is confined to their bedroom for up to three hours in any 24, with observation every 15 minutes. Incident reports must be completed for each restraint and copied to the Youth Justice Board monitor within 12 hours.

There is no single recommended system and a range of restraint methods is used in Local Authority secure children's homes (SCH). Methods used include: Price, Therapeutic Crisis Intervention (TCI), Crisis and Aggression Limitation and Management (Calm) and C&R. However, these methods have not been systematically evaluated and, apart from Price and PCC, there is no indication that they have been medically approved for use on children. One of the seven guiding principles relating to the use of physical restraint in an SCH is that it should be an act of care and control, not punishment.

Following a freedom of information act request for data, the Howard League for Penal Reform gained the following provisional data regarding statistics on the number of incidents of self-harm for juveniles (15-17-year-olds) in prison, broken down by gender:

| SEX    | 2005 | 2006 |
|--------|------|------|
| Female | 650  | 314  |
| Male   | 613  | 696  |

Figures gained in response to a Parliamentary Question have revealed that, of the ten most violent prisons in England and Wales, nine housed young offenders.<sup>73</sup> In the four-year-time period of 2003-2006, there have been a total of 174 recorded 'prisoner-on-prisoner' assaults in prisons holding children under the age of 18.

In 2000, a 19-year-old was brutally murdered by the young man he was sharing his cell with at Feltham Young Offender Institution. He had been sentenced to 90 days custody for shoplifting and interfering with a motor vehicle, and his killer was a known racist psychopath. Although he was not a juvenile at the time of his death, the inquiry carried out after his murder has highlighted some important lessons that need to be learnt in the use of cell-sharing, risk assessment processes and managing violence between juvenile detainees.

According to Wilson, "when we sentence offenders to a period of imprisonment in England and Wales, we are knowingly sentencing some of them to death... the criminal justice system has rapidly become our own secret death penalty."<sup>74</sup> Children in penal custody are 18 times more likely to commit suicide than children in the community.<sup>75</sup> A total of 30 children have died in custody in England and Wales in the last 17 years. The date and cause of death, the prison establishment, and details of the age, convicted status, offence and ethnicity of the child are given in the following table. It should be noted that at present there is no system for fully independent inquiries following the death of a child in penal custody.<sup>76</sup>

A sixteen year old hanged himself from the bars of his cell in Stoke Heath Young Offender Institution (YOI) in March 2002. At the time of his arrest, he had been seeing a psychiatrist for some months and had been prescribed medication. He was showing clear signs of depression, with suicidal thoughts and self-harming.

He had one previous conviction resulting from an altercation with ambulance staff when he had tried to kill himself by taking an overdose and jumping from a window. Because of his problem behaviour he was taken into care and placed in a children's home. Shortly after, he went out with a group of children from the home who had decided to steal mobile phones. They were caught and subsequently charged with street robbery.

As the trial approached, he became more depressed. Two weeks before the trial, he slashed his face 30 times with a knife. The walls in his room had to be completely repainted as they were covered in blood. He pleaded guilty to three offences of street robbery. Although he had not used or threatened violence and his involvement was peripheral, he hoped that a guilty plea would result in less time in court and a more lenient sentence. He was sentenced to a two year detention and training order. The judge stated in open court that he wanted the warnings about his self-harming and history of sexual abuse drawn to the attention of the authorities.

Once sentenced, the Youth Justice Board (YJB) had responsibility for placing him in a suitable institution. Although the YJB was told of his history and needs he was placed in Prison Service accommodation at Stoke Heath YOI.

He was initially put into strip clothing and placed in a cell with a surveillance camera, reduced ligature points and high levels of observation. After a few days he was moved to a cell with no surveillance camera, with ligature points and with reduced observation. On 24 March 2002, he retired to his cell, where he was later found dead, hanging from a sheet attached to the bars of his cell window.<sup>77</sup>

**ALL CHILD DEATHS IN CUSTODY SINCE 1990**

| DATE     | AGE | PRISON      | ETHNICITY | STATUS                | OFFENCE                | CAUSE   |
|----------|-----|-------------|-----------|-----------------------|------------------------|---|
| 13.07.90 | 15  | Swansea     | White UK  | Convicted             | Theft                  | Hanging   |
| 12.08.90 | 17  | Leeds       | White UK  | Remand                | Burglary               | Hanging   |
| 26.10.90 | 15  | Glen Parva  | White UK  | Convicted             | Aggravated Burglary    | Hanging   |
| 22.09.91 | 15  | Feltham     | White UK  | Convicted             | Arson                  | Hanging   |
| 02.05.92 | 16  | Deerbolt    | White UK  | Convicted             | Burglary               | Hanging   |
| 13.09.93 | 17  | Exeter      | White UK  | Remand                | Criminal Damage        | Hanging   |
| 10.05.94 | 17  | Cardiff     | White UK  | Convicted unsentenced | TWOC                   | Hanging   |
| 08.08.94 | 17  | Low Newton  | White UK  | Remand                | Bail failure           | Hanging   |
| 02.10.95 | 16  | Stoke Heath | White UK  | Convicted             | Robbery                | Hanging; however classification was 'homicide' and inquest verdict was 'unlawful killing' |
| 03.12.95 | 16  | Doncaster   | White UK  | Convicted unsentenced | Robbery handbag snatch | Hanging   |
| 13.08.96 | 17  | Lewes       | White UK  | Convicted unsentenced | Theft                  | Hanging   |

*The Prevalence of Violence*

| <b>ALL CHILD DEATHS IN CUSTODY SINCE 1990</b> |            |                                     |                  |                        |                        |   |
|---|------------|-------------------------------------|------------------|------------------------|------------------------|---|
| <b>DATE</b>                                   | <b>AGE</b> | <b>PRISON</b>                       | <b>ETHNICITY</b> | <b>STATUS</b>          | <b>OFFENCE</b>         | <b>CAUSE</b>                            |
| 17.01.97                                      | 17         | Hindley                             | White UK         | Remand                 | Robbery                | Hanging in health care                  |
| 17.01.98                                      | 17         | Doncaster                           | White UK         | JR                     | Aggravated burglary    | Hanging                                 |
| 09.07.98                                      | 16         | Glen Parva                          | White UK         | Sentenced              | Robbery                | Hanging                                 |
| 10.11.98                                      | 17         | Hindley                             | White UK         | Remand                 | Theft                  | Hanging                                 |
| 30.05.99                                      | 17         | Wetherby                            | White UK         | Sentenced              | Handling stolen goods  | Hanging                                 |
| 29.08.99                                      | 17         | Hindley                             | White UK         | Convicted un-sentenced | Attempted murder       | Hanging                                 |
| 30.05.00                                      | 17         | Brinsford                           | White UK         | Remand                 | Robbery                | Hanging                                 |
| 01.08.00                                      | 17         | Wetherby                            | White UK         | Sentenced              | Theft burglary robbery | Hanging                                 |
| 06.09.00                                      | 17         | Feltham                             | Black            | Remand                 | Theft                  | Hanging                                 |
| 14.02.01                                      | 16         | Brinsford                           | White UK         | Sentenced              | TDA                    | Hanging from bars with tracksuit        |
| 27.07.01                                      | 16         | Wetherby                            | White UK         | Sentenced              | Theft 4 months         | Hanging: shoelaces from door handle     |
| 29.09.01                                      | 16         | Feltham                             | White UK         | Sentenced              | Robbery                | Hanging                                 |
| 24.03.02                                      | 16         | Stoke Heath                         | White UK         | Sentenced              | Street robbery         | Hanging in healthcare                   |
| 06.10.02                                      | 17         | Parc                                | White UK         | Sentenced              |                        | Hanging                                 |
| 19.04.04                                      | 15         | Rainsbrook Secure Training Centre   | Black            | Sentenced              |                        | Died following staff restraint          |
| 09.08.04                                      | 14         | Hassockfield Secure Training Centre | White UK         | Sentenced              |                        | Hanging                                 |
| 20.01.05                                      | 16         | Lancaster Farms                     | White UK         | Convicted              | Rape                   | Hanging from window in segregation unit |
| 15.09.05                                      | 17         | Hindley                             | White UK         | Sentenced              | Robbery                | Hanging                                 |
| 27.11.07                                      | 15         | Lancaster Farms                     | White British    | Sentenced              | Breach of licence      | Hanging from window bars using bedsheet |

Source: NOMS Safer Custody Group

### 3.3 France

*“Institutional violence exists every time that individual violence is committed against a victim who is a minor or vulnerable by a person who has authority over the victim, and covered by one or more persons equally authorized.” (“Une violence institutionnelle existe chaque fois qu’une violence individuelle commise sur une victime mineure ou vulnérable, par une personne ayant autorité sur elle, est couverte par une ou plusieurs autres personnes ayant également autorité.”)<sup>78</sup>*

The seven juvenile detention facilities (*établissement pénitentiaire pour mineurs* (EPM)) are supposed to create 420 new places.<sup>79</sup> Sixty-one prisons are allowed to hold children, according to the Law of May 2007.<sup>80</sup> In those prisons, nine of the existing special sections for children (*quartier des mineurs*) should close before the end of 2007.<sup>81</sup> In 2004, in one of the overseas departments (Reunion), it was reported that 29 children were being held in the special section for children of the prison of Port (*Le Centre pénitentiaire du Port*), whilst the total capacity was 25 places.<sup>82</sup> But it seems that none of the new facilities will be opened in this overseas department.

The budget for 2008 gives priority to EPMs and closed educational centres (CEF).<sup>83</sup> The placement of a child who has committed an offence in a CEF is considered to be an alternative to imprisonment or detention, and may only be used after full consideration has been given to the possibility of educational measures.<sup>84</sup> The establishment of more CEFs has been announced for 2008. However, the ones already existing are not used to full capacity.<sup>85</sup> In 2005,<sup>86</sup> only 56.7% of the places in public CEFs were being used.<sup>87</sup> The last report by the Judicial Youth Protection Service (PJJ) states that there are 25 public CEFs with a total capacity of 259 places. Eight new CEFs were planned in 2007 and 14 for 2008, resulting in 47 CEFs with 501 places. Private CEFs also exist.<sup>88</sup>

In 2005, 3,516 incidents were reported by the Penitentiary Administration,<sup>89</sup> which represents an increase of 921 incidents since 2001.<sup>90</sup> Of these incidents, 304 were ‘collective incidents’, 570 were acts of aggression against a staff member,<sup>91</sup> 441 were escapes or escape attempts, 1,113 incidents were related to refusals to eat (*refus de s’alimenter*), and 122 suicides and 966 suicide attempts were also reported. Since 2000, the Central Penitentiary Administration do not report anymore about cases of self-harm. However, these numbers do not reflect all of the violent incidents which take place. Not all violent incidents are reported by staff, or the detainees (who may fear reprisals). Furthermore, the formal reports only take into account the number of incidents committed by the detainees, and do not include information on violent acts committed by staff.<sup>92</sup>

During CPT’s visit in 2004 to Reunion (an overseas department) information was gathered on complaints relating to the mistreatment of detainees by other detainees.<sup>93</sup> According to the CPT, overcrowding is a problem and drug trafficking occurs. There were reports of some detainees being too afraid to leave their cell.

According to the Observatory of Suicides within French Prisons (*Observatoire des suicides dans les prisons françaises*),<sup>94</sup> 122 deaths, including suicides and suspect deaths, were reported in 2005.<sup>95</sup> None of those cases concerned children. However, there are cases concerning suicides by young adults aged, for example, 18, 22, 23 and 24 years. The observatory has also reported that, every day, there are three suicide attempts in jail (90 attempts every month).

The International Prison Observatory (*Observatoire international des Prisons*) released a report in 2005 concerning the conditions of detention in France.<sup>96</sup> This report states that, in

some facilities, no psychiatric treatment is provided for detainees who have attempted to commit suicide. For example, in Fleury Mereugis prison, there is no policy for the prevention of self-harm for adults or children, except for in the women's section. On 25 October 2003, a 15-year-old child was found in his cell, lying down on his bed with a sheet around his neck. After this suicide attempt, the child was examined by the medical staff. They did not consider it necessary to transfer him to a hospital. As a preventative measure, he was placed in a cell together with another detainee.<sup>97</sup>

The standards and norms governing the treatment of children deprived of their liberty focus on security and control (e.g. the use of force and restraints, and disciplinary procedures).<sup>98</sup> The same applies to the house rules of the detention facilities. Within the facilities, this focus creates an atmosphere that makes the detainees feel anxious, vulnerable or threatened, and results in aggression.<sup>99</sup> This climate is a source of tension for not only the detainees but also the staff. Concerns have been expressed about the lack of proper training to deal with incidents of violence. Both the applicable standards and staff training do not pay enough attention to the prevention of aggression and violence.

Research points out that detention may negatively affect the mental health of children: "It is clearly established that the setting of detention seriously affects the mental and social balance of the child... Long-term effects include severe disorders... Detention involves a multitude of potentially harmful determinants for the prisoner and even more so when he/she is a child. In France, at the age of 13 years, [a child] can be placed in detention for criminal acts."<sup>100</sup>

According to a 2006 report by the CPT, allegations were made by children of violence by law enforcement officials, particularly by the CRS (*Compagnie Républicaine de Sécurité*) or the BAC (*Brigade Anti-Criminalité*) and especially during identity checks.<sup>101</sup> The CPT also states that, every year, the Judicial Medical Services (*Services des Urgences Médico-Judiciaires - UMJ*) of Hôtel Dieu in Paris conduct approximately 25,000 medical examinations relating to persons in police custody. According to the head of the service, about 5% complain about mistreatment by the police during arrest (often related to tight handcuffs).<sup>102</sup> The CPT studied 750 cases. There were allegations of mistreatment in 13% of the cases. In 5% of the cases, the allegations of mistreatment refer to the time of the arrest or in police custody.

The CPT also refers to the CNDS (*Commission Nationale de Déontologie de la Sécurité: National Commission for Ethics in Security*). In 2005, the CNDS was involved in 52 cases concerning the police and in five cases concerning the *gendarmerie*. The cases include allegations of abuse relating to body strip-searches and the use of handcuffs. Usually, the cases concerning children only refer to the full implementation of the legal rules on the management of incidents involving children.<sup>103</sup> Lawyers interviewed by the CPT state that the police frequently start a procedure against the person alleging mistreatment, which diminishes the number of complaints.<sup>104</sup>

A complaint was made by three children, to a doctor, a lawyer and to the judge. One of them was lying on the ground and kicked while being handcuffed. Another one had to be taken to the hospital to receive care after having been beaten up by police officers. The lawyer complained about the fact that the parents had not been informed of the arrest, which is against the law.<sup>105</sup>



### 3.4 The Netherlands

The arrest, detention or imprisonment of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time” (art. 37(b) of the Convention on the Rights of the Child). Nevertheless, each year more children are being deprived of their liberty. In 2002, 3,900 children were held in an youth custodial institution (YCI). In 2005, it rose to 4,965, but fell in 2006 to 4,726 children.<sup>106</sup> Despite the ‘stabilisation’ of the numbers of children held in YCIs, the government is planning to increase the capacity of youth custodial institutions with 172 new places in 2008, 127 places in 2009 and 146 in 2012.<sup>107</sup> A corresponding rise in youth crime cannot be verified by existing data.<sup>108</sup> Over the last decade, an increasingly punitive regime has come into practice. Overall, more and more severe punishments are given. Concerns have also been expressed about the numbers and length of time children are being held in pre-trial detention. In 2006, 40% of the average population of children in YCIs were in pre-trial detention.<sup>109</sup>

It is fair to say that the children themselves experience deprivation of liberty as a form of violence.

QUOTE

It is not nice at all when they lock the door of the room. Well, they call it a room but actually it's a cell. The first time I felt really unhappy about being locked up. I got used to life in prison but I could not get used to being locked up. In the end I was in an open institution. That was much better. The doors were not closed. I felt safer. It just feels better when the door is open. A closed door does not feel right.”  
*17-year-old boy who spent two years in a youth custodial institution aged 14-15 years (2007)*

QUOTE

“No child belongs in prison. Children in penal custody often complain about the food, and that life in prison is really boring. But if you ask them what they really think, they say that being locked up is violent in itself.” *Jelle Klaas, lawyer (2007)*

There is much criticism about the fact that, in 2006, 40% of the juveniles in YCIs were placed through a civil order,<sup>110</sup> because there are long waiting lists for placements in youth care facilities.

Children aged 12 years and above can be sentenced to placement in a youth custodial institution for treatment (*PIJ-maatregel*). However, there are waiting lists, and it can take more than a year before a treatment place becomes available. Therefore children are held in detention in a YCI while waiting for a treatment place.

QUOTE

“I have been detained for two years now. I have been in this institution for one year. I had to wait for one year before I was transferred to a place for treatment.” *18-year-old boy (2007)*

QUOTE

“I could have been transferred faster. That took too much time. After I finally was transferred to an institution for treatment my family came to visit sometimes. But it was a long ride and too far for them. I was in the middle of the woods at a five-minute walking distance from the German border. It was the only place where I could get treatment. They don't take into account how far it is. They don't care. They just say this is the best place and that's it. It was really hard for my parents.”<sup>111</sup>  
*17-year-old boy (2007)*

Young people aged 16-17 years who receive a prison sentence under adult criminal law may be imprisoned in a youth section of an adult penal institution. In principle, prison sentences of up to 30 years are possible. In 2005, the Ministry of Justice statistics show that 21 children were held in an adult prison in pre-trial detention and 15 children served (part of) their sentence in an adult prison. On 1 January 2006, there were 11 children held in adult prisons.<sup>112</sup>

**Case of 17-year-old sentenced to 15 years imprisonment in adult prison**

Because of the severity of the offence, a double homicide, and the circumstances of the offence, the court applied article 77b of the Criminal Code. Experts did not wish to express an opinion about the danger of repetition, and the second child psychiatrist said there was no danger of repetition. The court decided to sentence the 17-year-old boy to 15 years of imprisonment without a measure for treatment.<sup>113</sup>

When special incidents occur in YCIs (i.e. escapes, attempted escapes; violence by staff; serious incidents of violence in the group; suicides; and, unnatural deaths), they must be immediately reported by the director of the YCI to the National Agency for Correctional Institutions (DJI) of the Ministry of Justice. The DJI provided information about the number of children who had committed suicide since 2002. No distinction is made between juveniles placed under civil or criminal law order.

| YEAR                 | NUMBER OF JUVENILES WHO COMMITTED SUICIDE |
|----------------------|---|
| 2002                 | 0   |
| 2003                 | 2   |
| 2004                 | 0   |
| 2005                 | 1   |
| 2006                 | 1   |
| 2007 (until October) | 2   |

A recent report by four inspectorates stated that: “The content of collected data and statistics about incidents and other occurrences regarding safety as a basis for improvement is limited. Some institutions use the statistics for evaluation and improvement. Practically, this does not function well... The experiences of juveniles about their safety are not often measured, only when incidents happen and research needs to be done.”<sup>114</sup>

In a newspaper article, it was reported that in recent months at least three teenagers in YCIs (a 13-year-old girl, a 14-year-old girl and a 17-year-old boy) had committed suicide.<sup>115</sup> According to DJI, the article actually concerns one case in 2006 and two cases in 2007.

Incidents must also be reported to the Youth Care Inspectorate. From January-June 2007, seven special incidents were reported by directors of YCIs. The inspectorate’s annual report stated that many of the directors were not aware they were required to report to the inspectorate as well.<sup>116</sup> In July-November 2007, this was cleared up and 415 incidents were reported, of which 311 concerned escapes from YCIs.

Disciplinary sanctions were introduced in 2001 by the Youth Custodial Institutions Act (YCIA). During 2006, more than 10,000 sanctions were imposed. A distinction is made between (order and safety) measures and disciplinary sanctions. Measures are aimed at ensuring order and safety or protecting the juvenile. Disciplinary sanctions are meant to correct and punish. Measures include: exclusion from the group; separation for two days for juveniles under 16 and four days for those aged 16 and older; camera observation; and, temporary placement in a different institution. Disciplinary sanctions or punishments include: confinement in a punishment cell for four days for juveniles below the age of 16, and seven days for those aged 16 and above; no visits by certain persons (preventative); exclusion from activities; withdrawal of leave; and, a fine.

The number of imposed order measures and disciplinary sanctions in 2006

| <b>MEASURE</b>   |        |
|--|--------|
| Placement in room more than 4 hours  | 5,429  |
| Separation cell/other surroundings possibly in other institution                 | 2,213  |
| Temporary placement in other institution   | 51     |
| <b>DISCIPLINARY SANCTION</b>   |        |
| Separation as a sanction/ other surroundings possibly in a different institution | 2,569  |
| Total in 2006  | 10,262 |

Source: Ministry of Justice (DJI)

The evaluation report on the YCIA concluded that: “The total amount of order measures and disciplinary sanctions is now higher than the total amount of order measures given before the introduction of the YCIA. It seems that disciplinary sanctions are used to complement order measures and not as a replacement. This leads to the conclusion that the introduction of disciplinary sanctions has not led to a reduction of the use of order measures. The (differences in) use of corrective measures and disciplinary punishments should be further examined.”<sup>117</sup>

It is possible to question whether staff are sufficiently aware and trained in legal standards on the use of order measures and disciplinary sanctions, as well the use of force and instruments of restraint.<sup>118</sup>

**QUOTE**

“Staff are trained how to react to violence, but due to all the budgets cuts training has had low priority in recent years. Besides that, staff members change jobs quickly and they have to attend several courses. I cannot let them all go. The company has to keep on running.” *Staff member of a YCI (2007)*

As an experiment, data on violence by juveniles in YCIs was collected and published in the annual report of the National Agency for Correctional Institutions (DJI) of the Ministry of Justice in 2002. Violence against staff was reported 539 times, and 955 incidents of violence between juveniles were reported.<sup>119</sup> As an explanation for the fact that the rates of violence were rising, DJI stated that this could be caused by the increase in the numbers of children in custody.

