

CHILDREN'S RIGHTS BEHIND BARS

Human rights of children deprived of liberty: Improving monitoring mechanisms

National Report The Netherlands

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List of abbreviations

A

APT Association for the Prevention of Torture

B

BW Burgerlijk Wetboek

Bjj Beginnselenwet justitiële jeugdinrichtingen

BOPZ Wet Bijzondere Opnemingen in Psychiatrische Ziekenhuizen

C

CAT Committee Against Torture

CITT Commissie Integraal Toezicht Terugkeer
Supervisory Commission on Repatriation

CPT European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)/European Committee for the Prevention of Torture

CRC Convention on the Rights of the Child

CRC-OP3 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure

D

DJI Dienst Justitiële Inrichtingen
Custodial Institutions Agency

E

ESC European Social Charter

ETUC European Trade Union Confederation

G

Gw Gezondheidswet

I

IGZ Inspectie voor de Gezondheidszorg
Health Care Inspectorate

IJZ Inspectie Jeugdzorg
Inspectorate for Youth Care

IOE International Organisation of Employers

IOOV Inspectie Openbare Orde en Veiligheid
Public Order and Safety Inspectorate

Ist Inspectie voor de Sanctietoepassing
Inspectorate for the Implementation of Sanctions

IV&J Inspectie Veiligheid en Justitie
Inspectorate of Security and Justice

N

NPM National Prevention Mechanism

O

OPCAT Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

P

Pbw Penitentiaire beginselenwet

PIJ Plaatsing in een Justitiële Jeugdinrichting

PM Penitentiaire Maatregel

R	
Rjj	Reglement justitiële jeugdinrichtingen
Rrg	Reglement regime grenslogies
RSJ	Raad voor Strafrechtstoepassing en Jeugdbescherming <i>Council for the Administration of Criminal Justice and Protection of Juveniles</i>
S	
SPT	Subcommittee on Prevention of Torture
Sr	Wetboek van strafrecht STJ Samenwerkend Toezicht Jeugd <i>Collaborative Youth Supervision</i>
Sv	Wetboek van Strafvordering
V	
Vw 2000	Vreemdelingenwet 2000
Vc 2000	Vreemdelingencirculaire 2000
W	
Wjz	Wet op de Jeugdzorg
WKCZ	Wet Klachtrecht Cliënten Zorgsector
WNo	Wet Nationale ombudsman

Introduction

The aim of this national exploratory study is to obtain information on:

- the different monitoring mechanisms with regard to places where children are or may be deprived of their liberty;
- the way in which places where children are or may be deprived of their liberty are monitored in light of the country's NPM responsibilities under the OPCAT.
- the different complaint mechanisms accessible to children deprived of their liberty;
- the implementation of these mechanisms in practice.

Partner & Researcher

Defence for Children International The Netherlands – ECPAT The Netherlands (DCI-ECPAT NL) is an independent children's rights organisation, founded in 1989. DCI-ECPAT NL is dedicated to ensuring on-going, practical, systematic and concerted national and international action directed towards promoting and protecting children's rights as articulated by the United Nations Convention on the Rights of the Child (CRC), its optional protocols and all other human rights standards and instruments. The actions of DCI-ECPAT NL include advancing and monitoring the implementation of standards for children's rights; advocating and lobbying for children's rights; targeted research; technical support and training professionals in the implementation of children's rights. DCI-ECPAT NL is member of the global network of Defence for Children International with about 40 member organisations worldwide. As of the end of 2002 the two Dutch sections of Defence for Children International and ECPAT merged, joining forces to work together in one organisation for the promotion and protection of children's rights. ECPAT is a global network of about 75 organisations and individuals working together to eliminate child prostitution, child pornography and the trafficking of children for sexual purposes.

Methodology

The information presented in this report is based on the information obtained through a desk research, interviews with a number of professionals from Ministries, inspectorates, institutions where minors can be deprived of their liberty, persons representing minors and interviews with children who are deprived of their liberty. Please refer to annex 1 for an overview of the functions of the persons that have been interviewed.

