It is estimated that more than one million children are detained in prisons, detention centres or other (closed) institutions. These children are limited in their fundamental right to liberty of the person, as recognized under International Human Rights Law. Deprivation of liberty of children takes place in different (legal) contexts, such as the context of juvenile justice, child protection, immigration policies or mental health care. In addition, it has different forms; for example, remand in police custody, pre-trial detention, imprisonment or placement in a work camp, deportation centre or (closed) youth institution. Deprivation of liberty can be defined as: ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority’ (see rule 11 (b) UN Rules for the Protection of Juveniles Deprived of Their Liberty; JDLs).

Deprivation of liberty of children is a complex issue. It does not stand on its own, but is generally related to major social issues, such as juvenile delinquency, poverty, social exclusion and discrimination. The children involved are often the most stigmatised children of society: street children, vagrants, children in conflict with the law, children with behavioural and/or mental health problems, young (un)accompanied refugees or children in need of alternative care.

In addition, children deprived of their liberty are often confronted with (gross) violations of their human rights. They are incarcerated for obscure reasons in inadequate, overcrowded adult facilities, without respect for their privacy, while being denied contact with their parents or family, education and health care, and without being adequately protected against violence, abuse and neglect of guards and other inmates. Children deprived of their liberty are particularly vulnerable – they find themselves in a situation in which they are fully dependent on the institution’s administration and regime, out of sight from society and their family, and at great risk of being damaged for the rest of their lives.

The position of the child deprived of his liberty has been explicitly recognized under International Human Rights Law and Standards since the second half of the
1980s, when first the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) were adopted, followed by the 1989 UN Convention on the Rights of the Child (CRC) and the 1990 JDLs. The core provision of International Human Rights Law, article 37 CRC, recognizes the impact of deprivation of liberty on children, as well as the need for a child specific, human rights approach for children deprived of their liberty.

International Human Rights Law calls for the utmost restraint regarding deprivation of children’s liberty – arrest, detention or imprisonment must be a measure of last resort and used only for the shortest appropriate period of time (art. 37 (b) CRC). This implies an instruction to both the domestic legislator as well as the competent authorities to establish a clear legal framework *inter alia* with (a restrictive list of) the grounds for the use of deprivation of liberty, and to ensure that there are sufficient adequate alternatives available to the enforcing authorities (e.g. police, public prosecutors and courts). The legal requirements of article 37 (b) CRC imply that the need for and duration of deprivation of liberty must be carefully considered in each individual case, while taking into account the child’s best interests (art. 3 (1) CRC).

The detailed implications of International Human Rights Law are dependent on the form and context of the deprivation of liberty. Within the juvenile justice system, on which this study mainly focuses, a distinction should be made between the pre-trial phase (i.e. arrest, police custody and pre-trial detention) and the post-disposition phase (i.e. imprisonment or any other form of confinement as penal sanction).

Despite the instruction of the restrictive use of deprivation of liberty regarding children, this is regarded a lawful form of limitation of a child’s right to liberty, provided the legal requirements of article 37 (b) CRC are met. Moreover, each child deprived of his liberty must be treated with humanity, with respect for his inherent dignity as a human being and in a manner that takes into account his particular needs as a child (art. 37 (c) CRC). In conjunction with the general principles of the CRC, *inter alia* the principle of non-discrimination (art. 2 CRC), this implies that States Parties must ensure that each child deprived of his liberty remains entitled to all rights under International Human Rights Law, in particular the CRC. Limitation of the enjoyment of these rights is only tolerated if required by the special condition the child is in (i.e. deprivation of liberty) and only under full implementation of the ‘best interests of the child’ principle. This, in essence, is the legal status children deprived of their liberty are entitled to under International Human Rights Law.

It implies that States Parties must ensure that each child deprived of his liberty is enabled to enjoy his basic rights and should provide *inter alia* for an adequate standard of living; each child must also receive health care and education, and must be able to have contact with his family (see explicitly art. 37 (c) CRC). In addition, the child’s right to privacy should be respected, which, for example, implies that he should be allowed to wear his own clothes.
Furthermore, each child should be entitled to enjoy special protection rights, meaning that he receives the protection necessary in light of his special status and vulnerability as a child deprived of his liberty. In this regard the differences between children according to age, maturity and gender, should be taken into account as well. A child should be adequately protected against torture and other forms of ill-treatment (art. 37 (a) CRC), including violence, (sexual) abuse or neglect by institutional staff and other inmates. Corporal punishment must be prohibited; solitary confinement should not be used; and measures of order, force or restraint should be used only on lawful grounds and as a last resort. Furthermore, a child deprived of his liberty must be separated from adults; unless it is in his best interests not to do so (again see explicitly art. 37 (c) CRC).