In the year 2006 data on violence were not included in the DJI annual report. However, the DJI did provide information to this research showing that, in 2006, there were 2,101 cases where juveniles used violence or threatened to use violence against another juvenile which resulted in an order measure or a disciplinary sanction. Of this number, 1,658 reports are of physical violence and 423 concern verbal violence. Several YCIs reported 200 or more incidents of violence, others gave lower numbers, like 80 and 20 incidents, and YCI Den Engh reported no incidents.

Collective punishment is allowed in some YCIs. The method used at YCI Den Engh has led to some discussion.<sup>120</sup> This institution uses the *SocioGroepsStrategie*, where the entire group is punished for someone else's behaviour. In January 2005, the Youth Care Inspectorate carried out an inspection, and reported that Den Engh did not give sufficient information, and there was also a risk of unreliable information.<sup>121</sup> It expressed concerns about: the frequent use of verbal aggression and intimidation by staff; the lack of information about the rights of young people in prison; lack of forms to report a complaint; no information about rules for receiving visits or going home for the weekend; no hearing of the opinion of the child; and, no possibility to call a lawyer. The report raised fewer concerns about physical aggression; staff members reported only one or two instances over a couple of years.<sup>122</sup>

The Youth Care Inspectorate conducted an investigation in Harreveld YCI in October 2005,<sup>123</sup> following a number of incidents, including mistreatment, threatening behaviour and sexual abuse among children in the YCI.<sup>124</sup> Harreveld is used for children who have committed sex offences. The inspectorate report mentioned suspicions of sexual abuse by staff. It also stated that the whole group of children were often punished for the actions of an individual. After such group punishment, it stated that no explanation had been given to the children, who found this unjust. The report suggested that the negative atmosphere amongst staff possibly had a negative effect upon the children. It continued to criticise staff training, and their lack of information about how to use (mechanical) restraints and sanctions. The report concluded that there was a moderate risk to children's safety. This led to the dismissal of the director of Harreveld, and Harreveld was not allowed to accept any further placements.<sup>125</sup>

After this inquiry, questions were raised in parliament, which prompted the Minister of Justice to instigate the inspection of all fourteen YCIs. It was carried out by four national inspectorates (Youth Care Inspectorate, Health Care Inspectorate, Education Inspectorate, Execution of Sanctions Inspectorate).<sup>126</sup> They investigated whether the environment within the institutions could be classified as 'safe'. The conclusion was that none of the institutions provided a safe environment for children or staff. Six of them ranked as having a 'severe risk', four a 'moderate risk' and four a 'low risk' for an unsafe living and working climate:<sup>127</sup>

| CLASSIFICATION | INSTITUTION  |
|----------------|--|
| Low risk       | De Hunnerberg, O.G. Heldring, Rentray, Teylingereind   |
| Moderate risk  | De Sprengen, Den Hey-Acker, Het Keerpunt, Het Poortje  |
| Severe risk    | De Doggershoek, De Hartelborgt, De Heuvelrug, Den Engh, Harreveld, JOC (Jongeren Opvang Centrum) |

The inspection report highlights that, within YCIs, children with behavioural problems were not easy to work with, particularly through their aggressive behaviour and unpredictable situations.

Safety risks were inherent to the work undertaken in youth custodial institutions. Nonetheless, the inspection report concluded that the risks should be kept at an absolute minimum.<sup>128</sup>

The greatest risk was in the area of upbringing and rehabilitative treatment particularly due to a lack of staff expertise. Not all YCIs have a specialist for children to talk to about sexual intimidation. Staff lacked professionalism in responding to sexual behaviour.<sup>129</sup> The institutions were not successful in supporting children's upbringing, education and treatment, or in dealing with children's individual needs and problems. It suggested more attention should be focussed on preventing than reacting to violence and that policies should reflect this.<sup>130</sup> It went on to comment that no use was made of existing knowledge about the way to prevent violence from occurring, and that risk assessments were not adequately used to protect children and staff against violence: safety policies and procedures were not evaluated.<sup>131</sup> Policies and procedures were different in each institution. The inspectorates recommended that the climate in the institutions could be improved if staff were more oriented towards care than control.

QUOTE

“One night they told me I had to stay in my room longer than usual. They did not say why. Then ten people came into my room. They handcuffed me and I had to leave my room. The rest of the group got the same procedure. No one knew why. One person threatened me and said: ‘if you move, I will break your neck and you will die immediately.’ When I came back to my room later that night, it was a huge mess. The next day another special force team of 30 people came back. I had to undress and kneel. I was ashamed and I didn’t want the rest of the group to see me. They threw me on the floor and said I had to join the rest of the group. They said if you don’t walk we’ll hit you badly. When I came back to my room several hours later, my jewellery was gone. I found some of it back, but one necklace with emotional value is missing. That day we only got one meal. We weren’t allowed to take a shower or to go outside to get fresh air. I sleep badly ever since. In my head it repeats over and over again. One boy in my group is only 14 years old.” *19-year-old boy in penal custody in a YCI (2007)*

On 7 September 2007, the staff of a number of YCIs sent a report entitled ‘Youth Custodial Institutions should be closed’ to the State Secretary for Justice. It concluded that YCIs should be closed because children did not receive proper treatment. They only did their time. Some felt that the policy for the treatment of juveniles in institutions was going in the wrong direction and something must be done about it.<sup>132</sup>

On 21 August 2007, members of parliament asked questions about Doggershoek YCI. They were concerned about signs of violence, intimidation, and smuggling by visitors and staff. According to the Ministry of Justice, in 2006, the Doggershoek had an equal number of incidents compared to the other YCIs. A total number of 151 measures and sanctions were given. In 47 cases it was for violence. The police were informed 14 times about mistreatment. The parliamentary answer stated that there was no immediate need for a special policy.<sup>133</sup> Information obtained for this research showed that during 2006 the Doggershoek YCI imposed 428 measures and sanctions, and violence had occurred 95 times amongst the children.<sup>134</sup>

Official complaints by children are dealt with by the YCI's complaints committees but the outcomes are rarely published. The Council for the Administration of Criminal Justice and the Protection of Juvenile's (RSJ) website publishes appeal cases. An analysis of the appeal cases and decisions taken by one of the complaints committees shows that the main complaints relating to forms of violence are:

- Official complaints about unreasonable/too severe/illegal measures and sanctions: punish-

- ment of the group for the behaviour of one person, no electricity in room, too lengthy isolation, too lengthy exclusion from the group (e.g. more than five days) and bad exclusion conditions (e.g. placement in a different room, no toilet, no shower, no ventilation, no response to calls), extension of disciplinary sanction without authorisation by the director;
- Official complaints about physical violence: full body strip-search, room strip-search, pillowcase over head, use of mechanical restraints for transport to room, pinch throat, push head against wall, tolerance of violence amongst detainees, unauthorised use of mechanical restraints;
  - Official complaints about verbal intimidation by staff: threats of isolation, threats to use violence, shouting and yelling.

QUOTE

“When guards interfere they react very aggressively. Nine out of ten times this has an opposite effect as a result. Why would they hurt us for no reason? They come after you and you cannot get any air when four big men are on top of you. They are very rough, which is not necessary. They just don’t want to take any risks when they are ordered to take a juvenile to the isolation cell.”

*Boy in penal custody (2007)*

When a child is put in an isolation cell because he/she poses a danger to him/herself, staff are required to check on the child every hour. Complaints have been made by children that this does not always take place.

QUOTE

“No, not me, but I saw it happen to others often. It is no pleasure. Some boys were locked up for seven days in their rooms with only one hour of fresh air. Well, they call it a room but it is a cell. Then they see no one all day. You can get room placement when you fight too often or when you are up to something. Not if it only happened once. If you fight too often you have to learn. And then they think, maybe seven days, maybe that helps. You are not allowed to spend more than a few hours or days in an isolation cell. But when you are locked up in your room you can be there for a longer period, even when you are under 16.”

*Boy after release from custody (2007)*

The time out measure is frequently used and for long periods of time. Some boys say they were in their rooms alone for 17 days or longer with only one hour of fresh air.

QUOTE

“It goes on for months. Staff tease and punish often for no reason. When I complain about it, I am always right. I once got compensation, because I had been in my cell for three weeks. They weren’t supposed to punish me for such a long time.”

*Boy in penal custody (2007)*

QUOTE

“Because of shortage of staff, boys have to go to their rooms earlier at weekends. Sometimes they are in their cells for 20 hours a day. They complain that it is really boring. When there are sufficient staff, less punishments are given.”

*Lawyer (2007)*

Complaints and appeal cases show that some children are intimidated by forms of ‘group violence’ such as throwing chairs, drug possession, aggressive behaviour and verbal violence. In July 2007, a newspaper article reported a fight amongst a group of juveniles in the presence of staff, which started as fun and finally got out of control.<sup>135</sup>

In 2007, the National Ombudsman reported sexual intimidation of a child by an adult detainee while they were being transported.<sup>136</sup>

In the report ‘Trust is a scarce thing’ children in justice and care institutions were asked about how safe they felt.<sup>137</sup> The main problem they reported was a lack of care and sensitivity for their daily needs, especially when they felt vulnerable and wholly dependent on the YCI’s staff. There was a general lack of trust between children, and between children and staff. The children felt strongly that personal information and complaints should be treated with confidentiality, otherwise they felt unsafe.

QUOTE

“Staff do not grant us much. Two days ago they turned the electricity off. They often do that for 24 hours or more. Then you can’t watch t.v. and the lights are off. We want the group leaders to treat us with respect. They don’t need to yell. I won’t answer when someone yells at me.”  
*Boy in penal custody (2007)*

QUOTE

“I was not born aggressive, I became aggressive. Staff don’t understand how we feel. We’re put in our room to think and cool down, but they don’t understand.” *Boy in penal custody (2007)*

## Notes

- 1 Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General’s Study on Violence against Children, Geneva, 2006, p. 196. [www.violencestudy.org](http://www.violencestudy.org).
- 2 *Ibid.*, p. 190.
- 3 *Ibid.*, pp. 195-196.
- 4 See Home Affairs Committee, *Rehabilitation of Prisoners*, First Report of Session 2004-2005, House Affairs Committee, House of Commons, London, 2005, The Stationery Office Ltd.
- 5 See Davies, N., “Wasted Lives of the Young Let Down by the Jail System”, *The Guardian*, 8 December 2004.
- 6 See Paulo Sérgio Pinheiro, note 1 above, p. 194.
- 7 *Ibid.*, p. 196.
- 8 See Paulo Sérgio Pinheiro, note 1 above, pp. 195-196.
- 9 *Ibid.*, p. 196.
- 10 See United Nations, *Report of the Special Rapporteur on Violence against Women of the Mission to the United States of America on the Issue of Violence against Women in State and Federal Prisons*, UN Doc. E/CN.4/1999/68/Add.2, paras. 55, 58.
- 11 See Paulo Sérgio Pinheiro, note 1 above, pp. 196-200. According to P. Durning, institutional violence can be found at three levels: “The first stage concerns the mental suffering inherent in the removal process and comes from the act of distancing the child from his natural surroundings. Faced with adaptation problems, the institution most often chooses to personalize the welcome, encouraging the maintenance of links with the family and possibly questioning the appropriateness of the placement. The second stage corresponds to the chronic features of neglect and violence. This manifests itself as abandonment and neglect, lack of respect for privacy, humiliating corporal punishment. Such practices can be found in the context of endemic institutional dysfunction. Aggravating factors might be increased mechanization of acts, adults transferring attention to their own problems so that they become less available to those in their charge, the globalization of socio-educative action. Responses likely to counteract this situation depend to a large extent on collective re-appraisal of the entire project, on individual follow-up of those involved, on supervision of any intervention attempts and on resolution of group tensions... The final stage addresses critical situations including brutality, sexual abuse, mental cruelty. That such ultimate violence emerges is due to at least three conditions: powerlessness, fear and the closing-in of the institution on itself, making internal processes exaggeratedly intense as a result. From then on, the crisis within the institution is close to eruption. Only one response is possible: a complete assessment of representations concerning the action taken from all those involved, of relations with authority and of distinguishing factors (between positions of differing status, function, job, etc).” During, P., cited in: Tremintin, J., *Journal du droit des jeunes*, 1998, no. 174, p. 25. (Unofficial translation from French as given in: Cappelaere, G., Grandjean, A., Naqvi, Y., *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 260-261.)
- 12 *Ibid.*, p. 197.
- 13 See Children’s Rights Alliance for England, *State of Children’s Rights in England Annual Review*, 2005.
- 14 *Ibid.*, p. 198.
- 15 *Ibid.*
- 16 *Ibid.*, p. 199.
- 17 *Ibid.*
- 18 *Ibid.*

- 19 Ibid.
- 20 Ibid.
- 21 See HM Chief Inspector of Prisons, *Juveniles in Custody 2003-2004: an analysis of children's experiences in prison*, 2005.
- 22 See Paulo Sérgio Pinheiro, note 1 above, pp. 199-200.
- 23 See Annie E. Casey Foundation, "Juvenile Justice at a Crossroads", *Advocacy*, Vol. 5, No. 1, Baltimore, 2003; US Department of Justice, *Office of Juvenile Justice and Delinquency Prevention Annual Report, FY2003-2004*, Washington DC, OJDDP, 2004.
- 24 See section 3.2 England and Wales, below.
- 25 See also Chapter 6, below.
- 26 See Paulo Sérgio Pinheiro, note 1 above, pp. 180-182.
- 27 Krug, E.G. et al. (Eds.), *World Report on Violence and Health*, World Health Organization, Geneva, p. 5.
- 28 The CPT is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe.
- 29 *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 18 au 27 avril 2005*, 2006, para. 8.
- 30 The Standing Police Monitoring Committee is mandated to execute an external control of the police services, and it falls under the responsibility of the Parliament. See also Chapter 5, section 5.1 Belgium, below. See *Rapports d'activités 2003 du Comité permanent de contrôle des services de police*, Docs. 51 1267/001 (Chambre), 3-782/1 (Sénat), pp. 67-68, 145; *Rapport annuel 2004*, paras. 8.2.2, 21.
- 31 See *Rapports d'activités 2003 du Comité permanent de contrôle des services de police*, Docs. 51 1267/001 (Chambre), 3-782/1 (Sénat), pp. 67-68, 145; *Rapport annuel 2004*, paras 8.2.2, 21.
- 32 This information is based on an interview conducted for the purposes of this research in 2007.
- 33 See *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 18 au 27 avril 2005*, 2006, para. 63.
- 34 This information is based on an interview conducted for the purposes of this research in 2007.
- 35 This service accommodates children in open or closed regime. See also Chapter 2, section 2.1 Belgium, above.
- 36 See *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 18 au 27 avril 2005*, 2006, para. 136.
- 37 Ibid., para. 54.
- 38 See *Rapport au gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants du 25 novembre au 7 décembre 2001*, paras. 99-124.
- 39 Ibid., para. 104.
- 40 Two round tables have been organised in 2007 by Unicef Belgium, one gathering children from psychiatric units and another gathering children from private and public youth protection institutions. This was part of a Unicef Project 'What do you think?', aimed at giving the children a chance to speak for themselves.
- 41 This information is based on the UNICEF roundtables mentioned in note 40 above, and on interviews conducted for the purposes of this research in 2007.
- 42 Prison officer cited in: Goldson, B., *Vulnerable Inside: Children in Secure and Penal Settings*, The Children's Society, London, 2002, p. 145.
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## 4 NATIONAL STANDARDS ON PROTECTION AGAINST VIOLENCE

### Introduction

*“It is of utmost importance that all children who are placed in care systems or detention facilities should be protected from all forms of violence. To do so, a clear legal framework and a range of policies, regulations and programmes must be in place.”<sup>1</sup>*

In Belgium, England and Wales, France and the Netherlands, there are laws and regulations in place regarding the treatment of children deprived of their liberty. This chapter contains an overview of these laws and regulations, particularly those rules aimed at protecting them from any form of physical or mental violence.

According to the *UN Secretary-General’s Study on Violence against Children*, governments should prohibit all violence in justice institutions: “Governments should ensure that sectoral laws applying to care and justice systems reflect the State-wide legislative prohibition on all forms of violence. Legal prohibition should be backed by detailed guidance for all involved.” Furthermore, effective sanctions against perpetrators should exist: “Governments should adopt and apply a continuum of appropriate criminal, civil, administrative and professional proceedings and sanctions against individuals who are responsible for violence against children as well as against those who are responsible for institutions where such violence takes place.”<sup>2</sup>

Treatment of children deprived of their liberty should conform to international standards. Article 37(a) of the CRC prohibits torture or other cruel, inhuman or degrading treatment or punishment. Article 37(c) provides that: “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interests not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.” And Article 19(1) provides that: “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

#### Treatment and conditions (art. 37 (c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child centred staff, personnel, policies and practices.
86. This rule does not mean that a child placed in a facility for children has to be moved to a facility

for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.
88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.
89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:
  - Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;
  - Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
  - Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;
  - The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;
  - Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
  - Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;
  - Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;
  - Independent and qualified inspectors 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.

Source: Committee on the Rights of the Child, General Comment No. 10 Children's Rights in Juvenile Justice, UN Doc. CRC/C/GC/10 (25 April 2007).

Other important international instruments include the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1957 Standard Minimum Rules for the Treatment of Prisoners.

**K. Limitations of physical restraint and the use of force**

63. Recourse to instruments of restraint and to force for any purpose should be prohibited, except as set forth in rule 64 below.
64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.
65. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.

**L. Disciplinary procedures**

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.
67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.
68. Legislation or regulations adopted by the competent administrative authority should establish norms concerning the following, taking full account of the fundamental characteristics, needs and rights of juveniles:
  - (a) Conduct constituting a disciplinary offence;
  - (b) Type and duration of disciplinary sanctions that may be inflicted;
  - (c) The authority competent to impose such sanctions;
  - (d) The authority competent to consider appeals.
69. A report of misconduct should be presented promptly to the competent authority, which should decide on it without undue delay. The competent authority should conduct a thorough examination of the case.
70. No juvenile should be disciplinarily sanctioned except in strict accordance with the terms of the law and regulations in force. No juvenile should be sanctioned unless he or she has been informed of the alleged infraction in a manner appropriate to the full understanding of the juvenile, and given a proper opportunity of presenting his or her defence, including the right of appeal to a competent impartial authority. Complete records should be kept of all disciplinary proceedings.
71. No juveniles should be responsible for disciplinary functions except in the supervision of specified social, educational or sports activities or in self-government programmes.

...

**V. Personnel**

...

87. In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:

- (a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;
- (b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities;
- (c) All personnel should respect the present Rules. Personnel who have reason to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power;
- (d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;
- (e) All personnel should respect the right of the juvenile to privacy, and, in particular, should safeguard all confidential matters concerning juveniles or their families learned as a result of their professional capacity;
- (f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

Source: 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113, annex

#### 4.1 Belgium

The laws, rules, regulations and guidelines defining the treatment of children deprived of their liberty are settled in a range of legal texts, according to the category of facility which is concerned. These various provisions, as for the Youth Protection Act of 1965, generally emphasise the need for an educational perspective and claim to be consistent with domestic and international law.

On 5 May 1999, article 22*bis* was added to the Constitution: “Each child has right to the respect of his moral, physical, mental and sexual integrity.”

Police custody is regulated in the Law relating to the function of police (5 August 1992). It contains no special provisions on the treatment of minors, with the exception of article 33*quater*: “Any person who is the subject of an administrative arrest can ask that a person of confidence be informed. ... When the person deprived of his/her liberty is a minor, it is mandatory to inform the person in charge of the minor.”

Sixteen- and 17-year-olds given a prison sentence under adult criminal law are currently held in adult penal facilities.<sup>3</sup> The treatment of prisoners is regulated in the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees (12 January 2005), which contains no special provisions on the treatment of children. This law contains specific sections on: respect of human dignity; separation of accused detainees from convicted detainees; rules on the use of security measures, including their duration;<sup>4</sup> rules on the use of the measure of special security;<sup>5</sup> rules on the use of coercion measures;<sup>6</sup> rules on the use of disciplinary measures;<sup>7</sup> and, complaints procedures.<sup>8</sup>

The closed institution, the Centre of Everberg, falls under the responsibility of the federal Ministry of Justice.<sup>9</sup> In practice, the institution is managed jointly by the three Communities and the Federal Authority.<sup>10</sup> Each Community is responsible for the educational matters, and the Federal Authority is in charge of security and disciplinary matters.<sup>11</sup> The federal rules on

the treatment of prisoners apply in principle to the Centre of Everberg. It is not clear, however, if the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees applies. This would imply that the Centre of Everberg can be qualified as a 'prison', as defined in article 2 of the Law of principles. As of December 2007, this had not been clarified.

Articles 15-19 of the Centre of Everberg's internal rules deal with disciplinary sanctions. There are no further provisions on disciplinary sanctions, despite several requests.<sup>12</sup> Both federal and community staff are allowed to impose sanctions. Article 16 states that: "The sanctions policy must be uniform, transparent, consistent, centred on behaviour, foreseeable and proportionate. The sanctions may not violate the basic rights of the young person. The rights of the young person which may not be restricted by sanctions include: the right to defence; the right to freedom of thought, conscience and religion; and, the right to contacts with the wider community."