Limitations

This report is the result the national study on monitoring and complaint mechanisms. It provides an overview of the relevant international and national laws and regulations governing the deprivation of liberty of children. Due to the broad scope of the research and the limited time frame within which the national research had to be conducted it cannot be considered as more than an exploratory study.

The fact that The Netherlands has a multiple NPM system meant that more time was needed to speak to the different members. The time constraint made it impossible to speak to all the NPM members, underlining again that this is no more than an exploratory study into the NPM system.

During the field research we have not been able to speak to as many children as prescribed. For example in the closed institution for youth care we have spoken to only two children, both girls. In the judicial youth detention centre we were able to interview five children, though all of them were male and some had just turned 18. In the psychiatric hospital the girl that we had planned an interview with was upset due to something that had occurred earlier that day and her psychiatrist did not think it in her interest to do the interview with her because of her mental state at that point.

Additional note

The Children Ombudsman is currently conducting a research into the knowledge on the complaint procedures, their effectiveness and the independence of the complaint committees in four judicial youth detention centres and four closed youth care institutions. The research will contain an analysis of the different complaint protocols and interviews held with minors, members of the complaint committees, group leaders, confidants, management members and unit coordinators.

1. The international framework

This chapter will provide an overview of various international treaties on human and children's rights in light of the fight against torture, inhuman and degrading treatment or punishment, and recommendations that have been made to The Netherlands by their monitoring mechanisms.

1.1 Ratified conventions/conventions awaiting ratification

1.1.1 Convention on the Rights of the Child (CRC)

The Netherlands have signed the CRC on 26 January 1990 and have ratified the CRC on 6 February 1995. The Netherlands have made reservations with respect to article 26, 37 and 40 of the CRC and have made interpretative declarations with respect to articles 14, 22 and 38:

Reservations:

Article 26: The Netherlands have made a reservation with respect to this article as social security is seen as a right that parents can invoke. For this reason the Dutch government was not willing to accept a provision that implied an independent entitlement of children to social security, including social insurance.

Article 37: The Netherlands have not accepted that article 37 will prevent the application of adult penal law to children of sixteen years and older, as this possibility is laid down in the national penal code (provided that certain criteria laid down in the penal code have been met).

Article 40: The Netherlands have reserved the right to try cases involving minor offences without the presence of legal assistance and without the possibility for review. Reason for this was that The Netherlands wanted to prevent the impossibility of lighter offences being brought before a special judge (*kantonrechter*) in case of absence of a legal assistant.

Declarations:

Article 14: The Netherlands declared to read this article in such a way that it is in accordance with the provisions of article 18 of the International Covenant on Civil and Political Rights of 19 December 1966 and that this article shall include the freedom of a child to have or adopt a religion or belief of his or her choice as soon as the child is capable of making such choice in view of his or her age or maturity.

Article 22: The Netherlands declared to understand this article in such a way that the term refugee is to be understood in the same way as defined in article 1 of the Convention relating to the Status of Refugees of 28 July 1951. Additionally, The Netherlands have declared that the obligation imposed under the terms of article 22 does not prevent:

- the submission of a request for admission from being made subject to certain conditions, failure to meet such conditions resulting in inadmissibility;
- the referral of a request for admission to a third State, in the event that such a State is considered to be primarily responsible for dealing with the request for asylum.

Article 38: The Netherlands declared that it is of the opinion that States would not be allowed to involve children directly or indirectly in hostilities and that the minimum age for the recruitment or incorporation of children in the armed forces should be above fifteen years. In times of armed conflict, provisions shall prevail that are most conducive to guaranteeing the protection of children under international law, as referred to in article 41 of the Convention.

1.1.2. Optional Protocol to the Convention on the Rights of the Child on a communications procedure (CRC-OP3)

The Netherlands have not yet signed the CRC-OP3.