An important legal safeguard against unlawful or arbitrary treatment during deprivation of liberty is the right to file complaints; each child deprived of his liberty should have this right and he should be assisted in using it. In this regard it is particularly relevant that each child is fully informed about his legal status and that he has access to legal and other appropriate assistance (art. 37 (d) CRC). Institutions should also be closely supervised and regularly inspected by an independent authority, in order to improve the transparency of places where children are deprived of their liberty and safeguard their lawful treatment.

Furthermore, the legal status of children concerns the realization of the objectives of the deprivation of liberty. The implications are strongly dependent on the context. In the context of juvenile justice, for example, a child’s imprisonment as a disposition should ultimately aim at the child’s reintegration in society, in which he can play a constructive role, while respecting the rights and freedoms of others (art. 40 (1) CRC). In this regard, the child’s placement is relevant (i.e. placement in the vicinity of his community and residence should be favoured), as is an individualized programme, including opportunities to attend school, to participate in vocational training, and, if relevant, to receive individual treatment. Furthermore, reintegration programmes and aftercare are essential.

These and other (substantive and procedural) aspects of the legal status of children deprived of their liberty can be derived from various global and regional Human Rights Standards, of which the JDLs are the most significant one for children deprived of their liberty worldwide. It is strongly recommended to incorporate these standards into domestic legislation in order to effectively safeguard the rights of children deprived of liberty, while not losing sight of local conditions and particularities, including cultural values and socio-economic circumstances (see also art. 4 CRC).

This study aims to provide a systematic and comprehensive analysis of the implications of International Human Rights Law and Standards regarding children deprived of their liberty, in particular regarding their legal status. Although it mainly focuses on deprivation of liberty as part of the juvenile justice system, many
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of the implications addressed are of equal relevance to deprivation of liberty in other contexts. Since the implementation of the relevant human rights provisions primarily is a domestic matter, this study provides for an extensive list of recommended actions for implementation, concerning domestic legislation and enforcement, including awareness-raising and training (see Chapter 5, paras. 5.3 and 5.4).

In this regard, this study also presents an example of domestic legislation from the Netherlands that has been specifically drawn up to regulate and strengthen the legal status of children deprived of their liberty in Dutch youth institutions: the 2001 Youth Custodial Institutions Act (‘Beginselenwet justitiële jeugdinrichtingen’). This piece of domestic legislation has been evaluated and assessed in light of the international human rights framework.

The general conclusion is justified that the Act works reasonably well and that it has indeed improved the legal status of children; a legal status which is largely in conformity with International Human Rights Law and Standards. Still, there are some significant conflicts of interests and imperfections regarding the law and its implementation in practice. In addition, there are some (serious) issues regarding deprivation of liberty of children in the Netherlands in general. One should think of the significant increase in the number of children placed in youth institutions, the waiting lists regarding treatment centres and the critique from different inspectorates concerning the safety of children in youth institutions. There are also concerns regarding the legal requirements of deprivation of liberty as embodied in the Dutch Criminal Code and Code of Criminal Procedure; the latter, for example, lacks a clear child-oriented approach as far as pre-trial detention is concerned. Furthermore, there are worries regarding the detention of children at police stations, since there is no adequate, child specific regulation concerning their legal status. Detailed recommendations in this regard are made for the Dutch legislator, competent authorities (inter alia the Ministry of Justice and National Agency for Correctional Institutions) and youth institutions (see Chapter 5, para. 5.5).

Deprivation of liberty of children is a global issue. The (legal) position of the child deprived of his liberty has been gaining attention since the establishment of the CRC framework. However, the road towards a full respect of the rights of children in this regard is still long. By clarifying the important steps to be taken, this study wishes to make a contribution to the realization of the rights of children deprived of their liberty around the world.