In the French Community (Wallonia and Brussels), the Order of the French Community Government (15 March 1999) contains standards on the treatment of children placed in private facilities.<sup>13</sup> Each facility must have a pedagogical plan dealing with "the objectives and teaching methods implemented, including the behaviour and sanctions by staff which are unacceptable towards the young people."<sup>14</sup> The Decree relating to youth assistance (4 March 1991) contains standards on the treatment of children placed in public youth protection institutions. This decree includes standards regarding: guarantees for the respect of the child's rights (Chapter I); and, guarantees for the respect of the child's rights when subjected to a measure of placement (chapter II). In addition to this decree, relevant rules can be found in ten other legal texts.<sup>15</sup>

The Decrees of 4 March 1991 and 19 June 1991 contain rules on the administration of public youth protection institutions. It stipulates that "each child entrusted to a public youth institution, in open or closed mode, may have contacts with the wider community, including visits, release or holidays".<sup>16</sup> The conditions for the measure of isolation/solitary confinement are specified as follows:

- It can be taken only when the child compromises his/her own safety, or the safety of peers, the staff or visitors;
- The management must immediately inform the placement authority or, in case of absence, the public prosecutor;
- The measure must be confirmed by a written report notified to the placement authority and the competent authorities;
- The isolation measure cannot be extended for longer than 24 hours without permission of the competent judge. The judge's decision to extend must be written and motivated, and specify the duration of the extension, which can be longer than eight days;
- The isolation may not deprive the child of his/her rights;
- The federal rules on isolation must be abided by.<sup>17</sup>

The federal standards on the measure of isolation/solitary confinement concern matters such as general and specific standards for the isolation rooms, safety measures, staff visits, recording procedures, and notification procedures to the judge (Law of 21 March 1997).

Finally, the house rules of the public youth protection institutions (IPPJs) mention, in some cases very briefly, the applicable sanctions system, including the processing rules of solitary confinement. Most institutions explain that a violation of the house rules leads to a sanction, with sometimes no further detail. Some of the documents make a distinction between positive, negative and restorative sanctions. The positive sanctions sometimes take the form of reward-

ing decisions (longer visits, positive reports, outdoor activities). The negative sanctions may be verbal remarks, negative reports, placement in room, removal of certain advantages, individual work of reflection or separation from the group; while restorative sanctions aim to repair the damage caused.<sup>18</sup> The choice and the modalities of the sanction are usually left to the discretion of the education staff, with no further precisions. This is part of the institutional attempt to avoid relying on a system of sanctions which might be ‘tariffed’ with one specific sanction for each offence. All house rules include a reminder of the possibility for juveniles to complain about the sanctions received, and the way to go about lodging such a complaint.

## 4.2 England and Wales

There are a number of rules, regulations and guidelines that govern a prison. These are outlined in Prison Service Instructions (PSIs) and Prison Service Orders (PSOs). Prison Service Orders are long-term mandatory instructions which are intended to last for an indefinite period. Prison Service Instructions are mandatory instructions which have a definite expiry date. They are also used to introduce amendments to Prison Service Orders.

In 2004, on behalf of the Home Secretary, the Youth Justice Board published the National Standards for Youth Justice Services, which set out the minimum level of service expected in each area of Youth Offending Team (YOT) work. The YOTs were audited against these standards for the first time during October-December 2004, and again during October-December 2005. For each of the standards, 70% compliance is considered acceptable, whilst 90% is considered a good level of compliance.<sup>19</sup>

The Code of Practice published by the Youth Justice Board in 2006 says that strategies for managing the behaviour of children should emphasise a child centred culture and should be consistent with domestic and international law.<sup>20</sup> The code specifies that restrictive physical intervention must not be used as a punishment or merely to secure compliance with staff instructions. In addition, the Code of Practice stipulates that deliberate pain must only be used in exceptional circumstances. However, the method used on children detained in the Secure Training Centres is based on inflicting pain. Euphemistically called the ‘distraction’ technique it involves bending the thumb forwards or down, hitting the nose from underneath and using the knuckles to hit into the child’s ribs. According to the International Centre for Prison Studies: “All those authorities responsible for the administration of prisons have an obligation to ensure that all staff and others involved in prisons are fully aware of the complete prohibition on torture and cruel, inhuman or degrading treatment. Authorities should ensure that none of the operational regulations in prison can ever be interpreted by staff as permission to inflict such treatment on a prisoner.”<sup>21</sup>

The Secure Accommodation Network represents and promotes the work of Local Authority secure children’s homes in England and Wales. In relation to information documents concerning violence against children in custody, the network has published Good Practice Guides (which include assessment tools) on: the use of single separation in secure children’s homes; the physical searching of young people in secure children’s homes; and the management and minimisation of behaviour by young people that results in an act of self-harm in secure children’s homes.<sup>22</sup>



### 4.3 France

Children in detention may only be held in a special section for children in a prison (*quartier des mineurs*) or in a specialised penal institution for minors (*Etablissement pénitentiaire pour mineurs* (EPM)) (art. 11 of the Ordinance of 2 February 1945 concerning delinquent children). During the night, they must be kept completely separate from adult prisoners. Children aged 13-16 years must be completely separated from adults and monitored by educators. This provision is applicable to both boys and girls, however there are no juvenile wards in women prisons. Girls are in the same ward as women but they are in a separate cell. Children must be alone in their cell (art. R.57-9-14 of the Law of Criminal Procedure (CPP)).

The Circular of 8 June 2007 concerns the juvenile prison regime and stipulates that each child deprived of liberty should be monitored by the Juvenile Protection Services after he/she has been released.<sup>23</sup>

The disciplinary regime for children is different from the one applicable to adults. Standards on disciplinary measures and use of instruments of restraint are laid down in articles D.265 to D.283-6 of the CPP, but they must be “adapted to minors”.<sup>24</sup> The use of handcuffs and shackles is limited to detainees who may cause danger or a threat to themselves or others, or in case of the risk of escape (art. 803 of the CPP).<sup>25</sup> These instruments of restraint may only be used on children in exceptional cases (Circular JUSK0740097C).<sup>26</sup> The use of handcuffs is limited to children whose dangerousness is proven, either by their criminal record or by incidents which took place in detention, or by a risk of escape. The use of shackles is limited to exceptional cases of great danger and cannot be combined with the use of handcuffs.

A strip-search may only take place at arrival and before departure from the facility, at the end of any visit other than by lawyers and visitors of prison, except in particular circumstances, and before placement in the disciplinary ward (art. D.275 of the CPP).

The CPP does not allow ‘administrative’ isolation. The judge in charge of a case can impose ‘judicial’ isolation but only for children over the age of 16 (art. D.56-1 of the CPP).

Article D.520 of the CPP introduced a new measure, the individual protection measure, specifically for children. The director of the facility, after counselling by the educational team, can impose this measure if it is deemed necessary due to the circumstances of the detention or the child’s personality. During detention, a child can encounter significant difficulties, potential or proven dangers, which force him/her to ask for a temporary extraction from the collective life. The child must give his/her written agreement to this measure. The judge in charge of the case must be informed. The duration of this measure cannot exceed six days, renewable once, and cannot exceed 12 days within a period of four months in detention. There is no minimum duration.

Decree No. 2007-814 (11 May 2004) modified the disciplinary proceedings applicable to children deprived of their liberty in order to take into account the intervention of the Judicial Youth Protection Service (PJJ). Several specific provisions are integrated into the disciplinary regime as regulated in the CPP. According to article D.250-1 of the CPP, when disciplinary measures are considered to be taken against a child, the PJJ is required to investigate “the personal, social and family situation of the minor”. This report must be taken into account by the director of the facility in deciding whether or not to engage in a disciplinary proceeding. The Law of 12 April 2000 contains an article concerning legal

assistance in disciplinary proceedings. This article does not contain specific provisions for children. Legal assistance is thus optional, but it remains necessary to hear the views of parents or others responsible for the child.

Disciplinary measures should take into consideration the age, personality and degree of understanding of the child (art. D.251-1-1 of the CPP). The measures aim to limit the use of isolation/solitary confinement in a disciplinary ward by offering more alternatives. These alternative measures have an educational aim, in particular the measure of restoration, by aiming to raise the awareness of the child of the injury he/she caused. A disciplinary measure cannot prohibit access to the visiting room and should not limit access to care. The measures listed in article D.251-1-1 of the CPP include: warning; prohibition to purchase (except for hygiene products and writing material); deprivation for a maximum of 15 days of television or MP3 player; activity of restoration;<sup>27</sup> deprivation or the restriction of cultural, sport or leisure activities for a maximum of eight days; and, solitary confinement in an ordinary cell.<sup>28</sup> These six measures can be generally applied. There are other measures which apply only under specific circumstances:

- Exclusion from a job or an educational program for a maximum duration of three days if the misconduct was committed during the job or the activity and by a child aged 16-17 years;
- Disciplinary solitary confinement for children aged 16-17 years under exceptional circumstances;<sup>29</sup>
- Placement in 'prevention' for children aged 16-17 years in cases of misconduct similar to those leading to disciplinary solitary confinement.

Taking into account the prominent role given to education, the placement in a disciplinary ward does not prohibit the child to take part in the educational activities. The visits by his/her family members and any other person taking part in the education or the social integration of the child are maintained. PJJ educators must visit the child placed in the disciplinary ward at least once a day. Conduct such as insults or drug possession cannot be punished by placement in solitary confinement in an ordinary cell or in the disciplinary ward, but may be punished by other alternative measures.

#### 4.4 The Netherlands

The standard rules for the treatment of juveniles in youth custodial institutions are laid down in the Youth Custodial Institutions Act (YCIA).<sup>30</sup> This law includes detailed provisions concerning the legal status of young people in youth custodial institutions.<sup>31</sup> Other relevant instruments include the Regulation Youth Custodial Institutions Act, which deals with matters such as aftercare, treatment and complaints. The law is further specified in 13 ministerial juvenile justice regulations, including an instruction on the use of force by staff.<sup>32</sup> In addition, there are various circulars.<sup>33</sup> Internal rules based on the YCIA include house rules, a violence instruction, a protocol on the use of instruments of restraint, and rules on making complaints to the Inspection Commission.

The YCIA applies to both private and public youth custodial institutions. The YCIA states that both detention and treatment must be arranged soon after conviction. Each institution must develop and hand out house rules, including rules to prevent violence amongst the detainees.<sup>34</sup>

The directors of the youth custodial institutions (YCI) have the final responsibility regarding the use of measures and disciplinary sanctions, and the use of force and instruments of

The house rules of 12 (of the total of 14) youth custodial institutions were recently compared. The researchers found that, in some cases, the house rules are not in compliance with the standards laid down in the Youth Custodial Institutions Act, as well as in international instruments. For example, the right to receive regular and frequent visits by family members and the defence counsel is restricted in some institutions. Parents are frequently only allowed to visit their child once a week for one hour. The right to leave the institution is not clearly regulated. Basically, it is left to the discretion of the institution's director to decide whether a juvenile is allowed to leave for a visit to their home. The children are not always well informed about their right to leave the institution. In some institutions the child's right to make a telephone call twice a week with a person of his/her choice is not respected.<sup>35</sup>

restraint. The YCIA includes rules on the use of solitary confinement and isolation, the use of force, the use of instruments of restraint, the use of (order) measures and disciplinary sanctions, and permissible restrictions of rights. It is permissible to restrict rights for reasons of: public safety or safety in the institution; prevention of or search for delinquency; protection of victims or others; the emotional and physical development of the juvenile; and, the execution of the treatment plan. The permissible restrictions of rights are summed up as follows: identification; body and clothes search; urine analysis; medical treatment; use of instruments of restraint; inspection of room; and, use of force. The right to contact with parents or a lawyer cannot be prohibited, but the director can take measures to protect the safety of a visitor.

Measures are aimed at ensuring order and safety or protecting the juvenile.<sup>36</sup> Disciplinary sanctions are meant to correct and punish.<sup>37</sup> Measures include: exclusion from the group; separation for two days for juveniles under 16 and four days for those aged 16 and older;<sup>38</sup> camera observation; and, temporary placement in a different institution. Disciplinary sanctions or punishments include: confinement in a punishment cell for four days for juveniles below the age of 16, and seven days for those aged 16 and above;<sup>39</sup> no visits by certain persons (preventative); exclusion from activities; withdrawal of leave; and, a fine.

When children put in the cell for separation or punishment pose a danger to themselves (self-harm), they must be checked by staff every hour. A doctor or psychiatrist must investigate and be informed of the child's situation. A camera can be placed in the room. Daylight must be able to come in. A toilet, couch, and mattress with pillow and blankets should be in the isolation room. The right to visits and telephone calls can be limited. A lawyer can visit without supervision. Parents and the supervisory committee must be informed about the imposed measure or sanction of confinement after 24 hours.

Separation from the group is also carried out for other reasons than mentioned in the law. The time out measure is a pedagogical instrument to let a juvenile calm down. No specific rules are set for duration and conditions. Some YCIs have a Very Intensive Care (VIC) unit.<sup>40</sup> These are places for children who cannot function in a group because of psychiatric problems. Five juveniles are placed in one section, but they do not necessarily see each other. They often eat and go outside alone. Forced medication can be used. The house rules are not applicable to these children. According to the Ministry of Justice, a VIC placement is temporary. In practice, placement in a VIC section can last for more than one year. An evaluation of VIC placements has not yet taken place.

Instruments of restraint include padded handcuffs, mouth protection, wristband, ankle band, handcuffs (approved of by the Minister of Justice), crash helmet, strait jacket. If necessary,

more than one restraint can be used. The use of restraints may not cause any form of physical injury to the child. Parents are informed about the use of restraints. Twice-a-day, staff checks on the situation of the child. If the restraint lasts more than six hours, a doctor is called. The child is allowed to drink and eat three times a day. The YCI director must make sure that a protocol is developed on the use of restraints in his/her institution. This protocol defines which restraints are available, how they are used, which precautions apply, who must take care of the detainee, the way a decision for the use of restraints is made and communicated, and staff training on the use of restraints.

The 'Violence Instruction for Youth Custodial Institutions' defines violence (*geweld*) as "every use of force of more than little meaning executed towards persons or materials". Instruments of force include: semi-automatic gun, Heckler & Koch MP 5, type A2 and type A3, calibre 9 millimetre times 19 millimetre; semi-automatic gun, Walther P5, calibre 9 times 19 millimetre; a short or tall baton of a certain type approved by the Minister of Justice; and, CS teargas granules or teargas spreading means of a certain type approved by the Minister of Justice. The YCI director must make sure that an instruction on the use of force/violence by staff is developed. In general, it is allowed in cases where the director gives his/her authorisation and in a closed environment when the staff member has reason to believe that the child is in possession of a weapon, and he/she will make use of it, or in a group of children which form a serious threat to safety. Only authorised staff trained to use weapons may carry them.

## Notes

- 1 Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006, p. 211. [www.violencestudy.org](http://www.violencestudy.org).
- 2 *Ibid.*, pp. 216-217.
- 3 See also Chapter 2, section 2.1 Belgium, above.
- 4 See Title 6, chapter 3, of the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 5 See Title 6, chapter section 2 and 3 of the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 6 See Title 6, chapter 4, of the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 7 See Title 7, chapters 3-5, of the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 8 See Title 8, chapters 1-2, of the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 9 See also Chapter 2, section 2.1 Belgium, above.
- 10 See art. 14 of the Agreement of 30 April 2002. This agreement, initially concluded for a duration of three years, is tacitly prolonged if it is not denounced six months before its expiration date.
- 11 See art. 8 of the Agreement of 30 April 2002.
- 12 See, for example, the parliamentary question of Mr. Denis Grimberghs to Mrs. Catherine Fonck, Minister for childhood, youth assistance and health, relating to the "regime of sanctions in force in the closed centre of Everberg", *CRIC N° 63 - Santé 14 (2004-2005)*, PCF, Brussels, 2005, pp. 6-7.
- 13 See Order relating to the general conditions of agreement and to the granting of subventions for the services in article 43 of the Decree of 4 March 1991 relating to youth assistance.
- 14 Art. 5(4) of the Order of the French Community Government of 15 March 1999.
- 15 *Loi du 8 avril 1965 relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait (modifiée par les lois du 15 mai et du 13 juin 2006); Décret du 4 mars 1991 relatif à l'aide à la jeunesse; Arrêté du gouvernement de la Communauté Française du 15 mai 1997, fixant le code de déontologie de l'aide à la jeunesse et instituant la commission de déontologie de l'aide à la jeunesse; Arrêté de l'Exécutif de la Communauté française du 10 mai 1991 créant le groupe des institutions publiques de protection de la jeunesse, à régimes ouvert et fermé, de la Communauté française; Arrêté de l'Exécutif de la Communauté française du 19 juin 1991 relatif à l'organisation du groupe des institutions publiques de protection de la jeunesse, à régimes ouvert et fermé, de la Communauté française; Arrêté du Gouvernement de la Communauté française du 18 mai 1993 déterminant les conditions auxquelles l'obligation scolaire peut être remplie dans le groupe des institutions publiques de protection de la jeunesse, à régime ouvert et fermé, de la Communauté française; Arrêté du Gouvernement de la Communauté française du 12 juillet 1996 fixant la composition de l'équipe pluridisciplinaire des institutions publiques de protection de la jeunesse, à régimes ouvert et fermé, et déterminant les rubriques que doivent comprendre le rapport médico-psychologique et l'étude sociale dont font l'objet les jeunes confiés au groupe de ces institutions; Arrêté du Gouvernement de la Communauté française du 21 mars*

1997 réglementant les modalités d'isolement dans les institutions publiques de protection de la jeunesse, organisant le contrôle de ces modalités et fixant les normes applicables aux locaux d'isolement; Arrêté du Gouvernement de la Communauté française du 15 mai 1997 fixant le code de déontologie de l'aide à la jeunesse; Arrêté du Gouvernement de la Communauté française du 25 mai 1999 fixant le règlement général du groupe des institutions publiques de protection de la jeunesse; Arrêté du Gouvernement de la Communauté française du 15 juin 2004 relatif aux institutions publiques de protection de la jeunesse.

- 16 See art. 7 of the Decree of 19 June 1991.
- 17 See art. 19 of the Decree of 4 March 1991.
- 18 See e.g. House Rules (*règlements particuliers*) of youth protection institutions Braine-le-Château and Fraipont.
- 19 See Youth Justice Board, *Youth Justice Annual Statistics 2005/06*, 2007.
- 20 See Youth Justice Board, *Managing Children and Young People's Behaviour in the Secure Estate: A Code of Practice*, London, 2006.
- 21 Coyle, A., *A Human Rights Approach to Prison Management: Handbook for Prison Staff*, International Centre for Prison Studies, London, p. 36.
- 22 See [www.secureaccommodation.org.uk/bestpractice.htm](http://www.secureaccommodation.org.uk/bestpractice.htm).
- 23 See *Circulaire JUSK0740097C de la DAP n° 2007-G4 du 8 juin 2007 relative au régime de détention des mineurs*.
- 24 *Ibid.*
- 25 "...Nul ne peut être soumis au port des menottes ou des entraves que s'il est considéré soit comme dangereux pour autrui ou pour lui-même, soit comme susceptible de tenter de prendre la fuite." See art. D.283-4 of the CPP.
- 26 This appraisal is made by the director of the facility or the person designated by the director.
- 27 The activity can be linked to the victim (e.g. verbal or written apology), but also to the community. The child can carry out activities for the benefit of the community, including mainly tasks of cleaning. It is recommended that this activity does not exceed a total duration of ten hours. This sanction is subjected to the agreement of the child and of the representative of the parental authority (art. D.251-1-4 of the CPP).
- 28 This sanction can apply to children aged 13 and over. Previously, it could only apply to children from 16-18. The maximum duration has been shortened. For children aged 16-17 years, the maximum duration is seven days for misconduct of first degree (the duration is chosen in accordance with the seriousness of the misconduct: it can be three, five or seven days). Children aged 13-15 may only undergo this confinement for misconduct of first degree (the one that can lead to a confinement of seven days for children aged 16-17). According to article D.249-1 of the CPP, solitary confinement in an ordinary cell can be used in the following cases of misconduct: 1° physical violence against a member of the staff or a person on mission or visit in the facility; 2° participation in any collective action which could compromise the safety of the facility; 3° holding of objects or substances dangerous for the safety of the people (except narcotics); 4° racketeering; 5° physical violence against a fellow prisoner; 6° participation in an escape or an attempt of escape; 7° intentional acts compromising the safety of others. The duration of this confinement cannot exceed three days for children aged 13-15. Any child in confinement has the right to education.
- 29 Three types of misconduct are relevant: Misconduct of first degree defined by article D.249-1 of the CPP (see note 28, above); Misconduct of second degree defined in article D.249-2 of the CPP including: 1° threat to a member of the staff or a person in mission or visit in the facility (insulting a member of a staff cannot lead to a disciplinary sanction anymore); 2° participation in collective action likely to disturb the order in the facility; 7° non-respect of disciplinary sanctions previously given; Misconduct of third degree defined in the article D.249-3 of the CPP including 3° threat to a fellow detainee. The maximum duration of the placement in disciplinary solitary confinement is seven days for misconduct of the first degree, five days for the second degree and three days for the third degree.
- 30 Juveniles deprived of their liberty have the right to daily free exercise in the open air, sufficient food, clothes, hot showers, health care, education, participation in sports and recreational activities. The day programme is 12 hours during weekdays and 8.5 hours in the weekend. Each juvenile has his/her own room of 10 square metres and a window. Contacts with the wider community are allowed by telephone, correspondence, visits, radio and television. They have the right to leave the institution occasionally. They have the right to freedom of religion. Juveniles have the right of access to their files, although the director is allowed to limit the right to information. When the director decides to impose a measure or punishment, he/she first must hear the child.
- 31 See Weijers, I. and Liefwaard, T., "Jong vast - 1995 tot 2005. Vrijheidsbeneming in het Nederlandse jeugdstrafrecht- deel 2", *Proces 2007/5*, p. 206.
- 32 These regulations include model house rules, rules on the reporting of special cases, rules on the use of confinement and isolation, rules on the use of instruments of restraint, rules on violence instruction, rules on schooling and training programmes, rules on the placement and transfer of juveniles, rules on the possession of their own room, rules on urine analysis, rules on correspondence, rules on pocket money, rules on the costs of education and pedagogical activities, rules on an interruption of punishment.
- 33 Circulars on transport service, the extension of an imposed youth measure of placement with treatment, contact juveniles/director and media.
- 34 These rules deal with matters such as procedure of arrival, getting a room, the daily program, receiving a treatment plan, conduct, education and activities, disciplinary procedures and measures.
- 35 See Heide-Jorgensen, mr. L., Jeltens, mr. M., Groenendaal, mr E.G.C., "Kind in de cel, over de rechtspositie van gedetineerde minderjarigen", *NJB*, 30 November 2007, nr. 43, p. 2736.
- 36 Arts. 24-27 YCIA.
- 37 Arts. 54-59 YCIA.
- 38 Art. 25 sub 3 YCIA.
- 39 Art. 55 sub 1a YCIA.
- 40 See *Inventarisatie van strafrechtelijke interventies voor jeugdigen Ministerie van Justitie Programma Jeugd terecht*, [www.justitie.nl/images/Inventarisatie%20strafrechtelijke%20interventies%20Jeugdigen\\_tcm74-83121\\_tcm34-11103.pdf](http://www.justitie.nl/images/Inventarisatie%20strafrechtelijke%20interventies%20Jeugdigen_tcm74-83121_tcm34-11103.pdf).