1.1.3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The Netherlands have signed the CAT on 4 February 1985 and have ratified the CAT on 21 December 1988. The Netherlands have made an interpretative declaration with respect to article 1 and reservations with respect to article 21 and 22:

Interpretative declaration with respect to article 1:

"It is the understanding of the Government of the Kingdom of the Netherlands that the term "lawful sanctions" in article 1, paragraph 1, must be understood as referring to those sanctions which are lawful not only under national law but also under international law;"

With respect to article 21:

"The Government of the Kingdom of the Netherlands hereby declares that it recognizes the competence of the Committee against Torture under the conditions laid down in article 21, to receive and consider communications to the effect that another State Party claims that the Kingdom is not fulfilling its obligations under this Convention;"

With respect to article 22:

"The Government of the Kingdom of the Netherlands hereby declares that it recognizes the competence of the Committee against Torture, under the conditions laid down in article 22, to receive and consider communications from or on behalf of individuals subject."

1.1.4 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

The Netherlands have signed the OPCAT on 3 June 2005 and have ratified the OPCAT on 28 September 2010. The Netherlands have made no interpretative declarations or reservations with respect to the OPCAT.

1.1.5 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The Netherlands have signed the CPT on 26 November 1987 and have ratified the CPT on 12 October 1988. The Netherlands have made no interpretative declarations or reservations with respect to the CPT.

1.1.6 European Social Charter (ESC)

The Netherlands have signed the ESC on 23 January 2004 and have ratified the ESC on 3 May 2006. The Netherlands have made no interpretative declarations or reservations with respect to the ESC.

1.2 Recommendations of international inspection mechanisms and of treaty bodies

Throughout the years, several treaty bodies and international inspection mechanisms have adopted recommendations to the Netherlands government. Below, we list the relevant recommendations adopted concerning minors deprived of their liberty, monitoring and complaint mechanisms. Please refer to annex 2 for a complete overview of the recommendations

1.2.1 Convention on the Rights of the Child (CRC)

In response to the State's reports of 1997, 2002 and 2007 the CRC Committee adopted recommendations to The Netherlands in 2004 in their concluding observations with regard to the implementation of the CRC in places of detention for children. The Netherlands have sent their fourth State's Report to the CRC Committee on 22 November 2013. After the pre session with representatives of Dutch NGOs and human rights institutes, the CRC Committee will send back a list of issues with regard to the content of this report. The Netherlands State's Report will be discussed by the CRC Committee in May 2015.

Reservation to the CRC

The CRC Committee has repeatedly expressed its concerns about the possibility for children between the age of 16 and 18 who are in conflict with the law to be sentenced as adults. The CRC Committee noted that an increasing proportion of children in conflict with the law in The Netherlands are being

sentenced as adults. Therefore, the Committee recommended The Netherlands to ensure the full implementation of juvenile justice standards as laid down in the Convention (in particular articles 37, 40 and 39) as well as the Beijing Rules and the Riyadh Guidelines.

Life imprisonment

Furthermore, in 2004, the CRC Committee recommended The Netherlands to amend their legislation so that life imprisonment cannot be imposed on anyone between the age of 16 and 18 and to fix a maximum limit for their detention, to ensure that the detention of juvenile offenders is used only as a measure of last resort and to avoid detention of juvenile offenders with children institutionalized for behavioural problems.

Pre-trial detention

Pre-trial detention is increasing and also there is still a possibility of 16 and 17 year olds being tried under adult criminal law. Therefore, in 2009 the Committee recommended The Netherlands to ensure the full implementation of juvenile justice standards as laid down in the Convention (in particular articles 37, 39 and 40) as well as the Beijing Rules and the Riyadh Guidelines as a reaction to the increased number of minors in pre-trial detention and the possibility of 16 and 17 year olds being tried under adult criminal law. Thereby, to amend legislation in order to eliminate the possibility of trying children as adults and to ensure that the deprivation of liberty of juvenile offenders is used only as a measure of last resort and for the shortest appropriate period of time. The Committee also recommends that The Netherlands take all appropriate measures to ensure that the principle of the best interests of the child, in accordance with article 3 CRC, is adequately integrated in to all legal provisions and applied in judicial and administrative decisions and in projects, programmes and services which have an impact on children.

Investigation of complaints

The Committee welcomes the improvements to the Youth Custodial Institutions Act but recommended that due attention be given to ensuring that efforts to settle certain complaints through a mediation procedure would not result in a less than thorough investigation.