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## 5 MONITORING, INSPECTION AND COMPLAINTS MECHANISMS

### Introduction

National policies and legislation must reflect the State obligation to protect all children deprived of their liberty from all forms of violence. This encompasses the obligation to ensure that all places where children in conflict with the law may be held – police lock-ups, prisons, detention facilities, welfare and educational facilities – cannot operate without accountability. Public scrutiny must be guaranteed in a number of ways, including ensuring access for children’s families,<sup>1</sup> NGOs, human rights institutions and ombudspersons, lawyers, media, and other elements of civil society, while respecting children’s privacy and dignity rights.

Effective reporting systems should be established in law. Competent bodies should have the power to demand ongoing information on treatment and conditions, and to investigate and address allegations of violence. All placements and movements between placements should be registered and reported. All incidents of violence should be recorded and reported. Information on violence should also be collected through confidential exit interviews with all children upon their release.

Independent inspections and monitoring by qualified bodies should take place on a regular basis, with full access to the facilities, and freedom to interview children and staff in private. These bodies should have the capacity to monitor treatment and conditions, and to investigate any allegations of violence in a timely manner. Such bodies can include ombudspersons, independent commissions, members of the public, or police review boards.

One of the recommendations of the *UN Secretary-General’s Study on Violence against Children* is that governments should ensure effective monitoring and access of all justice institutions: “Governments should ensure that institutions are inspected regularly by appropriately empowered independent bodies with the authority to enter without warning, interview children and staff in private and investigate any alleged violence; access to institutions by NGOs, lawyers, judges, ombudspersons, national human rights institutions, parliamentarians, the media, and others as appropriate should be assured, while respecting children’s privacy rights.”<sup>2</sup> According to the Committee on the Rights of the Child, under article 37(c) of the Convention on the Rights of the Child (CRC) dealing with the treatment of, and conditions for, children deprived of their liberty, State obligations include empowering independent and qualified inspectors “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.”<sup>3</sup>

72. Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.

73. Qualified medical officers attached to the inspecting authority or the public health service should participate in the inspections, evaluating compliance with the rules concerning the physical environment, hygiene, accommodation, food, exercise and medical services, as well as any other aspect or conditions of institutional life that affect the physical and mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.
74. After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution.

Source: 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113, annex.

National legislation should provide for complaints mechanisms. Children and their representatives should also have access to an appeals process. In addition, children should have opportunities to express themselves freely and verbalise their concerns. Guarantees that children and their families are heard should have a basis in law, rather than just guidance or institutional procedure manuals.<sup>4</sup>

One of the further recommendations of the *UN Secretary-General's Study on Violence against Children* is that governments should ensure effective complaints, investigation and enforcement mechanisms with respect to all justice institutions: "Governments should ensure that children have simple, accessible and safe opportunities to raise concerns and complain about the way they are treated without the risk of reprisals, and have access to the courts when necessary. All allegations of violence must be investigated thoroughly and promptly, safeguarding 'whistleblowers' from reprisals."<sup>5</sup> According to the Committee on the Rights of the Child, article 37(c) of the CRC also includes the right of every child deprived of his/her liberty "to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms."<sup>6</sup>

75. Every juvenile should have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.
76. Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.
77. Efforts should be made to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.
78. Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.

Source: 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, General Assembly resolution 45/113, annex.



When violence against a child takes place, the perpetrator(s) must be held accountable and the child affected must receive appropriate care, support and compensation. The UN Study on Violence against Children recommends that: “Governments should adopt and apply a continuum of appropriate criminal, civil, administrative and professional proceedings and sanctions against individuals who are responsible for violence against children as well as against those who are responsible for institutions where such violence takes place.”

Here below follows a description of the monitoring, inspection and complaints mechanisms which are in place in Belgium, England and Wales, France and the Netherlands.

## 5.1 Belgium

There are two inspection mechanisms in place concerning the police: the Police Committee (*Comité P*) and the General Inspectorate of the federal and local police force (*L'Inspection générale de la police fédérale et de la police locale*).<sup>7</sup> The Police Committee reports to the federal Parliament. The General Inspection reports to the Ministry of Home Affairs and the Ministry of Justice.

Monitoring boards (*commissions de surveillance*) exist for all prisons. They are made up of volunteers from the community. Each board monitors one or more prisons, and a central Council of Penitentiary Monitoring is in place for the whole of Belgium.<sup>8</sup> The boards consist of six people, and must include at least one judge, one doctor and one lawyer. Every month, each board must appoint several members to visit a prison at least four times. The boards have free access to all places in a prison. They have the right to consult on site, with some legal exceptions, all registers and documents, including all files containing personal information about the prisoners. They have the right to private correspondence with the prisoners and to come into contact with them without staff supervision. The monitoring boards have a complaints commission chaired by a magistrate to examine complaints by prisoners.<sup>9</sup>

The inspection of private facilities is managed by the service of pedagogical inspection of the Directorate-General of Youth Assistance. The inspection of the public youth protection institutions (IPPJs) is managed by the service of coordination of IPPJs.

In May 2007, the public youth protection institution of Saint-Servais (for girls) set up an internal Service of Institutional Assistance (*Service d'Assistance Institutionnelle*), which may be called upon by the management or a staff member when a problematic situation arises for a child or a staff member. This team of assistance has a supportive and monitoring role in any situation of actual or potential violence or tension that may occur. It mainly functions as a preventative body. However, it may also intervene, exceptionally, in a reactive way. It is generally felt that the existence of this body largely fulfils its preventative function, and is considered by the staff as a good way to prevent difficult situations with the girls from occurring.<sup>10</sup>

The (closed) federal Centre of Everberg is monitored by an evaluation commission, which is obliged to provide an annual report, the contents of which remain generally confidential.<sup>11</sup> The first report was issued in June 2004.<sup>12</sup> The commission concluded that there is a need for formally regulated mechanisms to assess the collaboration between the federal State and the Communities and the operation of the facility, as well as independent, scientific and methodological assessments by independent experts. It also stated that there was a need for “uniformity in the recording and the presentation of statistical data, in particular concerning the number and the origin of the young people placed, the application of the disciplinary powers...”<sup>13</sup>

The commission noted that: “The cooperation between the Flemish and French Communities proves to be a true exercise of balance. Indeed, the communities do not always have the same priorities in the assumption of responsibility for the young delinquents. Consequently, it would be desirable that the institutions act in concert in order to achieve results such as adapting the cooperation agreement or within the framework of the law reform regarding youth protection.”

Safety measures must be distinguished from disciplinary sanctions. Articles 15-19 of the internal rules of the Everberg Centre deal with the permissible sanctions, as well as isolation (solitary confinement). The federal authority and/or the Communities can impose sanctions with respect to juveniles whose behaviour contravenes the mission which was entrusted to the federal authority and/or the Communities. The disciplinary sanctions regime is also a matter of concern: “A manual containing the regulation of the sanctions must be developed and applied, taking into account the international obligations of Belgium, in particular isolation or solitary confinement must never be applied as a sanction, except if the measure is absolutely necessary to prevent the young person from injuring other people or him/herself, or causing serious damage.”<sup>14</sup>

The Criminal Code prohibits maltreatment of children including violence (arts. 29-30). It punishes ‘non assistance to people in danger’ (art. 422), which provides that “any person who, by condition or profession, is an agent of professional secrecy and has knowledge of an infringement laid down in the Criminal Code made against a minor” must declare this (art. 458*bis*). Individually, or together with the Youth Assistance administration, a child can make use of these provisions through legal channels. In practice, the child may either call upon the staff or the management of the institution of facility, or his/her lawyer.

In addition, the intervention of the general Delegate of the French Community on the rights of the child can be requested. The general Delegate has the duty to safeguard the rights and interests of children, including:

- To inform and ensure the protection of the rights and interests of children;
- To monitor the correct application of laws and rules concerning children;
- To recommend to the government, the parliament and any other proper authority responsible for children’s matters any proposal aimed at adapting the law and rules for a more complete and effective protection of the rights and interests of children;
- To receive information, complaints and/or requests for mediation relating to violations of the rights and interests of children;
- To carry out, at the request of the parliament, investigations on the operation of the relevant administrative services of the French Community.<sup>15</sup>

## 5.2 England and Wales

The Youth Justice Board monitors the performance of the children’s secure estate using its Effective Regimes Monitoring Framework. This framework focuses on the following four main areas:

1. Safeguarding: how safe each establishment is for the young people and the staff;
2. Behaviour management: how each establishment deals with difficult behaviour and rewards good behaviour;
3. The daily regime within each establishment; and
4. Case management: sentence planning and preparation for release.

Inspections of the Police Service, Youth Offender Teams (YOTs), Local Authority secure children's homes, Secure Training Centres, Young Offender Institutions and courts holding children are carried out by separate bodies, or multi-inspectorate teams.

Her Majesty's Inspectorate of Constabulary publishes a series of Inspectorate reports to the public. These include baseline assessment reports for each of the 43 English and Welsh police services, and thematic reports that cover a wide range of issues. A particularly relevant thematic report is devoted to child protection. It highlights issues associated with the "statutory, procedural and investigative duties that police undertake to safeguard the welfare and interests of child victims, witnesses and offenders".<sup>16</sup> Whilst no explicit information is given with regard to the specific child protection issues associated with children in police custody, the report concluded that: "there is clear potential for the application of a Best Value framework to this area with its self-assessment, benchmarking, and review processes".<sup>17</sup>

The Independent Police Complaints Commission (IPCC) sets standards for the way in which police handle complaints, and deals with complaints and conduct matters against police officers and staff in England and Wales, from members of the public and members of the police service. After a complaint has been recorded, a decision is taken in terms of whether the complaint can be dealt with locally (by the police force concerned) or through a police investigation. The IPCC also deals with appeals against investigations into complaints.

Police stations are also inspected by independent custody visitors (ICVs) who are local community members who check on the welfare of people in police custody, by visiting police stations unannounced.<sup>18</sup>

The most recent YOT inspection programme, in 2006-2007, was conducted jointly by the Commission for Social Care Inspection, the Healthcare Commission, HM Inspectorate of Constabulary, HM Inspectorate of Prisons, HM Inspectorate of Probation, the Office for Standards in Education, HM Inspectorate of Education and Training in Wales, and Social Services Inspectorate Wales.<sup>19</sup> Part of the inspection process involved interviews with young people who were engaging with YOT services. One of the inspection aims was to determine the extent to which children's health, safety and well-being were protected or improved: "The YOT exists to prevent offending by children and young people and thereby protect the public. Another element of this work includes safeguarding their rights and promoting their welfare. We see this as an essential issue in terms of protecting children and young people (from others or themselves)."<sup>20</sup>

Her Majesty's Inspectorate of Prisons carries out independent inspections of the conditions for, and treatment of, prisoners and other detainees in each prison, Young Offender Institution and immigration removal centre in England and Wales at least once every five years. Inspections are either announced (whereby the prison is informed in advance of the visit) or unannounced (the inspection team visits without giving any notice). Inspectors cannot be refused entry by the establishment. The different categories of inspections include: full inspections (where information is gathered from several sources, including staff, prisoners and visitors); follow-up inspections (which are predominantly guided by focusing on areas of concern identified in previous full inspections and draw on prisoner surveys, observations and analysis of prison data); and short follow-up inspections (which are unannounced and tend to be conducted when previous full inspections have revealed few concerns). The inspectorate team also produces thematic reports, the most relevant of which include a thematic review on young prisoners,<sup>21</sup> an analysis of children's experiences of

prison,<sup>22</sup> the perceptions of juveniles in custody,<sup>23</sup> and suicide in prison.<sup>24</sup> The inspectorate's survey questions cover topics relating to courts, transfers and escorts, complaints procedures, safety, healthcare, induction, education, exercise, keeping in touch with family and friends, resettlement and relationships with staff.

Her Majesty's Inspectorate of Prisons recently issued a 'Prisoner Safety' research publication, which summarised the findings of 'safety interviews' carried out in 12 prisons, two of which (Hindley and Stoke Heath) hold children.<sup>25</sup> The interviews revealed that the six most significant safety issues identified by the 24 children interviewed were: staff interaction; the response of staff to fights, bullying and self-harm; lack of trust in prison staff; disciplinary procedures; aggressive body language of staff; and discrimination on the basis of ethnicity or culture.

Inspection of Local Authority secure children's homes and Secure Training Centres was originally the responsibility of the Department of Health and the Commission for Social Care Inspection. Since April 2007, under the Education and Inspections Act 2006, inspections have been carried out under OFSTED, the Office for Standards in Education, Children's Services and Skills. OFSTED is also now responsible for inspecting children and family courts (previously the responsibility of HM Inspectorate of Court Administration). Inspections typically take place over several days, and the inspectors use standards and criteria devised by the Youth Justice Board. The Common Inspection Framework includes the following indicators concerning the health and safety of children in custody:

- The timely access to relevant effective personal guidance, care, advice and other support provided to promote personal development, safeguard welfare and achieve high standards of behaviour;
- The extent to which the provision contributes to the learners' capacity to stay safe and healthy.<sup>26</sup>

The Secure Accommodation Network claims states that secure children's homes are inspected annually. In response to a Parliamentary Question, it has been confirmed that, in 2006, three of the four Secure Training Centres in England and Wales (Rainsbrook, Medway and Hassockfield) received an unannounced inspection. So far, in 2007, Oakhill has received two unannounced inspections. Immediately after the deaths of two boys in 2004, unannounced inspections were conducted at Rainsbrook and Hassockfield.<sup>27</sup>

The Prisons and Probation Ombudsman for England and Wales investigates complaints from prisoners and those subject to probation supervision, or those upon reports that have been written. The Ombudsman is independent of the Prison Service and Probation Service, and is also responsible for investigating all deaths of prisoners.

By law, every prison in England and Wales must have an Independent Monitoring Board (IMB), previously known as 'Board of Visitors'. These boards consist of groups of ordinary members of the public, appointed by the Secretary of State, who have unrestricted access to their local prison at any time and can talk to any prisoner they wish to, out of sight and hearing of a members of staff if necessary. If a prisoner has an issue (e.g. with regard to staff/prisoner relations, visits, or bullying) that he/she has been unable to resolve through the usual internal channels available at the prison, he/she can put in a confidential request to see a member of the IMB. Each board meets approximately once a month and produces an annual report for the Secretary of State. Many IMBs choose to publish their reports although it is not mandatory to do so.

Local authority organisations which provide accommodation for children are required to have a procedure for considering representations, including complaints, from children, young people and other people under the Children Act 1989.

Parliamentary scrutiny occurs in the forms of:

- Parliamentary committees (made up of between approximately 10 and 50 Members of Parliament or Lords) which are either Select Committees (one for each government department), Joint Committees (which can conduct ongoing examinations of particular areas, such as human rights, or examine proposals for Bills on various subjects), General Committees (to consider proposed legislation) and Grand Committees (consider matters relating specifically to the countries of Scotland, Wales and Northern Ireland). A Children, Schools and Families Committee was established in November 2007, and other Committees relevant to children in conflict with the law include the Home Affairs Committee, and the Justice Committee.
- Parliamentary Questions (questions directed at the Government by an MP, to be answered either in person or in writing).
- Hansard (an edited version of what has been said in Parliament).

### 5.3 France

The juvenile wards of prisons (*quartiers mineurs*) and the juvenile detention facilities (*établissement pénitentiaire pour mineurs* (EPM)) fall under the same supervisory bodies and inspectorates as adult prisons. The EPMs also fall under the supervision of the Judicial Youth Protection Service (*Protection judiciaire de la jeunesse* (PJJ)).

The closed educational centres (*centres éducatifs fermés* (CEF)) are considered as educational facilities and not as juvenile penal facilities. They are inspected by the General Inspectorate of Judicial Services (*L'inspection générale des services judiciaires*), the Judicial Youth Protection Services Inspectorate (*L'inspection des services de la protection judiciaire de la jeunesse*) and the General Inspectorate of National Education (*L'inspection générale de l'éducation nationale*). Under the Law on medical-social institutions, these facilities are inspected by the Public Health Inspectorate (*Inspection de la santé publique*) and the Inspectorate of Sanitary and Social Affairs (*Inspection des affaires sanitaires et sociales*). The Department Head (*Préfet*) authorises the creation of such facilities and is responsible for their supervision, and can decide to close a facility.<sup>28</sup> The Code on social action and families includes provisions on the rights of placed children, including the right to human dignity and personal integrity, and to privacy, as well as security matters.<sup>29</sup>

The General Inspectorate of Judicial Services falls under the responsibility of the Ministry of Justice. It conducts inspections and investigations on matters such as staff respect of applicable standards and ethics. The Penitentiary Services Inspectorate (*L'inspection des services pénitentiaires*) is one of the inspectorates which is closest to the director of the Penitentiary Administration. It carries out visits and inspections, and inspects compliance with the applicable standards. In addition, it has an advisory role, and formulates guidelines, recommendations and instructions. It ensures cooperation with the inspectorates of the other ministries and is placed under the responsibility of a magistrate, a member of the General Inspectorate of Judicial Services, who is designated by the Minister of Justice. The General Inspectorate of Social Affairs (*L'inspection générale des affaires sociales*) inspects health and hygiene conditions. The General Inspectorate of National Education (*L'inspection générale de l'éducation nationale*) inspects education and vocational training. The Inspectorate of

Work Conditions (*L'inspection du travail*) inspects the hygiene and safety conditions of the prisoners' work places.

The General Inspectorate for the National Police (*L'inspection générale de la police nationale*) inspects the 419 facilities falling under the authority of the National Police. While the State Police Inspectorate (*L'inspection de la gendarmerie nationale*) has responsibility for the 3,600 State Police facilities. The public prosecutor has the authority to visit police custody facilities, and the Police Custody Officer (*L'officier de garde à vue*) monitors compliance with rules relating to the rights of the persons held in police custody.

All prisons have a Monitoring Board (*commissions de surveillance*). They are responsible for monitoring health and safety conditions, nutrition, the organisation of care, work conditions, the disciplinary regime, compliance with rules, education and social rehabilitation treatment. The members change every two years. The boards meet at least once a year. One or more of the members can visit the prison when they consider that this is necessary. The prison director will give the board a report on how the prison is functioning. The board may also interview any person involved in the functioning of the facility.<sup>30</sup>

Magistrates, the public prosecutor, the judge of sentences application (*Juge d'Application des Peines*), and the examining magistrate (*juge d'instruction*) have the power to visit prisons. They have a legal obligation to regularly visit prisons. Depending on the authority concerned, the frequency of such visits varies from once a year to every six or three months, to at least once a month.<sup>31</sup> During their visits, they can meet with the prisoners in private. Prisoners may also correspond with these legal authorities.<sup>32</sup>

The President of the Examining Chamber (*Président de la Chambre d'Instruction*) has the authority to visit any prison or juvenile detention facility (*établissement pénitentiaire pour mineurs*) (EPM), if he/she considers that this is necessary, and has the legal obligation to visit the prisons at least once every three months. The president also evaluates the conditions of pre-trial detention.<sup>33</sup> The examining magistrate (*juge d'instruction*) and the juvenile judge also have the authority to visit prisons. The juvenile judge has the legal obligation to visit juvenile wards of prisons and EPMS at least once a year to assess the conditions.

Members of Parliament also have the authority visit prisons. The deputies and senators can visit police custody facilities and prisons at any time. They must be accompanied by the director and a staff member at all times and they are subjected to the same safety requirements as visitors. They may not carry a mobile phone, a camera or any video equipment.

The National Commission of Deontology of Security (*La commission nationale de déontologie de la sécurité* (CNDS)) is an independent administrative body that was established in June 2000. This commission assesses the respect for deontology by every person in charge of the safety of the Republic. It has investigative and monitoring responsibilities. Any person who is a victim or witnesses incidents that could constitute non-compliance with deontological rules can inform the commission. The complaint is made through a deputy or a senator. The Prime Minister or the members of parliament can also refer cases to this authority. The public authorities must take all measures to facilitate the task of the commission.

A new reform that established a *Contrôleur général des prisons* (General Supervisor of Prisons) was passed in October 2007.<sup>34</sup> The general supervisor must ensure respect for the basic rights of persons deprived of their liberty and supervise prison conditions. The general supervisor is an independent authority, and will be nominated by Presidential decree for a

non-renewable period of six years. This authority is subject to confidentiality, and has the power to visit any facility accommodating people deprived of their liberty, including medical institutions, and to meet with anybody held in such facilities (except if the responsible authorities oppose because of grave and serious reasons related to the national security or defence, natural catastrophes or serious disruptions in the place to be visited).<sup>35</sup> The newly established general supervisor will give recommendations to the public authorities and propose modifications to legal standards, where considered necessary.

Every detainee has the right to present requests or complaints to the prison director, who can grant a meeting with the detainee if it is assessed there are sufficient reasons (art. 259 of the Code of Penal Procedure (CPP)). Each prisoner can ask to be heard by any person related to inspections or visits of the prison, without the presence of a staff member. A detainee can also appeal a decision taken against him/her by the prison director to the regional director, and to the Ministry of Justice against the decision in appeal by the regional director.<sup>36</sup>

The Defender of Children is an independent authority who can represent children, or their representatives (e.g. parents), public authorities or associations in cases of violations of the rights of the child. The defender has the power to examine the case and send recommendations to the authorities, except if the case is examined by a competent jurisdiction. In 2001, 2002 and 2003, questions relating to prisons represented 3% of the defender's caseload. They mainly concerned complaints about relations between children and parents in prison. The proportion of the caseload fell to 1% in 2006. In its annual reports, no mention is made of individual complaints. The reports of 2001 and 2004 contain the defender's general observations about the detention of children in France, following a number of visits to facilities.

#### 5.4 The Netherlands

The Minister of Justice has the final responsibility for everything that happens in youth custodial institutions (YCI).<sup>37</sup> Governmental supervision is described in the *Planning & Control Manual 2007*. Every four months, the directors of YCIs must report directly to the National Agency for Correctional Institutions (DJI) of the Ministry of Justice.<sup>38</sup> The information must be given according to management and policy indicators.<sup>39</sup> The use of force or instruments of (mechanical) restraint must be reported, along with the reasons why they were used, to the director of the YCI or the civil servant for selection of the Ministry of Justice. In cases of possible injury, or the use of a baton, teargas or a fire weapon, the director or the civil servant for selection of the Ministry of Justice are required to consult a physician.<sup>40</sup>

Immediate reporting is mandatory in relation to: escape; excessive use of force or violence; disturbance of order; suicide; unnatural death; and, every other incident within or outside the institution which has serious political value or is of interest for the media.<sup>41</sup> Special cases that may be reported one day later include: withdrawal or attempt at withdrawal of supervision in a semi-closed institution; no return after leave; violence against staff or other detainees; police contact during leave; possession of contraband, weapons, drugs; misuse of medicine; punishable acts of staff such as sexual abuse, intimidation, unacceptable relationships with the detainees; cases of hunger strikes, natural death, self-harm and suicide attempts; infectious disease; and, the immediate dismissal of staff.<sup>42</sup>

The Netherlands Court of Audit investigates whether public funds are collected and spent regularly and effectively. It aims to audit and improve the regularity, efficiency, effectiveness

and integrity with which the State and associated bodies operate.<sup>43</sup> According to its report 'Detention, treatment and aftercare regarding juvenile delinquents' (October 2007), the policy in YCIs was not in accordance with the law. The research focused on the question of what was done within the YCIs to work on improvement of behaviour, circumstances and future perspectives of the juveniles. The main conclusion of the Netherlands Court of Audit was that the effect of the time spent in a YCI should be improved: "Existing rules and daily practice are two different worlds, with a poor result for juveniles and society".<sup>44</sup> The report noted that little was done to improve the personal surroundings of the juvenile detainees or to analyse their offending. The juvenile detainees are not prepared to return to society and aftercare is often lacking. The indicators used in the government reporting system focus on management. They were not designed to test the policy towards the juveniles, or to measure any results such as prevention of recidivism. Effectiveness was not evaluated. The Netherlands Court of Audit was very concerned about the way YCIs function and the effectiveness of public spending in this domain.

In 2005 and 2006 several reports were published by Inspectorates. Their role is to investigate whether the institutional treatment meets the legal requirements and to evaluate whether youth policy is implemented effectively in the daily routine. They have an advisory role for the Minister of Justice. Inspections are not carried out on a regular basis. They take place upon the request of the government or are initiated by an inspectorate. Recently an inspection was made of all YCIs. Summarising the findings of all the recent reports, the Netherlands can be described as a country which invests in young people. Staff members work hard, but the overall results are poor. High numbers of juvenile detainees re-offend after their release, the waiting lists for rehabilitative treatment are very long, treatment is of low quality, and safety is not sufficiently guaranteed.

In 2005, upon request by members of parliament and the Minister of Justice, the Youth Care Inspectorate investigated YCI Den Engh. Research was conducted concerning the atmosphere, the quality of staff and treatment, the use of safety instruments (e.g. mechanical restraints), the reaction to the occurrence of violence, information supply to the Ministry of Justice, and compliance with laws and regulations.<sup>45</sup> The main conclusion was that child safety is guaranteed in Den Engh.<sup>46</sup> However, safety risks were too high in relation to detainees escaping. It reported that Den Engh did not record the implementation of basic rights, such as leave, visits, phone calls, etc. At times, the individual interests of the juveniles were forgotten, and a clear policy on sexual intimidation was not in place. Staff were trained in dealing with aggressive juveniles and violence. The inspectorate recommended YCI Den Engh to take concrete measures to improve internal and external communication.

In May 2006, the Youth Care Inspectorate investigated incidents at YCI Harreveld following concerns about sexual abuse and sexual incidents in October 2005.<sup>47</sup> Interviews were held with 65 juveniles and 56 staff members.<sup>48</sup> The inspectorate concluded that the quality of care was inadequate and the staff not sufficiently qualified to carry out their duties effectively.<sup>49</sup> The institution specialised in sex crimes, but it did not have a vision about how to handle the topic of sexuality. Juveniles said that they felt safe at Harreveld, but not at school. Communication between management and employees needed to be improved. Incidents were not always reported internally, staff members were frequently absent due to sick leave, and the atmosphere was tense. Cooperation between units was inadequate. And treatment plans for juveniles with complex behavioural problems were not accurate or did not exist.

In May 2006, as a result of the negative outcomes of the report on YCI Harreveld, the Minister of Justice asked the National Inspectorates of Youth Care, Execution of Sanctions,



Education and Healthcare for a national inquiry into safety at all fourteen youth custodial institutions. The report 'Safety in Youth Custodial Institutions: An Assignment With Risks' was published on 10 September 2007. The main question was whether YCIs fulfil their task to guarantee a safe living, treatment and working climate for juveniles and staff, and in school.<sup>50</sup> According to four inspectorates, the safety in Dutch YCIs was not fully guaranteed and only four out of the 14 YCIs operate at 'low risk'. Four YCIs were classified as having a 'moderate risk', and six YCIs were considered as being at 'severe risk' of an unsafe climate for the juveniles and the personnel. The YCIs did not succeed in using the period of detention for the upbringing and rehabilitative treatment of the juveniles. The right to psychiatric help was not guaranteed. There was an insufficient knowledge, and staff members are not educated or specialised, in working with this specific group of children. Efforts were made to control violent or dangerous situations but not enough was done to prevent such situations and to offer help. The inspectorates ordered the Dutch YCIs to make improvement plans and the YCIs classified as 'severe risk' were placed under special supervision. The inspectorates used many indicators to measure safety. For example:

- Theme: Prevention and control of aggression and violence.
- Criteria: The YCI undertakes sufficient action to prevent aggression and violence.
- Indicators: Safety of the building, safety awareness, takes stock of safety risks, policy on prevention and control of incidents, training of staff, policy on social conduct (polite ways of behaving), integrity policy.<sup>51</sup>
- Criteria: The YCI undertakes adequate action against aggression and violence.
- Indicators: Number of staff, registration and analysis of incidents, procedure for alarm, cooperation YCI and school regarding incidents, aftercare when incidents occur.
- Theme: Treatment.
- Criteria: The YCI guarantees the rights of juveniles deprived of their liberty.
- Indicators: Information is accessible for juveniles, procedure for complaints, assistance and legal aid, right to medical care and psychiatric treatment, vision on separation and isolation/solitary confinement, supervision of education, existence of day programme.
- Criteria: The YCI treats juveniles with respect.
- Indicators: Protection of privacy, carrying out of the rules for behaviour, responsibility and accountability towards the use of force and disciplinary sanctions, decisions about restrictions of liberty.

The Youth Custodial Institutions Act (YCIA) contains rules on participation and complaints. When juveniles enter a YCI they have to be informed of their rights and duties.<sup>52</sup> They can meet regularly with the director during special consultation hours. Every group (of children) has a representative who participates in meetings. By law, every institution has to appoint an independent Monitoring Board. The Board has four monitoring tasks: to monitor the execution of the detention sentence within the institution; to take notice of complaints by children and their parents, and to mediate; to deal with complaints and take decisions; and to advise the Minister of Justice, the Council for the Administration of Criminal Justice and the Protection of Juveniles, and the director about the execution of the detention sentence.<sup>53</sup>

The Commission for Complaints is part of the Monitoring Board and consists of a judge, a lawyer and two experts. Every month one member of the board, a 'commissioner', visits the YCI to consult with the detainees and to have a meal together with a group of children. The commissioner is a mediator in complaints about treatment and conditions. The children can send a letter of complaint to the commission. Decisions by the commission can be appealed via the Council for the Administration of Criminal Justice and the Protection of Juveniles (RSJ). This is an independent judicial body.<sup>54</sup> The members are appointed by the Crown. The Council is also an advisory body for the Minister of Justice on topics such as youth care, and the execution of sanctions, punishments and youth measures.<sup>55</sup> It serves as a watchdog for the quality of treatment, legal status and protection of juveniles who are under the responsibility of the State.<sup>56</sup>

**Interview with a 17-year-old boy (2007)**

*"Did you ever complain formally?"*

"No. I know of the existence of the inspection commission. But I have never seen the commissioner who should visit the institution once a month. He really does not do that. I have never seen him. No one like that has ever joined us for dinner."

*"You have never seen a person who mediates or takes decisions in complaints?"*

"No."

*"Did they tell you who you can go to when you have a problem?"*

"No."

*"Do you know their name?"*

"I know that a mechanism for complaints exists, but I do not know who is in charge of it."

The National Ombudsman deals with complaints about the actions of governmental bodies. So far, the Ombudsman has only investigated the position of juveniles placed in YCIs by a civil order.<sup>57</sup> It dealt with three complaints by juveniles who were in the same bus as adults during transport from a YCI to court. The Ombudsman ruled that transporting children with adult prisoners constituted a violation of the Convention on the Rights of the Child.<sup>58</sup>

The European Committee for the Prevention of Torture (CPT) visited the Netherlands in 2002 and in 2007. In 2002 no visit was made to a youth custodial institution and in the report following the 2002 visit no mention was made of violence against juveniles in YCIs.<sup>59</sup> As of December 2007, the report on the 2007 visit was not yet published, but the CPT website mentions a visit to Youth Custodial Institution The Hartelborgt in Spijkenisse in the week of 4-14 June 2007.

## Notes

- 1 Article 37(c) of the Convention on the Rights of the Child provides that every child deprived of liberty "shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances".
- 2 Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006, p. 218. [www.violencestudy.org](http://www.violencestudy.org).
- 3 Committee the Rights of the Child, *General Comment No. 10 Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10 (25 April 2007), para. 89.
- 4 See Paulo Sérgio Pinheiro, note 2 above, pp. 212-213.
- 5 Paulo Sérgio Pinheiro, note 2 above, p. 217.
- 6 Committee the Rights of the Child, *General Comment No. 10 Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10 (25 April 2007), para. 89.
- 7 See the Law of 15 May 2007 on general inspection referring to various dispositions relating to the status of certain members of police services (*Loi du 15 mai 2007 sur l'inspection générale et portant des dispositions diverses relatives au statut de certains membres des services de polices*).

- 8 See the Law of principles relating to the administration of penitentiary facilities and the judicial status of detainees of 12 January 2005.
- 9 Their role is: to independently monitor the prisons for which they are qualified, in particular as regards the treatment of prisoners and compliance with applicable standards; to submit, to the Minister and the central Council, opinions and information concerning questions which, in the prisons, present a direct or indirect link with the well-being of the prisoners, and to formulate proposals; to ensure mediation between the director and the prisoners if complaints are brought to their attention; to write an annual report on the prisons, the treatment of the prisoners and compliance with applicable standards.
- 10 For the purposes of the research for this report, an interview was conducted with Marie-Christine Delbovier, director of the public youth protection institution of Saint-Servais.
- 11 See art. 33 of the Cooperation Agreement of 17 July 2002. See also Chapter 2, section 2.1 Belgium, above.
- 12 See 'Rapport de la Commission d'évaluation du centre De Grubbe à Everberg, Juin 2004' in: *JDJ*, No. 239, Liège, November 2004, pp. 9-32.
- 13 *Ibid.*, p. 28.
- 14 *Ibid.*, p. 27.
- 15 See the Decree of 20 June 2002.
- 16 Her Majesty's Inspector of Constabulary, *Child Protection: HMIC Thematic Report*, HMIC, London, 1999, p. 10.
- 17 *Ibid.*, p. 53.
- 18 See <http://www.icva.org.uk/>
- 19 See Youth Offending Team Inspection, *Annual Report 2006/2007. Joint Inspection of Youth Offending Teams*, 2007.
- 20 *Ibid.*, p. 22.
- 21 See HMIP, *Young Prisoners: A Thematic Review by HM Chief Inspector of Prisons for England and Wales*, 1997.
- 22 See Worsey, R., *Young People in Custody 2004-2006*, HM Inspectorate of Prisons / Youth Justice Board, 2006.
- 23 See HM Inspectorate of Prisons, *Juveniles in Custody: A Unique Insight into the Perceptions of Young People Held in Prison Service*, 2004.
- 24 See HM Inspectorate of Prisons, *Suicide is Everyone's Concern*, 1999.
- 25 See HM Inspectorate of Prisons, *Prisoner Safety in HM Prisons*, 2007.
- 26 See Ofsted, *Common Inspection Framework, Amended for use in Secure Children's Homes and Secure Training Centres*, London, 2006.
- 27 See House of Commons Hansard Written Answers, 3 July 2007, Column 911W.
- 28 See art. L. 313-1, ff of the Code on Social Action and Families.
- 29 See art. L.311-3 of the Code on Social Action and Families.
- 30 See art. D.183 of the CPP.
- 31 See art. D.176-1 of the CPP.
- 32 See art. D.261 of the CPP.
- 33 See art. D.177 of the CPP.
- 34 See Law No. 2007-1545 of 30 October 2007 (*Loi n° 2007-1545 du 30 octobre 2007 instituant un Contrôleur général des lieux de privation de liberté*).
- 35 Art. 8 of Law No. 2007-1545 of 30 October 2007 (*Loi n° 2007-1545 du 30 octobre 2007 instituant un Contrôleur général des lieux de privation de liberté*).
- 36 See art. D.260 of the CPP.
- 37 See arts. 3b, 3c, 3d, 4, 5 and 8 of the Youth Custodial Institutions Act.
- 38 See *Handleiding justitiële jeugdinrichtingen* ('Manual Youth Custodial Institutions'), *Planning & Control 2007*, Model four-monthly report, p. 67.
- 39 *Ibid.*, pp. 126- 141.
- 40 See art. 12 of the Regulation on violence instruction for YCIs (*Regeling geweldsinstructie justitiële jeugdinrichtingen*).
- 41 See art. 2 sub 1 of the Regulation on reporting special incidents concerning juveniles (*Regeling melding bijzondere voorvallen jeugdigen*).
- 42 See art. 2 sub 2 of the Regulation on reporting special incidents concerning juveniles (*Regeling melding bijzondere voorvallen jeugdigen*).
- 43 See <http://www.rekenkamer.nl/9282400/v/>.
- 44 Lower House, 2007-2008, 31215, nrs. 1-2, *Detention, treatment and after care of juveniles in conflict with the law (Detentie, behandeling en nazorg criminele jeugdigen)*, p. 12.
- 45 See Youth Care Inspectorate, *De grenzen van Den Engh, de gevolgen van de werkwijze van Den Engh voor jeugdigen, personeel en omgeving*, Utrecht, January 2005, p. 8.
- 46 *Ibid.*
- 47 Research questions used by the Advisory Bureau Van Montfoort and the Youth Care Inspectorate included: Does the YCI have a vision on the topic of sexuality? Are staff sufficiently educated and trained? Do juveniles themselves experience safety? Do they have to cope with teasing, maltreatment, extortion? Are sexual incidents occurring? Are incidents discussed in the group? What is being done to make Harreveld a safer place? How does staff experience the safety of juveniles? Is the building safe? Are there shortages in staff? Is inspection adequate? Does teasing by staff happen too often? How is the relation between management and employees? Is a treatment registration system in use? Is work done according to a plan or protocols?
- 48 See Adviesbureau Van Montfoort, *Veilig Harreveld of hoe jongens hun verblijf op Harreveld beleven*, 2005; *Veilig Harreveld, de beleving van medewerkers in kaart gebracht*, 2005.
- 49 See Youth Care Inspectorate, *Onderzoek naar aanleiding van incidenten op Harreveld*, Utrecht, May 2006.
- 50 See *Inspectiejaarplan 2007*, para. 2.9.1, <http://www.inspectiesanctietoepassing.nl>.
- 51 The other indicators used by the inspectorates include:
 

|             |   |
|-------------|---|
| Theme:      | Treatment.  |
| Criteria:   | The YCI offers the juvenile a predictable perspective.  |
| Indicators: | Information is given about the goal and perspective of the detention, involvement of juvenile when a plan is made for stay and treatment, involvement parents, information is given about educational goal and perspective. |
| Theme:      | Treatment and upbringing.   |

- Criteria: The YCI sees the upbringing of the juvenile as a key issue.  
Indicators: Connection day programme and education with development of the juveniles, living environment is designed to meet developmental needs, composition of groups, multidisciplinary meetings about guidance of the juvenile, focus on starting point pupils, following of progress and development, day programme and treatment plan are coordinated, evaluation of implementation of treatment plan.
- Criteria: The YCI treats juveniles with psychiatric and behaviour problems.  
Indicators: Vision on prevention of psychiatric disorders, recognition and diagnosis of psychiatric disorders and how they can be treated, internal and/or external treatment for well known psychiatric disorders, vision on the execution of protocol medical treatment under coercion, multidisciplinary coordination of medical and psychiatric treatment, treatment plan for juveniles with a youth measure for treatment (*PIJ-maatregel*).
- Theme: Expertise of staff.  
Criteria: The YCI provides for professionalism.  
Indicators: Formation healthcare according to applicable standards and norms, 24-hour doctor or psychiatrist within reach, quality and expertise staff in relation to the group of juveniles concerned, policy development and professionalism staff and personnel, education on healthcare.

52 See art. 60 YCIA.

53 See art. 7 YCIA.

54 See *Wet van 13 december 2000, houdende tijdelijke instelling van de Raad voor strafrechtstoepassing en jeugdbescherming (Tijdelijke instellingswet Raad voor strafrechtstoepassing en jeugdbescherming)*, Bulletin of Acts and Decrees 2001, 20.

55 The advisory role of the RSJ is based on the 5th principle of the European Prison Rules.

56 See [www.rsj.nl](http://www.rsj.nl).

57 See National Ombudsman, *Report 2004/460*.

58 See National Ombudsman, *Report 2007/101-103*.

59 See *Report to the Authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe and to the Netherlands Antilles by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in February 2002, Strasbourg, 15 November 2002*.  
<http://www.cpt.coe.int/documents/nld/2002-30-inf-eng.pdf>.