Placement of children who have not committed a crime in institutions for young offenders

In 2009 the Committee urged The Netherlands to take immediate action to ensure that children who have not committed a criminal offence, but are in need of support and care are not placed in institutions for young offenders.

Unaccompanied minors seeking asylum

In 1999 the Committee urged The Netherlands to give prompt and serious attention to the need to ensure that children not be used as prostitutes and that asylum –seeking procedures effectively protect children from involvement in trafficking for sexual exploitation.

In 2004 the Committee stated that the definition of an unaccompanied minor seeking asylum does not conform to international standards and may make access to basic services more difficult for the child while in the country. The Committee is also concerned that the determination and rejection of a significant and increasing proportion of applications for refugee status through the 48-hour accelerated procedure are not in keeping with article 22 of the Convention and international standards. Finally, the Committee expressed its concerns about the fact that children whose applications for refugee status have been rejected are detained in closed campuses with limited possibilities for education and leisure activities. Therefore, the Committee recommended The Netherlands to review the Aliens Act of 2001 and its application to ensure full conformity with international standards applicable to refugees and with the Convention, to change the definition in the Aliens Act of unaccompanied minors seeking asylum so as to bring it into line with international standards, to ensure that the determination of refugee status of minors conforms to international standards, and consequently reconsider the 48-hour accelerated procedure and to ensure that the detention of children whose applications for refugee status have been rejected is used only as a measure of last resort, and that all children awaiting expulsion receive adequate education and housing.

In 2009, one of the recommendations of the CRC Committee saw upon the practice of the detention of unaccompanied children and families with children. Children seem to continue to disappear from

reception centres, despite the pilot project centre to prevent the disappearance of undocumented children. Furthermore, the Committee is concerned about the access to family services for asylum-seeking and refugee children, which should be culturally sensitive. Therefore, the Committee recommends The Netherlands to reduce the use of aliens' detention for unaccompanied children and for families with children, to further strengthen the measures already taken to prevent the disappearance of asylum seeking children, and to provide culturally sensitive family services.

Mental health services

In 1999 the Committee recommended The Netherlands to increase the availability of places in institutions in order to provide juvenile offenders in need of psychological and psychiatric treatment with timely and appropriate treatment.

In 2009 the Committee recommended that The Netherlands allocates financial and human resources at all levels of the mental health care system and aim to shorten the waiting lists in order to ensure access to specialized services for children and adolescents when needed.

Monitoring mechanisms

In 2009 the CRC advised The Netherlands to establish mechanisms to monitor the number of cases and the extent of violence, sexual abuse, neglect, maltreatment or exploitation considered by article 19, including within the family, in institutional or other care.

Children's Ombudsman

The Committee has repeatedly recommended the establishment of an ombudsman for children, in accordance with the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the protection and promotion of the rights of the child and the Principles relating to the status of national institutions for the promotion and protection of human rights.

Child and youth participation

Last but not least the CRC Committee in 2009 advised The Netherlands to strengthen its support of the National Youth Council and youth organisations. This has to be improved.

1.2.2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The next Netherlands State's Report is due 31 May 2017.

(Unaccompanied) minors and children seeking asylum

In 1999 the Committee recommended strengthening measures providing counselling and prompt and full education and other services for refugee and asylum-seeking children and ensuring their integration into society. In 2007 the CAT Committee expressed its concerns about unaccompanied children and asylum seekers who are placed in detention centres because of uncertainty about their age. The Committee recommended to take measures to ensure that when the age of an unaccompanied child is uncertain, verification should be made before placing the child in detention. The State party should pay particular attention to the situation of young asylum seekers and only use detention as a measure of last resort and provide adequate housing and education for young returnees awaiting expulsion.

Furthermore, the Committee recommends that The Netherlands verify the age of an unaccompanied child, if uncertain, before placing the child in detention. Such detention should be used as a last resort, but also to take alternative measures to avoid detention of children or their separation from their families, to ensure that unaccompanied minors can enjoy the rights guaranteed by the Convention on the Rights of the Child.