## 6 DATA COLLECTION SYSTEMS

### Introduction

The Committee on the Rights of the Child often expresses concern in its concluding observations on State Party reports about the provision of very limited statistical data on the treatment of children in conflict with the law.<sup>1</sup> The Committee's General Comment No. 10 on children's rights in juvenile justice states that: "The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pre-trial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them. ... The Committee urges the States parties to systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to juvenile delinquency, in full accordance with the principles and provisions of [the Convention on the Rights of the Child]."<sup>2</sup>

More detail on the type of statistical data required by the Committee is provided in an annex to the General Guidelines regarding the form and content of periodic reports submitted after 31 December 2005.<sup>3</sup> In preparing these reports, States Parties should follow the guidelines and include, where appropriate, disaggregated statistical data. References to categories of disaggregation include age and/or age group, gender, location in rural/urban area, membership of minority and/or indigenous group, ethnicity, religion, disability or any other category considered appropriate. The disaggregated data should cover the reporting period since the consideration of the State Party's last report. States Parties should also explain or comment on significant changes that have taken place over the reporting period.<sup>4</sup>

As regards article 40 (The administration of juvenile justice) of the Convention on the Rights of the Child (CRC), the Committee requests appropriate disaggregated data, including by type of crime, on the:

- a) Number of persons under 18 who have been arrested by the police due to an alleged conflict with the law;
- b) Percentage of cases where legal or other assistance has been provided;
- c) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have received suspended sentences or have received punishment other than deprivation of liberty;
- d) Number of persons under 18 participating in probation programmes of special rehabilitation;
- e) Percentage of recidivism cases.<sup>5</sup>

As regards article 37(b)-(d) (Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings) of the CRC, the Committee requests appropriate disaggregated data, including by social status, origin and type of crime, on children in conflict with the law in respect of the:

- a) Number of persons under 18 held in police stations or pre-trial detention after having been accused of committing a crime reported to the police, and the average length of their detention;

- b) Number of institutions specifically for persons under 18 alleged as, accused of, or recognized as having infringed the penal law;
- c) Number of persons under 18 in these institutions and average length of stay;
- d) Number of persons under 18 detained in institutions that are not specifically for children;
- e) Number and percentage of persons under 18 who have been found guilty of an offence by a court and have been sentenced to detention and the average length of their detention.<sup>6</sup>

In relation to violence, the Committee also specifically requests, under article 37(b)-(d), appropriate disaggregated data in respect of the: “(f) Number of reported cases of abuse and maltreatment of persons under 18 occurring during their arrest and detention/imprisonment.”<sup>7</sup>

Some sources estimate that, at any one time, one million children worldwide are deprived of their liberty.<sup>8</sup> According to the *UN Secretary-General’s Study on Violence against Children*, this is certainly an underestimate and better data collection is urgently needed globally. In this regard, it notes that “information is hard to find and data on children in care and justice systems are not generally disaggregated.”<sup>9</sup> National policies and legislation on children in conflict with the law are improved if based on reliable data, and if this data is open to the public.<sup>10</sup> The UN Study contains a set of 13 recommendations for action to effectively prevent and address violence against children in justice systems. One of the recommendations specifically concerns registration and data collection, and provides that:

*10. Registration and collection of data.*

Governments should ensure that all placements and movements of children between placements, including detention, are registered and centrally reported. Data on children in detention and residential care should be systematically collected and published. At a minimum, such data should be disaggregated by sex, age, disability and reasons for placement. All incidents of violence should be recorded and centrally reported. Information on violence against children should also be collected through confidential exit interviews with all children leaving such institutions, in order to measure progress in ending violence against children.<sup>11</sup>

In this chapter, sections 6.1-6.4 provide information concerning the data collection systems with respect to children in conflict with the law in Belgium, England and Wales, France and the Netherlands. Special attention is given to the question of whether and how instances of violence are recorded, centrally reported and published, and analysed. Section 6.5 deals with the 15 juvenile justice indicators which have been developed by Unicef, the UN Office on Drugs and Crime, and other partners.

## 6.1 Belgium

*“The systematic gathering of data on crime and crime control has been a problem in Belgium for decades. This situation – despite increasing computerisation – is dramatic, especially regarding juvenile delinquency. Figures, if available, are scattered over several federal, regional and local agencies and hence neither reliable nor comparable.”<sup>12</sup>*

In 2002, in its Concluding Observations on the report of Belgium, the Committee on the Rights of the Child recommended that: “The State party establish a nationwide system such that disaggregated data are collected on all persons under 18 years for all areas covered by

the Convention, including the most vulnerable groups (e.g. non-nationals, children with disabilities, children of economically disadvantaged households, children in conflict with the law, etc.), and that these data are used to assess progress and design policies to implement the Convention.”<sup>13</sup>

This recommendation has not fully been met. Admittedly, laws were adopted, reports were written, and the National Institute for Forensics and Criminology was entrusted with the task of conducting research aimed at developing a system for the collection of data on children in conflict with the law. But, to date, such data are not systematically collected and published.

Due to the division of the juvenile justice system between the federal and community level, the responsibility for data collection is shared by the two authorities. Considering that this duty requires substantial financial means, the situation is different at each level. Currently, there are signs that both levels are slightly improving the way they cope with their responsibility. One sign is that they both have expressed the need to have a centralised and integrated approach. This approach is the opposite of the ‘split-up’ approach that has prevailed until now, with many different organisations being responsible for the collection of data with no shared or consistent vision.

The National Institute for Forensics and Criminology (INCC) is a federal institute for scientific research, whose independence is legally guaranteed. It falls under the responsibility of the Ministry of Justice and is divided into two departments: the forensic department deals with research on crime offenders and evidence gathering; and, the criminology department aims to attain better knowledge of criminal phenomena and ways to address them.

The division between the federal and community level is one of the reasons why the need for official criminal statistics was forgotten in the recent past. It can be said that the ‘awakening’ occurred in the INCC in 2001 – at least regarding juvenile delinquency – following the Concluding Observations of the Committee of the Rights of the Child. The INCC was entrusted with the task of conducting research aimed at developing a centralised system for the collection of data on children in conflict with the law. Since 2002, the INCC has been carrying out a project aimed at developing a statistical tool based on an integrated approach. Once developed, the tool will provide relevant data for the determination and improvement of policies. The largest limitation in implementing this statistical tool is of a cultural nature. Beyond financial and material difficulties, a ‘statistical culture’ in Belgium, at any level, is indeed largely lacking. The INCC is in practice asking people not only to change their way of working but also to work more. This sometimes meets resistance at the ground level, mainly because of a lacking – or weak – awareness of the issues at stake.

Several statistical projects are now run by the INCC, which often act as a data gathering process. However, the formal mission of the INCC is the analysis of data. The INCC is currently holding workshops with justice representatives to determine which statistics are currently available, what kind of statistics are needed and how to collect those statistics. The INCC uses data coming from various sources:

- Data on children in conflict with the law from the service of criminal policy, which falls under the Ministry of Home Affairs;
- Data on arrested children and penal cases referred to the youth court from the public prosecution service (Ministry of Justice, statistical services of the Board of Procurators General);
- Data on youth court decisions and sentences from the court offices (Ministry of Justice, service of the court registrars).

The data registered by the public prosecution service and by the court offices offer only one partial and skewed description of reality. In the new integrated approach, all of this data will be centrally collected and assessed. The INCC will be able to see which decisions have been made, e.g. percentages of classification without prosecution, referrals to Youth Assistance, diversion measures, referrals to the youth court in requisition (sentence-aimed/sentencing) or quotation (provisional).

At the French Community level (Wallonia and Brussels), two services are competent as regards data collection and analysis: one is part of the Directorate-General for Youth Assistance (DGAJ),<sup>14</sup> and the other is the Observatory on Childhood, Youth and Youth Assistance (OEJAJ).<sup>15</sup> The Methods, Research and Training service of the DGAJ is responsible for the collection and compilation of data related to Youth Assistance issues in general, thus including juvenile justice. Sigmajed is the database used for measures taken by advisors, directors of Youth Assistance and juvenile judges. This database was originally designed as a management tool to assess the use of financial resources by the institutions, thus not designed to provide information about the juveniles themselves.

The database contains measures taken between 1 January 2002 and 30 June 2004. The aim has recently been to transform data referring to *measures* into data referring to *people*. This has required the checking of the relevance of many data handling. It has been decided to bring the data up-to-date. In 2007, a thorough analysis will be carried out with data from 1 January 2002 to 31 December 2006, which should make preliminary insights into trends possible.

A first report was presented to the Directorate-General for Youth Assistance in November 2006.<sup>16</sup> The Hougardy Report formed the first attempt at an integrated statistical survey on children in conflict with the law.<sup>17</sup> This experience and its methodology will be used in the future to collect annual data relating to children in conflict with the law, including children placed in the public youth protection institutions (IPPJs) and the Centre of Everberg.

The OEJAJ was created as a common tool for all approved services and facilities dealing with children and youth issues, including juvenile justice. It fulfils a mission of support and its work intends to offer a transversal perspective and analysis. The mission of the OEJAJ is defined in a Decree of 12 May 2004 as follows:

- To regularly review social policies, data on childhood, youth and youth assistance, and public youth protection institutions and other competent services and facilities;
- To realise and support studies and scientific research, and to keep an inventory of all studies and scientific research on childhood, youth and youth assistance;
- To implement, for the French Community, articles 42 (publicity) and 44 (State party reports) of the Convention on the Rights of the Child;
- To promote any initiative aimed at improving the situation of children and youth in the French Community.

Another important source of information on children in conflict with the law is research findings. In Belgium, the key non-governmental organisations (NGOs) carrying out policy research on children in conflict with the law include: *Défense des Enfants International Belgique* (Defence for Children International-Belgium); *La Ligue des Droits de l'Homme/De Liga voor Mensenrechten* (The League for Human Rights); *Unicef Belgique/Unicef België* (Unicef Belgium); *La Coordination des ONG pour les droits de l'enfant* (Coordination of NGOs for children's rights); *De Kinderrechtencoalitie* (Children's Rights Coalition); *Kinderrechtswinkels* (Children's Rights Shops). A significant part of the research by universities in Belgium concerns juvenile justice related issues.



Though mainly carried out by criminology departments, other departments, such as anthropology, social work, law, psychology, communication studies, are also regularly active. Two departments in particular are involved with in-depth research: the Research Group on Juvenile Criminology of the Faculty of Law of the Catholic University of Leuven<sup>18</sup>; and the Psychology of Delinquency and Psycho-social Development Service of the Faculty of Psychology and Education of Liege University.<sup>19</sup> Several researchers and lecturers of the criminology department of the Free University of Brussels are currently dealing with issues relating to children in conflict with the law, including a doctoral dissertation on minors deprived of their liberty in public youth protection institutions.<sup>20</sup> The Interdisciplinary Centre for Children's Rights was recently created as a joint venture between the criminology department of the Catholic University of Louvain-la-Neuve,<sup>21</sup> and Defence for Children International-Belgium. Both partners aim to nurture and improve education and research on children's rights issues.

## 6.2 England and Wales

In England and Wales, the key government bodies responsible for collecting data relating to children in conflict with the law are the Youth Justice Board, the Home Office and the Ministry of Justice.

The Youth Justice Board (YJB) for England and Wales was set up under the Crime and Disorder Act 1998. Part of its function is to monitor the operation of the Youth Offending Teams (YOTs) and the provision of youth justice services. Specifically, the YJB: advises the Secretary of State on the operation of, and standards for, the youth justice system; monitors the performance of the youth justice system; purchases places for, and places children and young people remanded or sentenced to custody; identifies and promotes effective practice; makes grants to local authorities or other bodies to support the development of effective practice; and commissions research and publishes information.

The YJB produces annual statistics that present detailed national information on the offences committed by young people, the remand decisions made, the sentences given and the performance of the services available in the community and secure estate.<sup>22</sup> Data relating to the gender, age and ethnicity of sentenced children is also collected, along with the distance from home that a child is placed. Regional statistics are also gathered, providing regional information on offences, remand decisions and sentences given, during the same period. The Youth Justice Board has developed a set of six performance indicators used to monitor the performance of the secure estate in 2007-2008: Secure Training Centres (STCs), Local Authority secure children's homes and Youth Offender Institutions (YOIs). These are:

|   |   |
|---|---|
| Information from youth offending teams (YOTs) | If young people arrive without an 'Asset' or pre-sentence report, follow-up action must be taken within one hour and the young person managed as vulnerable until the information is obtained from the YOT. In the event of information not arriving, the secure establishment will alert the YJB by noon the day after reception.  |
| Time out of room                              | 95% of young people will spend less than 14 hours a day locked in their room.   |
| Hours of education                            | In 2007/08, 90% of young people will receive 30 hours a week of education, training, and personal development activity compliant with the National Specification for Learning and Skills (STCs) and secure children's homes and the Offender's Learning Journey (YOIs). For young people in YOIs, the expected performance will be 25 hours. Additionally, YOIs will ensure that attendance rates for timetabled education and training sessions do not fall below 90%. |

|                       |   |
|-----------------------|---|
| Literacy and numeracy | All young people entering secure facilities will be tested for literacy and numeracy, with 80% of young people on Detention Training Orders of 12 months or more improving by one skill level or more in literacy and/or numeracy to the level of need set out in their individual learning plan. |
| Reception             | All young people will be assessed by a clinician on reception for vulnerability and substance misuse.   |
| Substance misuse      | 90% of sentenced young people will have completed all goals set within their substance misuse care plan on release from custody.  |

The Home Office is the government department responsible for leading the national effort to protect the public from terrorism, crime and anti-social behaviour. The Home Office Research Development and Statistics Directorate (RDS) undertakes a range of research projects to inform policies and measure the impact of initiatives in the areas of crime, policing, justice, immigration, drugs and race equality. The publications produced by the Home Office include development and practice reports (for practitioners in specific fields), research studies (reports undertaken by or on behalf of the Home Office), research findings (giving a summary of research reports along with key results), and statistical publications (e.g. providing statistics on gender and race in the criminal justice system).

The new Ministry of Justice was launched in May 2007.<sup>23</sup> The Ministry of Justice publishes a range of statistics relating to the operation of the criminal and civil justice systems, and on aspects of criminal justice policy. These include:

- A monthly statistical release presenting tables on the population in custody with summary figures on the population in prison establishments, police cells, secure children's homes and Secure Training Centres. The publication also contains more detailed information on the make-up of the prison population by custody type, offence group, sentence length, age group and establishment.
- Annual National Statistics release, presented on a financial year basis and covering the number of persons arrested for notifiable offences by type of offence, age, sex, and police force area in England and Wales. The publication also includes information relating to police stops and searches of persons and vehicles including the reasons for the searches.
- Monthly National Statistics release presenting figures derived from the Police National Computer on the time taken to bring Persistent Young Offenders to justice. This release monitors the 1997 pledge to halve the arrest to sentence time for this offender group (from 142 to 71 days) in all Criminal Justice Areas.
- Annual National Statistics release presenting statistics on the re-offending of juveniles released from custody, receiving a pre-court disposal or a non-custodial court disposal in the first quarter of a particular year. These data relate to re-offending in a one year follow up period that results in a conviction or pre court disposal. This release measures progress on targets to reduce re-offending.

The ways in which violence against children can be measured are limited. Official statistics give one indication. For instance, rates of fights and assaults in prison are measured according to "the number of times that prisoners are charged with an offence against prison discipline by an officer and processed through an adjudication before the governor."<sup>24</sup> However, these figures do not represent the actual rates of violent incidents because prisoners may be reluctant to report incidents or because staff may chose to handle incidents informally.<sup>25</sup> The following extract provides an example of data collection concerning self-harm in prison, and the extent to which 'underreporting' impacts on data: "Reducing self-harm has been identified as one of the priorities for the juvenile estate and the Prison

Service as a whole. In December 2002, the Prison Service introduced a revised system for self-harm data collection that requires all staff to complete an F213SH form for every incident of self-harm known to occur within the establishment. The introduction of the new procedures has improved the validity and accuracy of the self-harm data collected although it is known that underreporting still continues. It is recognised by the Prison Service that access to good quality data on self-harm is vital to inform the development of appropriate and effective policy and practice at both a central and local level in an attempt to reduce, or at least more appropriately manage, vulnerable individuals. ... Since the introduction of the new F213SH form, Safer Custody Group figures show that there has been a 60% increase in reported cases in 2003 compared with 2002. In order to measure the extent of continuing under-reporting of self-harm, checks were made at 61 establishments across the estate; estimates were calculated for the total number of known/unknown (unrecorded) incidents. In total, the number of incidents in 2003 was estimated to be 18,710, 15% higher than the actual number reported.”<sup>26</sup>

Self-report measures have also been widely used to collect data concerning violence against children in penal custody. For instance, alongside official figures, academics have developed a better understanding of suicide and self-harm through an exploration of the perspective of the individual.<sup>27</sup> Likewise, victimization self-report surveys that have been developed in order to measure victimization in prisons and young offender institutions include the following questions which relate specifically to victimization: How many times over the past one month:

- Have you been called hurtful names or have other prisoners made insulting remarks about your family or girlfriend?
- Have other prisoners tried to stop you joining in activities, for example not allowed you to play pool or watch TV?
- Have you been asked by another prisoner to give him your canteen?
- Has anybody stolen your private property from your cell?
- Has another prisoner threatened you with violence?
- Have you been hit, kicked or in any other way assaulted by another prisoner?<sup>28</sup>

However, researchers have pointed out that these self-report methods, whilst useful in terms of providing information about the prevalence of a particular form of violence, do not allow for detailed explorations of the particular circumstances in which interpersonal violence arises.<sup>29</sup> A significant body of academic research has been concerned with the prevalence and nature of ‘bullying’ in youth custody settings. Researchers have assessed this aspect of prison violence using a variety of measures, such as self-reports by means of semi-structured interviews or structured questionnaires, as well as official records, such as discipline reports and bullying incident reports. A recent review of the statistical data available concerning bullying among prisoners concluded: “Recent advances in the research field include:

- 1) an increased understanding of the existence of indirect bullying between prisoners;
- 2) the development and further refinement of measures used to assess the frequency and severity of bullying behaviours;
- 3) identification of some of the intrinsic characteristics associated with membership to each of the bully groups; and
- 4) refinement of the analytic methodology used.”<sup>30</sup>

Other important sources of information on children in conflict with the law derive from research findings. The key NGOs carrying out policy research concerning children in conflict with the law in England and Wales include:

- The Howard League for Penal Reform ([www.howardleague.org](http://www.howardleague.org));
- The Prison Reform Trust ([www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk));
- The National Association for the Care and Rehabilitation of Offenders ([www.nacro.org.uk](http://www.nacro.org.uk));
- Revolving Doors ([www.revolving-doors.co.uk](http://www.revolving-doors.co.uk));
- Action for Prisoners' Families ([www.prisonersfamilies.org.uk](http://www.prisonersfamilies.org.uk));
- Inquest ([www.inquest.org.uk](http://www.inquest.org.uk));
- Justice ([www.justice.org.uk](http://www.justice.org.uk));
- National Society for the Prevention of Cruelty to Children ([www.nspcc.org.uk](http://www.nspcc.org.uk));
- Save the Children UK ([www.savethechildren.org.uk](http://www.savethechildren.org.uk));
- The Trust for the Study of Adolescence ([www.tsa.uk.com](http://www.tsa.uk.com));
- The Children's Charity NCH ([www.nch.org.uk](http://www.nch.org.uk));
- The Children's Society ([www.childrensociety.org.uk](http://www.childrensociety.org.uk));
- Children's Rights Alliance for England ([www.crae.org.uk](http://www.crae.org.uk)).

As well as conducting their own programmes of research, some of these organisations are also involved in commissioning independent inquiries into subjects concerning children in conflict with the law. For example, the Howard League for Penal Reform recently commissioned an independent inquiry into the use of restraint against children.<sup>31</sup>

A recent publication by the Children's Rights Alliance for England summarises key developments in human rights in England over the past 12 months.<sup>32</sup> The review concluded that, in recent months, England has moved even further away from a juvenile justice system that complies with the provisions and principles of the Convention of the Rights of the Child and other relevant international standards.

Youth justice issues are a prominent aspect of criminological research in university departments across England and Wales. Academics from a range of disciplines, including sociology, law, psychology, childhood studies, social policy, and of course criminology, engage in research concerning children in conflict with the law. Findings are disseminated through a range of channels, including books, peer-reviewed journal articles, conferences and workshops. Academic researchers are regularly contracted to evaluate intervention, education or treatment programmes for children in conflict with the law and multi-disciplinary research programmes across academic institutions have devoted themselves to issues associated with children in conflict with the law. For instance, SCoPic (the study of the social contexts of pathways into crime) is a five-year research programme exploring how young people become involved in crime. The programme is funded by the Economic and Social Research Council and draws together four UK-based studies, as well as international collaborative studies.

### 6.3 France

Data is collected and published concerning the different stages of the juvenile justice process. However, it is oftentimes impossible to properly analyse or compare the data because, amongst other things, the data is not always disaggregated (e.g. between 'persons' and 'cases'), and certain categories of specific data are incorporated but are not given separately.

To summarise, the juvenile justice process is as follows.<sup>33</sup> The Public Prosecutor receives complaints from the police departments. The Public Prosecutor can decide either to drop the charges or to prosecute. Instead of referring a case to a judge, he/she may also decide to deal with the child without resorting to formal trial ('diversion'). The Public Prosecutor can refer the case to the Examining Judge for minors (*Juge d'Instruction chargés des mineurs*), who can decide to drop the charges, to divert, or to refer the case to a juvenile judge (*Juges des enfants*), a juvenile court (*Tribunal pour enfants*), a (Juvenile) Assizes Court, or a police

court (*Tribunaux de Police ou Jurisdictions de proximité*).<sup>34</sup> Penalties can be imposed with respect to children aged 13 and above. Educational sanctions can be imposed with respect to children aged 10 years and above.<sup>35</sup>

The key government bodies responsible for collecting data relating to children in conflict with the law are also responsible for policy making. According to the law, all Ministers have the responsibility to collect, harmonise and release data relating to their 'activity' for each year (1 January - 31 December).<sup>36</sup> They usually release their reports one to two years after the data has been collected.

The most recently available data can be found in three key reports published by the Ministry of Justice: 'The Annual Justice Statistics' (*L'annuaire statistique de la Justice*), edition 2006 for the data available concerning 2004 and 2005 (1 January - 31 December),<sup>37</sup> as well as edition 2007 for some of the data relating to 2005; 'The Key Statistical Data concerning the penitentiary administration as at 1 January 2006' (*Les Chiffres clés de l'administration pénitentiaire au 1er Janvier 2006*); and 'The annual report of the commission that follows pre-trial detention' (*Le rapport annuel de la commission de suivi de la detention provisoire*), edition 2006 for data concerning pre-trial detention in 2004 (1 January - 31 December).<sup>38</sup>

All three reports use the same information sources. As regards children in conflict with the law, at least five primary information sources of data can be found. However, the data is not always comparable or adequate.<sup>39</sup>

#### Police Statistics (*statistique de Police*)<sup>40</sup>

The available police statistics relating to children is poor. The only data given is the number of arrested children, and entered on the prison register (*placés sous écrous*).<sup>41</sup> This data is collected monthly (disaggregation by type of offence) and is published every year. From the data, a measurement cannot be made of how many children were alleged as having committed an offence more than once in a given year. It is also impossible to determine how many were arrested and released.<sup>42</sup>

The Police Statistics give the total number of offences found and established by the police and *gendarmerie*. This data cannot be compared with the data released by the Ministry of Justice because it excludes offences reported by other authorities, all traffic fines and offences, and decisions issued by the police administration. In addition, different indicators (*unité de compte*) are used. The Ministry of Justice gives data on the number of cases. From the data, a measurement cannot be made of how many children were alleged or recognised as having committed an offence more than once in a given year.

#### Statistics from the Public Prosecutor (*La statistique dite des 'cadres du parquet'*)<sup>43</sup>

This data includes information collected annually by each jurisdiction according to the methods of the local statistic tool. The data concerns terminated cases (*affaires traitées*), over an entire year (1 January - 31 December), without disaggregating by the type of offence. The disaggregation by numbers of persons only start with the category of prosecuted persons (*personnes poursuivies*). The numbers of persons annually handed over to the law or referred to a court without a formal trial (*déférés*) are not given.<sup>44</sup>

#### Statistics from the examining judge (*Statistique issues du répertoire de l'instruction*)<sup>45</sup>

The source of this data is the computerised inventory of the examining judge. The collection only takes into account the terminated cases over an entire year. This data is released every year in the 'The Annual Justice Statistics'.<sup>46</sup>

Statistics from the sentences registered on police record (*Statistiques des condamnations inscrites au casier judiciaire*)<sup>47</sup>

The anonymous computerised recording, transmitted through the police record, for each definitive sentencing (*condamnations définitives*) gives a disaggregation for pre-trial committal order (*mandat de depot*), which indicates the numbers in pre-trial detention. No disaggregation is made by the type of procedure,<sup>48</sup> which determines the permissible length of pre-trial detention.

Statistics from the penitentiary facilities (*Statistique mensuelle et trimestrielle 'manuelle' des établissements pénitentiaires*)

These statistics include the number of detained persons at a precise date (at each first day of the month or every three months) or the number of entries in a three-month period. The data is disaggregated according to the status of the detainee (pre-trial detention or after-sentencing detention). However, the exact status of the detainee in pre-trial detention is left vague.<sup>49</sup> This information source is used in 'The Annual Justice Statistics' and in 'The Key Statistical Data concerning the penitentiary administration as at 1 January 2006'.

The statistic tool specifically dedicated to children faced numerous difficulties before becoming stable. Statistical tables concerning the decisions of juvenile judges and courts only appeared in 1998.<sup>50</sup>

The key organisations carrying out research concerning children in conflict with the law include several types of governmental organisations falling under the responsibility of the Prime Minister,<sup>51</sup> the Ministry of Justice,<sup>52</sup> and the Home Office,<sup>53</sup> as well as academic bodies such as *Le Centre de recherche sociologique sur le droit et les institutions pénales* (CESDIP) ([www.cesdip.com](http://www.cesdip.com)), *La Mission de recherche Droit et Justice, Ressource pour la Recherche Justice, Centre d'études et de recherches de science administrative* (CERSA) ([www.cersa.org](http://www.cersa.org)), and *Le Groupe Européen de Recherche sur les Normativités* (GERN) ([www.gern-cnrs.com](http://www.gern-cnrs.com)). The Judicial Youth Protection Service (PJJ) also carries out research.<sup>54</sup> Another important information source is the Child's Ombudsman.

## 6.4 The Netherlands

In a recent evaluation report on the Youth Custodial Institutions Act, it is pointed out that an extensive amount of data is available on the application of this act, but the utility of the data has considerable limitations:

- The data has many different sources, including annual reports of the youth custodial institutions, reports of the monitoring boards, annual reports of the National Agency for Correctional Institutions (DJI), and other reports by the DJI (e.g. the Planning and Control Manual).
- Comparisons show that in some cases these sources produce different data regarding the same indicator (e.g. the right to make complaints).
- Only part of the data is published and open to the public. The other part is accessible upon direct request.
- To evaluate the application of the Youth Custodial Institutions Act, important data are not (yet) available.<sup>55</sup>

The evaluators recommended that "measures should be undertaken to strengthen and increase the utility and the accessibility of the rather extensive data collection."<sup>56</sup>

In 2004, in its Concluding Observations on the report of the Netherlands, the Committee on the Rights of the Child recommended that the government should: “develop a system of data collection which is compatible with the Convention and collects data disaggregated by sex, age and other relevant indicators. Such a system should cover all persons under the age of 18 and pay particular attention to vulnerable groups, such as children deprived of a family environment, victims of abuse, sexual exploitation and trafficking and children in conflict with the law. Furthermore, the data should be used in the development of programmes and policies for the implementation of the Convention.”<sup>57</sup>

The key government bodies responsible for collecting data relating to children in conflict with the law are the National Agency for Correctional Institutions (DJI), which is part of the Ministry of Justice, the Research and Documentation Centre (WODC),<sup>58</sup> and the Public Prosecution Service (*Openbaar Ministerie*).<sup>59</sup> Independent bodies with a direct link to the government are the Central Bureau for Statistics (CBS), and the Council for the Administration of Criminal Justice and the Protection of Juveniles (RSJ). These bodies have a legal base and are financed by the state. Data is also collected by the national Inspectorates. The Ministry of Justice gives the assignments and finances research projects concerning youth custodial institutions carried out by the Inspectorates, the Research and Documentation Centre (WODC), and private research companies.<sup>60</sup> Furthermore information is gathered by the youth custodial institutions themselves, the monitoring boards and their commissions for complaints.

The directors of the youth custodial institutions (YCI) all work with the ‘Planning and Control 2007: Manual Youth Custodial Institutions’, which states what kind of information has to be submitted every four months to the National Agency for Correctional Institutions (DJI). The directors have to report on performance-indicators. For each indicator, the manual gives a definition, a description, specifications, the source of information, the frequency of reporting and a norm. A recent report by the national Inspectorates made clear that the safety of juveniles held in the fourteen youth custodial institutions was far more jeopardised than the Minister of Justice and politicians had foreseen.<sup>61</sup> The Ministry of Justice and the inspectorates are aware of the fact that the indicators that are now being used are not sufficient. It is clear that in the near future the indicators need to be reviewed.

| <b>MANAGEMENT INDICATORS</b><br>INFORMATION REQUIRED<br>EVERY FOUR MONTHS <sup>62</sup>   | <b>OTHER INDICATORS</b><br>INFORMATION REQUIRED<br>EVERY FOUR MONTHS <sup>63</sup>  | <b>POLICY INDICATORS</b><br>INFORMATION REQUIRED<br>ONCE A YEAR <sup>64</sup>   |
|---|---|---|
| <ol style="list-style-type: none"> <li>1. Number of escapes;</li> <li>2. Number of other withdrawals;</li> <li>3. Occupation;</li> <li>4. Use of violence between juveniles;</li> <li>5. Use of violence against staff;</li> <li>6. Number of reported complaints by juveniles;</li> <li>7. Schooling and training programmes (STP) and experimental leave;</li> <li>8. Day programme and address after departure;</li> <li>9. Absence of staff ;</li> <li>10. Budget control.</li> </ol> | <ol style="list-style-type: none"> <li>1. Results of custody plans;</li> <li>2. Results of treatment plans;</li> <li>3. Order measures and disciplinary sanctions, including separation from the group;</li> <li>4. Integrity staff.</li> </ol> | <ol style="list-style-type: none"> <li>1. Number of times the juvenile went on planned leave;</li> <li>2. Number of urine controls;</li> <li>3. Number of urine controls testing positive;</li> <li>4. Number of withdrawals of complaints;</li> <li>5. Number of disabled staff;</li> <li>6. Number of written complaints;</li> <li>7. Number of incidents regarding protection of information.</li> </ol> |

The data gathered by the DJI is put in the database TULP/JJI. This is an information system to which all the YCIs are connected. Every child present in an institution has a unique registration number. The database is not open to public use. In the case of serious incidents, the DJI has to be informed immediately by the directors. Information about such incidents are not registered in TULP/JJI.

The National Agency for Correctional Institutions (DJI) publishes data concerning the numbers of children in youth custodial institutions on its website. Data on incidents of violence are not published. It is therefore difficult to trace which information is available and how it is used, for individual responses or for making policy. Data is often collected or given upon the request of politicians or media after the occurrence of incidents. For the purposes of this research project, a formal Government Information (Public Access) Act request had to be sent to the Minister of Justice in order to be able to receive data specifically concerning violence against children in youth custodial institutions.<sup>65</sup>

The National Police monitor is published every two years in cooperation with the Ministry of Justice and the Ministry of Home Affairs.<sup>66</sup> The Research and Documentation Centre (WODC) is part of the Ministry of Justice and conducts research about judicial topics such as youth criminality. Since 1999, the WODC, the CBS and the DJI have a mutual publication on developments of criminality and justice.<sup>67</sup> The annual publications contain statistical data in the field of criminal law based on existing databases and annual reports. Youth statistics are included.

The Central Bureau for Statistics (CBS) is an independent (substantive) administrative body. The CBS undertakes research and publishes statistics on behalf of the government. Although the hierarchical relation between the Ministry and the CBS no longer exists, the Minister of Economic Affairs is responsible for the budget and the quality of the statistics. The CBS has a legal base under the Law for the CBS, 20 November 2003.<sup>68</sup> Database Statline contains a wide variety of national statistics and also has self-report figures of victims and offenders.<sup>69</sup> The database is accessible via internet.

Each youth custodial institution has a Monitoring Board and, in turn, each board has a commission for complaints.<sup>70</sup> The numbers of complaints must be included in the annual report of the institution (see above). The Council for the Administration of Criminal Justice and the Protection of Juveniles (RSJ) is an independent body with a legal base.<sup>71</sup> RSJ members are appointed by the Crown. It is an advisory body and a body for appeal.<sup>72</sup> The decisions are published anonymously in a database on its website.<sup>73</sup>

The Dutch Youth Institute (NJI) publishes the Database Effective Youth Intervention on its website.<sup>74</sup> All youth interventions concerning programmes on prevention, treatment and sanctions are mentioned. The research and policy database judicial documentation (OBDJ) is a database especially developed for the measurement of recidivism.

The analysis of the quantitative/statistical data can be complicated. For example, when reporting instances of violence or threat of violence by other children, is the institution reporting 20 cases more safe than the institution that gives notice of 215 cases?<sup>75</sup> And is the regime in the youth custodial institution where in 2006 a total of 1995 order measures and disciplinary punishments were given more alarming than that of the institution reporting a total number of 255 measures and punishments?<sup>76</sup>

In short, information and statistical data are collected by many different bodies. They are accessible via annual reports, publications and websites, or upon request. An annual



publication dedicated specifically to official youth statistics is missing. Statistical data relating to violence against children in youth custodial institutions are not included in the statistics which are made available to the public, for instance, data concerning the numbers of child injuries, child deaths including suicides, the use of force or instruments of restraint by staff, the use of closed or solitary confinement, or complaints made by detainees relating to violence. Though some of the weak parts in the data collection process are seemingly difficult to prevent, the lack of transparency with regard to the occurrence of violence in the YCIs should be solved immediately.

Other important sources of information on children in conflict with the law include research findings by several independent entities such as Advisory Bureau Van Montfoort, Verwey-Jonker Institute, PI Research and FORA. Relevant academic research is carried out by several universities. The Amsterdam Centre for Child Studies in partnership with the Free University of Amsterdam (ACK) is known for research on juvenile justice, and has broad expertise concerning child safety and protection issues.

Non-governmental organisations (NGOs) regularly carry out policy research on children's rights issues. Particularly Defence for Children International Netherlands is active in the field of juvenile justice. The Children's Rights Coalition cooperates in making shadow reports for the Committee on the Rights of the Child preceding the report of the government every four years (Defence for Children International Netherlands, *Kinderrechtswinkels*/Childrens Rights Shops, Unicef Netherlands, Plan Netherlands, Nederlands *Jeugdinstituut*/Dutch Youth Institute, *Jantje Beton*, *Nationale Jeugdraad*/National Youth Council, Save the Children and *Stichting Kinderpostzegels Nederland*).

## 6.5 The Fifteen Juvenile Justice Indicators

*“When government officials and the institutions making up the juvenile justice system do not have information either about the functioning of the system or the children who are in contact with it, abuse, violence and exploitation can occur with impunity, and the experience of the child is unlikely to be in his or her best interests. ... A child may spend too long periods deprived of liberty or be sentenced to a measure that is inappropriate for ensuring his or her welfare. A delay in a child's case may go unnoticed for months or even years. Government officials may find it difficult to assess the impact of new juvenile justice policies or guidelines. In short, a failure to carefully record and strategically make use of juvenile justice related information contributes to a failure to ensure the protection of the child in conflict with the law.”<sup>77</sup>*

In 2007, Unicef and the United Nations Office on Drugs and Crime published a ‘Manual for the measurement of juvenile justice indicators’. The manual is the result of a long process to identify and promote the use of global juvenile justice indicators.<sup>78</sup>

Indicator: an indicator provides a common way of measuring and presenting information that reveals whether standards are being met.<sup>79</sup>

The main purpose of the manual is to introduce 15 juvenile justice indicators and to make clear their utility. It contains practical guidance, strategies and tools for information

collection, information collation and calculation of the indicators. For each indicator there are suggested categories of disaggregation. The indicators provide a framework for measuring and presenting specific information about the situation of children in conflict with the law. This information concerns both quantitative values, such as the number of children in detention on a particular census date, and qualitative values concerning the existence of relevant policy. They are not designed to provide complete information on all aspects of children in conflict with the law in a particular country. Rather, they are intended as a basic dataset and comparative tool that offers a starting point for assessment, evaluation and service and policy development.<sup>80</sup>

The 15 Juvenile Justice Indicators

| INDICATOR                      |                                     | DEFINITION   |
|--------------------------------|-------------------------------------|--|
| <b>QUANTITATIVE INDICATORS</b> |                                     |  |
| 1                              | Children in conflict with the law   | Number of children arrested during a 12 month period per 100,000 child population  |
| 2                              | Children in detention               | Number of children in detention per 100,000 child population   |
| 3                              | Children in pre-sentence detention  | Number of children in pre-sentence detention per 100,000 child population  |
| 4                              | Duration of pre-sentence detention  | Time spent in detention by children before sentencing  |
| 5                              | Duration of sentenced detention     | Time spent in detention by children after sentencing   |
| 6                              | Child deaths in detention           | Number of child deaths in detention during a 12 month period, per 1,000 children detained  |
| 7                              | Separation from adults              | Percentage of children in detention not wholly separated from adults   |
| 8                              | Contact with parents and family     | Percentage of children in detention who have been visited by, or visited, parents, guardians or an adult family member in the last 3 months  |
| 9                              | Custodial sentencing                | Percentage of children sentenced receiving a custodial sentence  |
| 10                             | Pre-sentence diversion              | Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme   |
| 11                             | Aftercare                           | Percentage of children released from detention receiving aftercare   |
| <b>POLICY INDICATORS</b>       |                                     |  |
| 12                             | Regular independent inspections     | Existence of a system guaranteeing regular independent inspection of places of detention; Percentage of places of detention that have received an independent inspection visit in the last 12 months |
| 13                             | Complaints mechanisms               | Existence of a complaints system for children in detention; Percentage of places of detention operating a complaints system  |
| 14                             | Specialised juvenile justice system | Existence of a specialised juvenile justice system   |
| 15                             | Prevention                          | Existence of a national plan for the prevention of child involvement in crime  |

In the course of the research for this report, an attempt was made to measure the 15 juvenile justice indicators in Belgium (French Community), England and Wales, France and the Netherlands. The results can be found in the Annex.

## Notes

- 1 All of the Committee's concluding observations on State Parties reports can be found at [www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm).
- 2 Committee on the Rights of the Child, *General Comment No. 10 Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10 (25 April 2007), para. 98.
- 3 See Committee on the Rights of the Child, *General Guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention*, UN Doc. CRC/C/58/Rev.1 (29 November 2005).
- 4 *Ibid.*, paras. 2-3.
- 5 Committee on the Rights of the Child, *General Guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1(b), of the Convention*, UN Doc. CRC/C/58/Rev.1 (29 November 2005), Annex, para. 23.
- 6 *Ibid.*, para. 24.
- 7 *Ibid.*
- 8 See Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006, p. 191. [www.violencestudy.org](http://www.violencestudy.org). See also Cappelaere, G., Grandjean, A., Naqvi, Y., *Children Deprived of Liberty. Rights and Realities*, Éditions Jeunesse de droit, Defence for Children International, 2005, pp. 44-45.
- 9 See Paulo Sérgio Pinheiro, note 8 above, p. 191.
- 10 *Ibid.*, 213.
- 11 *Ibid.*, p. 218.
- 12 Van Dijk, C., Dumortier, E. and Eliaerts C., "Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice", in: Junger-Tas, J. and Decker, S.H. (Eds.), *International Handbook of Juvenile Justice*, Springer, Dordrecht, 2006, pp. 187 - 223 at p. 188.
- 13 Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.178, 13 June 2002.
- 14 *Direction Générale de l'Aide à la Jeunesse*.
- 15 *Observatoire de l'enfance, de la jeunesse et de l'aide à la jeunesse*.
- 16 See Hougardy, L., *Institutions Publiques de Protection de la Jeunesse et Centre fermé provisoire d'Everberg. Rapport statistique intégré 2006*, Ministère de la Communauté Française, Direction Générale de l'Aide à la Jeunesse, service de coordination des IPPJ, 2007.
- 17 *Ibid.*
- 18 KUL, Katholieke Universiteit Leuven.
- 19 Ulg, Université de Liège.
- 20 ULB, Université Libre de Bruxelles.
- 21 UCL, Université Catholique de Louvain.
- 22 See Youth Justice Board, *Youth Justice Annual Statistics 2005/06, 2007*. [www.yjb.gov.uk](http://www.yjb.gov.uk). See also Chapter 2, section 2.2 England and Wales, above.
- 23 It is made up of the following core components:
  - The National Offender Management Service: Administration of correctional services in England and Wales through Her Majesty's Prison Service and the Probation Service, under the umbrella of the National Offender Management Service.
  - Youth justice: and sponsorship of the Youth Justice Board.
  - Sponsorship of the Parole Board, HM Inspectorates of Prison and Probation, Independent Monitoring Boards, and the Prison and Probation Ombudsmen.
  - Criminal, civil, family and administrative law: Criminal law and sentencing policy, including sponsorship of the Sentencing Guidelines Council and the Sentencing Advisory Panel and the Law Commission.
  - The Office for Criminal Justice Reform, hosted by the Ministry of Justice but working trilaterally with the three CJS departments, the Ministry of Justice, Home Office and Office of the Attorney General.
  - The Courts Service: Administration of the civil, family and criminal courts in England and Wales through Her Majesty's Courts Service (HMCS).
  - The Tribunals Service: Administration of tribunals across the United Kingdom Legal Aid, and the wider Community Legal Service, through the Legal Services Commission.
  - Support for the Judiciary: Judicial appointments, via the newly created Judicial Appointments Commission; the Judicial Office and Judicial Communications Office.
  - The Privy Council Secretariat and Office of the Judicial Committee of the Privy Council.
  - Constitutional affairs: electoral reform and democratic engagement; civil and human rights; freedom of information; management of the UK's constitutional arrangements and relationships including with the devolved administrations and the Crown dependencies.
  - A headquarters focused to shape overall strategy and drive performance and delivery.
- 24 Edgar, K., O'Donnell, I. and Martin, C., "Tracking the pathways to violence in prison", in Lee, R. and Stanko, E. (Eds.), *Researching Violence*, Routledge, London, 2005, p. 69.
- 25 See Liebling, A., "Prison officers, policing and the use of discretion", 4 *Theoretical Criminology* 2000, pp. 333-357.
- 26 *Closed Settings, Closed Minds? - Young People Who Self Harm*, Interim Inquiry Report 3, [www.selfharmuk.org](http://www.selfharmuk.org).
- 27 See Liebling, A., *Suicides in Prison*, Routledge, London, 1992.
- 28 Edgar, K., O'Donnell, I. and Martin, C., "Tracking the pathways to violence in prison", in: Lee, R. and Stanko, E. (Eds.),

- Researching Violence*, Routledge, London, p. 70.
- 29 See Bottoms, A., "Interpersonal violence and social order in prisons.", in: Tonry, M. (Ed.), *Crime and Justice*, University of Chicago Press, Chicago, 1999.
- 30 Ireland, J., "Bullying among prisoners: the need for innovation.", in: Ireland, J. (Ed.), *Bullying Among Prisoners: Innovations in Theory and Research*, Willan, Devon, 2005.
- 31 The Howard League for Penal Reform, *The Lord Carlisle of Berriew QC: An Independent Inquiry Into the Use of Physical Restraint, Solitary Confinement and Forcible Strip Searching of Children in Prisons, Secure Training Centres and Local Authority Secure Children's Homes*, London, The Howard League for Penal Reform, 2006
- 32 See Children's Rights Alliance for England, *State of Children's Rights in England: Annual Review of UK Government Action on 2002 Concluding Observations of the United Nations Committee on the Rights of the Child*, London, 2005.
- 33 See also Chapter 2, section 2.3 France, above.
- 34 See The Annual Justice Statistics, *Orientation des affaires par le Parquet dans le cadre de la procédure pénale en France*, 2006 p. 103.
- 35 See also Chapter 2, section 2.3 France, above.
- 36 See e.g. *Loi de programmation de la justice de 2002*.
- 37 This report compiles statistical data over a period of five years, including the last year for which the data is available (2004 or 2005). See *The Annual Justice Statistics*, edition 2006, p. 3.
- 38 The data relating to children in pre-trial detention are included in the Police Statistic (*écroués* means to be entered on the prison register), in the statistics from the police records and in the penitentiary statistics. They are also available when the Judge of liberties and detention (*Juge des libertés et de la détention*) issues the committal order. These sources do not always make it possible to distinguish the type of committal order. The data from the examining judge (*statistique issues du repertoire de l'instruction*) disaggregate between children and adults. The penitentiary statistics also disaggregate between children and adults when presenting the number of detainees for each trimester. The minors taken into account are only the ones who are still under 18 at the date of registration. However, some adult detainees may have entered the facility when they were under 18. 'The Annual Justice Statistics' provide data concerning pre-trial detention of children ordered by the (juvenile) examining judge or the juvenile judge.
- 39 See Ministry of Justice, 'The annual report of the commission that follows pre-trial detention', edition 2006, pp. 151-153.
- 40 See Home Office, [www.interieur.gouv.fr](http://www.interieur.gouv.fr).
- 41 Part of the group of arrested persons for whom the public prosecutor chooses a procedure of formal trial. This legal category is vague because the entrance on the police register may be ordered by several types of mandates (e.g. summons, warrant for arrest, committal order).
- 42 In some courts, the public prosecutor decides which procedure to follow just by discussing over the phone with the police officer who heard the child alleged as having infringed the law. They go to trial based upon the information the police has at the time of the conversation, which often takes place shortly after arrest. It is impossible to determine how many cases are being dealt this way. It is impossible to know for how long the children are being detained because the centrally collected data on the length of police custody is not precise: less or more than 24 hours and not disaggregated according to age, meaning that no distinction is made between adults and children.
- 43 See Ministry of Justice, 'The Annual report of the commission that follows preliminary detention', edition 2006, p.151.
- 44 This data is established annually and is only released in part in 'The Annual Justice Statistics'.
- 45 See Ministry of Justice, 'The annual report of the commission that follows preliminary detention', edition 2006, pp.151-152.
- 46 For example, *La statistique dite des 'cadres du parquet'* and *La Statistique issues du repertoire de l'instruction* do not use the same definitions, and some of the differences between the two sources are difficult to explain. See Ministry of Justice, 'The annual report of the commission that follows preliminary detention', edition 2006, p. 152.
- 47 The police record does not provide information on acquittals and discharges, which are only taken into account in the statistics of the *cadres du parquet*, without referring to a prior placement in pre-trial detention. Cases of pre-trial detention followed by acquittal or discharge are not systematically listed. See Ministry of Justice, 'The annual report of the commission that follows preliminary detention', edition 2006, pp. 152-153.
- 48 The data relating to the procedure of *comparution immédiate* (immediate trial) is missing.
- 49 For example, pre-trial detention ordered during the examination process, detainee awaiting judgement after the examination process, detainee immediately tried and sentenced, detainee awaiting appeal (until the sentence is definitive, the detainee is still considered as being in pre-trial detention).
- 50 See Ministry of Justice, 'The annual report of the commission that follows preliminary detention', edition 2006, p. 154.
- 51 For example, *Centre d'Analyse stratégique*.
- 52 For example, *Commission de suivi de la détention provisoire*.
- 53 *Institut National des Hautes Etudes de Sécurité* (INHES, [www.inhes.interieur.gouv.fr](http://www.inhes.interieur.gouv.fr)) and *Observatoire National de la Délinquance* (OND).
- 54 *Centre National de Formation et d'Etudes de la Protection Judiciaire de la Jeunesse* (CNFE-PJJ).
- 55 Bruning, M.R., Liefwaard, T., Volf, L.M.Z., *Rechten in justitiële jeugdinstellingen: evaluatie Beginselenwet justitiële jeugdinstellingen*, WODC, Vrije Universiteit, Amsterdams Centrum voor Kinderstudies, 2004, p. 189.
- 56 Bruning, M.R., Liefwaard, T., Volf, L.M.Z., *Rechten in justitiële jeugdinstellingen: evaluatie Beginselenwet justitiële jeugdinstellingen*, WODC, Vrije Universiteit, Amsterdams Centrum voor Kinderstudies, 2004, <http://www.ack.vu.nl/htmls/onderzoek/samenvattingengels.pdf>, p. 8.
- 57 Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: The Kingdom of the Netherlands (Netherlands & Aruba)*, UN Doc. CRC/C/15/Add.227 (26 February 2004), para. 25.
- 58 *Wetenschappelijk Onderzoek- en Documentatiecentrum (WODC) (Afdeling Statistische Informatievoorziening en Beleidsanalyse (SIBa))*.
- 59 See Public Prosecution Service, *MEGAbestand OM2002-2006, Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*.
- 60 Private research bureaus include Stichting Alexander and the Van Montfoort Adviesbureau.
- 61 See Youth Care Inspectorate *et al. Veiligheid in justitiële jeugdinstellingen een opdracht met risico's*, September 2007.
- 62 See National Agency for Correctional Institutions (DJI), *Planning & Control 2007, Handleiding justitiële jeugdinstellingen*,

- pp. 126-138.
- 63 Ibid., pp. 126-138.
- 64 Ibid., pp. 139-141.
- 65 WOB: *Wet Openbaarheid Bestuur* (Government Information (Public Access) Act.)
- 66 See e.g. *Politiemonitor bevolking 2006, Landelijke rapportage*, Hilversum, 2006.
- 67 See Heide, W. van der, Eggen *et al.*, “*Criminaliteit en rechtshandhaving 2006: C&R 2006*”, WODC, Boom Juridische Uitgevers, The Hague, 2007.
- 68 See *Staatsblad 2003*, 516.
- 69 See [www.statline.nl](http://www.statline.nl).
- 70 See art. 7 of the Youth Custodial Institutions Act.
- 71 See Law of 13 December 2000 (*Wet van 13 december 2000, houdende tijdelijke instelling van de Raad voor strafrechtstoepassing en jeugdbescherming (Tijdelijke instellingswet Raad voor strafrechtstoepassing en jeugdbescherming)*).
- 72 The advisory role of the RSJ is based on the 5th principle of the European Prison Rules.
- 73 See <http://80.95.160.43/indexDB.html>.
- 74 See [www.nji.nl](http://www.nji.nl).
- 75 For the purposes of this research project, the following statistics were provided by the DJI upon request: total number of cases in which juveniles in each YCI used force or threatened to use force against another young person which led to the imposition of an order measure or a disciplinary sanction.
- 76 For the purposes of this research project, statistics were provided by the DJI upon request concerning the numbers of order measures and disciplinary sanctions imposed in each YCI.
- 77 United Nations Office on Drugs and Crime and Unicef, *Manual for the Measurement of juvenile justice indicators*, United Nations, New York, 2007, p. 2
- 78 Ibid.
- 79 Ibid.
- 80 Ibid.



## ANNEX: MEASUREMENT OF THE 15 JUVENILE JUSTICE INDICATORS

Four of the 11 'quantitative' juvenile justice indicators are identified by Unicef and partners as CORE, meaning of core importance. Here below follows information on these CORE indicators in Belgium (Wallonia and Brussels), England and Wales, France and the Netherlands.

| Population of children |   |
|------------------------|---|
| Belgium:               | 2,045,073 children aged 0-17; <sup>1</sup>  |
| England and Wales:     | 13,200,000 children aged 0-17;<br>5,486,000 children aged 10-17 in England and Wales (age of criminal responsibility). <sup>2</sup> |
| France:                | 14,189,499 children aged 0-17; <sup>3</sup><br>6,365,505 aged 10-17;<br>3,991,928 aged 13-17.                                       |
| The Netherlands:       | 3,581,757 children aged 0-17;<br>1,201,779 children aged 12-17 (age of criminal responsibility). <sup>4</sup>                       |

|                    |   |
|--------------------|---|
| Indicator 2        | Children in detention: Number of children in detention per 100,000 child population.  |
| Belgium:           | No information is available on the numbers of children in police custody. In 2006, in the French Community, there were a total 1,899 children placed in public youth protection institutions and in the Centre of Everberg due to an order under the Youth Protection Act. The total number of minors incarcerated in adult prisons was 122. <sup>5</sup>   |
| England and Wales: | In 2004, there were 9,907 child admissions to custody, of which 8,110 to prison service custody, and 1,797 to Local Authority secure children's homes and Secure Training Centres. <sup>6</sup> According to the Home Office, the number of arrests of 10-17-year-olds was 330,800 in 2004/05, <sup>7</sup> or 6,030 per 100,000 children in that age. This is not the same as the total number of young people arrested, as some will be arrested more than once in a given year. A rough estimate is that about 4% of 10-17-year-olds are arrested per year, based on Home Office survey data for 2004/05. <sup>8</sup> This is 219,440 children.   |
| France:            | No information is available on the numbers of children in police custody. <sup>9</sup> The number of children in pre-trial detention (479), given in the report by the DAP ( <i>Direction de l'Administration Pénitentiaire</i> ), <sup>10</sup> differs from the number of children in pre-trial detention (489) given in the report by the Ministry of Justice. <sup>11</sup> According to the DAP, on 1 January 2006, 732 children were detained, representing 1.25% of the 58,344 persons detained in France at the same date. 71 were under 16 and 661 were aged 16-17. 4,817 detained persons were aged 18 to 20. 94.7% (3,355) of detained minors in 2005 had access to school. <sup>12</sup> This means |

that about 3,543 children were detained in a facility under the control of the AP (*Administration pénitentiaire*) in the year 2005. According to the annual report of the Ministry of Justice 2006,<sup>13</sup> on 31 December 2005, 732 children were detained in a prison.<sup>14</sup> 489 were in pre-trial detention (66.8% of the 732 detained children) and 243 in post-sentence detention. According to this report, 3,519 children were incarcerated in 2005, in France *métropolitaine*.<sup>15</sup> There is no disaggregation between pre- and post-trial detention, or the type of offence.<sup>16</sup> 419 were under 16 and 3,100 were aged 16-17. 2,998 were French and 521 were not. In the year 2005, 124,149 educational measures of placement were ordered by a juvenile judge.

The Netherlands: In 2006, there were 4,726 children in penal custody in youth custodial institutions (YCI).<sup>17</sup> This number consists of 1,177 children in detention on 1 January 2006 in a YCI and 3,549 new entries. Of the 1,177, approximately 600 children who received a PIJ-measure (treatment) are included. Of this group, 80% or approximately 500 persons are above 18. In 2006, a total of 6,759 children were held in pre-trial detention. In 2006, 62 minors were sentenced under adult criminal law.<sup>18</sup> According to the Ministry of Justice, 11 16-17-year-olds were incarcerated in adult prisons in 2006. In 2005, there were 21 juveniles incarcerated in an adult prison and 88 minors were convicted under adult law.

Indicator 3 Children in pre-sentence detention: Number of children in pre-sentence detention per 100,000 child population.

Belgium: An educational measure of placement at the Everberg Centre is not formally considered as pre-trial detention. It is a provisional measure of placement that concerned 531 boys in 2006.

England and Wales:

| 31 JULY 2007          | AGE 15 | AGE 16 | AGE 17 | TOTAL UNDER 18 |
|-----------------------|--------|--------|--------|----------------|
| Total on remand       | 51     | 132    | 361    | 544            |
| Untried               | 29     | 85     | 233    | 347            |
| Convicted unsentenced | 22     | 47     | 128    | 197            |

Source: *Population in Custody Monthly Tables: July 2007, England & Wales*, Ministry of Justice, London.

France: According to the *Annuaire statistique de la Justice 2006*,<sup>19</sup> on 31 December 2005, 732 children were detained in a prison, of which 489 children were in pre-trial detention (66.8% of the 732 detained children).<sup>20</sup> In 2005, 1,122 out of the 82,256 convicted children were held in pre-trial detention.<sup>21</sup>

The Netherlands: On 1 January 2006, 339 children aged 12-17 were in preventative custody in a YCI.<sup>22</sup> According to 2006 statistics of the Public Prosecution Service, 6,759 minors were in pre-trial detention (6,192 boys and 567 girls), of which 4,196 were in preventative custody (more than 3 days and 15 hours) in a police cell or a YCI.<sup>23</sup>



|                    |  |
|--------------------|--|
| Indicator 9        | Custodial sentencing: Percentage of children sentenced receiving a custodial sentence.   |
| Belgium:           | In 2006, there were 2,305 children ‘recognised as having committed acts qualifying as an offence’ who received an educational measure under the Youth Protection Act, or a prison sentence following ‘transfer to adult court’ proceedings. Of these children, 1,185 received at least one measure of placement in a closed facility, or were sentenced to prison, representing 51% of the total number. <sup>24</sup>   |
| England and Wales: | Of the 212,242 disposals reported by Youth Offending Teams in the period 2005/06, 3% were custodial dispersals. This figure represents total dispersals, not numbers of children. It is possible for a child to receive more than one disposal in a given period. This information is also given according to ethnicity, gender, age and offence type. <sup>25</sup>   |
| France:            | In 2005, 193,663 children had contact with the public prosecutor. 142,851 cases were transferred by the public prosecutor to a juvenile judge, a juvenile court or the juvenile assize court for prosecution. <sup>26</sup> 63,408 cases were dealt with by diversion. 20,705 cases were dropped. 58,738 cases were transferred for prosecution. The juvenile court and the juvenile assize court dealt with 3,540 cases (transferred by the examining judge). <sup>27</sup> The juvenile judge dealt with 82,556 delinquent children. <sup>28</sup> 6,203 orders of deprivation of liberty were handed down by a juvenile judge. <sup>29</sup> 14,681 decisions of suspended prison sentences were ordered by a juvenile judge. <sup>30</sup> 315 sentences were handed down by the juvenile assize courts. |
| The Netherlands:   | 18 per 100 convicted children are sentenced to youth detention, which can be combined with treatment (PIJ-measure). This number does not include children who are sentenced to a PIJ-measure without youth detention. The latter number is not published. In 2006, the juvenile judge dealt with 15,763 penal cases. Of these cases, 11,210 minors were found guilty of an offence and were convicted. <sup>31</sup> The numbers of children sentenced to deprivation of liberty in 2006 are as follows: 1,975 children, <sup>32</sup> of which 615 to non-suspended youth detention and 1,360 to partially suspended youth detention. <sup>33</sup>   |
| Indicator 10       | Pre-sentence diversion: Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme.  |
| Belgium:           | This information is not available.   |
| England and Wales: | The Youth Justice Board has confirmed that, in the year 2005-2006, a total of 301,860 offences resulted in a pre-court disposal (reprimand or final warning). However, this figure represents total offences, not the total number of children. The Youth Justice Board also breaks this data down according to gender, age, ethnicity and offence type. <sup>34</sup>   |
| France:            | Out of the 142,851 cases <i>poursuivables</i> , the public prosecutor chose diversion in 63,408 cases. 20,705 cases were dropped, because the prosecutor considered that it was not necessary to proceed. According to the <i>Annuaire statistique de la Justice 2007</i> , <sup>35</sup> the juvenile judge dealt with 82,556 <sup>36</sup> delinquent children in 2005. <sup>37</sup> 29,915 provisional   |

educational measures were ordered (including 1,122 orders of pre-trial detention). 39,332 children were tried by the *Chambre du Conseil* and 33,829 were tried by the juvenile court. 8,585 decisions were handed down.<sup>38</sup> 73,748 definitive measures and sanctions were ordered.

The Netherlands:

50% of the juvenile cases dealt with by the public prosecutor were not sent to court. Diversion was used in 62% of the cases. In 2006, a total number of 22,985 children aged 12-17 were sent to a Halt bureau after arrest. A total of 2,069 children aged 8-11 were sent to a Halt bureau for a Stop reaction after arrest. Out of 36,592 cases dealt with in 2006 by the public prosecutor,<sup>39</sup> 18,312 were sent to court and 18,280 were not.

## Notes

- 1 See *SPF Économie - Direction générale Statistique et Information économique, Service Démographie*, 1 January 2006.
- 2 See <http://www.statistics.gov.uk/census>.
- 3 See INSEE ([www.insee.fr](http://www.insee.fr)).
- 4 See <http://www.statline.cbs.nl>.
- 5 See Mulkay, F., *Study of the OEJAJ, on the basis of data from the DGAI*, November 2007, SPF Justice - DG EPI - *Cellule d'analyse des données*, SIDIS/Greffé. The number of children in prison concerns the whole of Belgium. In 2006, in the French Community, there were a total of 1,899 children placed in public youth protection institutions and in the Centre of Everberg, following an educational measure of placement under the Youth Protection Act.
- 6 See Children's Rights Alliance for England, *State of Children's Rights in England: Annual Review of UK Government Action on 2002 Concluding Observations of the United Nations Committee on the Rights of the Child*, London, 2005.
- 7 See Home Office, *Arrests for Recorded Crime (Notifiable Offences) and the Operation of Certain Police Powers under PACE 21/05 England and Wales, 2004/05*, Table AB, 2005, p. 3. Available on: <http://www.homeoffice.gov.uk/rds/pdfs05/hosb2105.pdf>.
- 8 See Home Office, *Young People and Crime: Findings from the 2005 Offending, Crime and Justice Survey*, Table 4a, 2006, p. 48. Available on: [www.homeoffice.gov.uk/rds/pdfs06/hosb1706.pdf](http://www.homeoffice.gov.uk/rds/pdfs06/hosb1706.pdf).
- 9 Police statistics do not distinguish between minors and adults (See *Ministère de la justice, commission de suivi de la détention provisoire, rapport 2006*, note 5, p. 14).
- 10 See Ministry of justice, *Les chiffres clés de l'administration pénitentiaire au 1<sup>er</sup> janvier 2006*, France.
- 11 See *Annuaire statistiques de la Justice 2006 et 2007* (upon request).
- 12 Ibid.
- 13 See *Annuaire statistique de la Justice 2006*, p. 259.
- 14 *Décisions des cours d'asises des mineurs, des tribunaux pour enfants et des cours d'appel mineurs*.
- 15 See *Annuaire statistique de la Justice 2006*, pp. 263, 265 (*Décisions des cours d'asises des mineurs, des tribunaux pour enfants et des cours d'appel mineurs*).
- 16 Data only available for 2002.
- 17 Furthermore, 2,440 minors were placed in a youth custodial institution through a civil placement order. This numbers consists of juveniles present at 1 January plus the number of juveniles entering the YCI during the year.
- 18 See MEGAbestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, p. 9/21
- 19 See *Annuaire statistique de la Justice 2006*, p. 259
- 20 *Décisions des cours d'asises des mineurs, des tribunaux pour enfants et des cours d'appel mineurs*.
- 21 See Ministry of Justice, *Annuaire statistique de la Justice 2007* (upon request).
- 22 Information obtained from the Ministry of Justice upon request.
- 23 See MEGAbestand OM 2002-2006, *Instroom, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, p. 2/21.
- 24 This does not include the numbers on children falling under the responsibility of the Flemish Community, and therefore concerns mostly French-speaking children. See Mulkay, F., *Study of the OEJAJ, on the basis of data from the DGAI*, November 2007; SPF Justice - DG EPI, *Cellule d'analyse des données*, SIDIS/Greffé.
- 25 See Youth Justice Board, *Youth Justice Annual Statistics 2005/06*, 2006. <http://www.yjb.gov.uk/Publications/Resources/Downloads/Youth%20Justice%20Annual%20Statistics%202005-06.pdf>.
- 26 Information obtained from the Ministry of Justice upon request.
- 27 *Juge d'Instruction chargé des mineurs*.
- 28 Under the *Ordonnance 1945*.
- 29 Information on *emprisonnement ferme* obtained from the Ministry of Justice upon request.
- 30 Information on *sursis avec mise à l'épreuve et sursis simple* obtained from the Ministry of Justice upon request.
- 31 See Heide, van der, Eggen, A.Th.J. *Criminaliteit en rechtshandhaving 2006*, WODC, CBS, DJI, table 7.2, table minors (*minderjarigen*), p. 528.
- 32 Ibid.
- 33 See [www.statline.cbs.nl](http://www.statline.cbs.nl).
- 34 Ibid.
- 35 For France Métropolitaine and DOM. This data is issued by every juvenile court and was obtained upon request.
- 36 3,471 were under 13; 16,116 were aged 13-14; 39,644 were aged 15-16; 23,254 were 17. The age of 71 children was unknown. Information obtained upon request.

*Annex*

- 37 Under the *Ordonnance 1945*.
- 38 *Décisions écartant la poursuite*.
- 39 See MEGAbestand OM 2002-2006, *Instream, afdoeningen en doorlooptijden van rechtbank- en kantonzaken over de jaren 2002 t/m 2006*, p. 4/21.









## Publications

Other publications by Defence for Children International - The Netherlands:

*Kids Behind Bars: A study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards* (2003)

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