16-18 year old offenders

The Committee expressed concern about the lack of a separate unit for offenders aged between 16 and 18 who are currently held with either adult offenders or prisoners undergoing psychological observation. The Committee urgently recommended that juvenile offenders be placed separate from adult offenders and to provide for educational and training programmes to help the social reintegration of juveniles. The Committee recommended that The Netherlands establishes specific mechanisms to

receive complaints of sexual abuse that will ensure the privacy of victims and protect both victims and witnesses against ill-treatment or intimidation as a consequence of the complaint.

In 2013 the CAT Committee expressed their concerns about the high numbers of persons with mental and psychosocial disabilities who are held in mental health care institutions on an involuntary basis, often for a lengthy period of time. The Committee is further concerned at the frequent use of solitary confinement, restraints and forced medication which may amount to inhumane and degrading treatment. The Committee remains concerned about the lack of focus on alternatives to hospitalization of persons with mental and psychosocial disabilities. Finally, the Committee is concerned about the frequent lack of effective and impartial investigation of the excessive use of restrictive measures in mental health-care institutions. Therefore, The Committee recommends The Netherlands to develop alternative measures to reduce the number of forcibly interned persons with mental and psychosocial disabilities and ensure that involuntary intern placements in places of deprivation of liberty, including psychiatric and social care institutions, are done on the basis of a legal decision, guaranteeing all effective legal safeguards, to strengthen the possibilities for appeal of decisions and effective access to complaint mechanisms for interned persons, to use restraints and solitary confinement as a measure of last resort when all other alternatives for control have failed, for the shortest possible time and under strict medical supervision, to undertake effective and impartial investigations into incidents where the excessive use of restrictive measures resulted in injuries and/or death of the interned persons and to provide remedies and redress to the victims.

Pre-trial detention

According to the Committee the Netherlands should take appropriate measures to reduce the use of pre-trial detention and to ensure that the decisions imposing pre-trial detention are duly substantiated. Pre-trial detention should be used only as a measure of last resort and alternative measures should be considered to its use. The Netherlands should also establish systems to obtain disaggregated data about the composition of detainee population to avoid disproportionate representation of minorities.

Incidents of death in places of detention

Allegedly, some incidents of death in places of detention are related to the excessive use of physical restraints such as isolation measures. The Committee recommends that The Netherlands carry out thorough investigations of deaths and ascertain whether there is a link between the use of measures of physical restraints and the incidents of death in places of detention.

Another recommendation sees upon the lack of clarity regarding the State party's strategies to inform, through the Custodial Institutions Inspectorate, alleged victims of torture and ill-treatment in detention facilities, including immigration detention centres, about the available complaint procedures against detention personnel. The Committee recommended that The Netherlands take further steps to sensitize detainees, through the Custodial Institutions Inspectorate, about the possibility and procedure for filing a complaint of alleged torture and ill-treatment in detention facilities against the respective categories of detention personnel, to make such information available and widely publicized, including by displaying it in all places of detention and to ensure that all allegations of misconduct by the detention personnel are duly assessed and investigated, including the cases of intimidation or reprisals as a consequence of the complaints of ill-treatment.

Prevention of torture and ill-treatment and other cruel or degrading treatment

The Netherlands has designated six different bodies as the national preventive mechanisms (NPM). The Committee is concerned about the alleged lack of perceived independence of the NPM and the limitation of its mandate to the European part of The Netherlands. While noting that the Optional Protocol leaves the institutional format in which the NPM is established to the State party's discretion, the Committee recommends that The Netherlands ensure and respect complete financial and operational independence of the NPM, both factual and perceived, when carrying out its functions and to explain, in its next periodic report, what progress has been made to accept and apply the Optional Protocol to the Caribbean part of its territory and the autonomous islands in order to establish the NPMs tailored for the needs of the islands and allow for the visits by the Subcommittee on Prevention of Torture.

1.2.3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT has visited the Netherlands in 2007 and 2011. Aside from general recommendations the CPT also visits particular institutions and makes specific recommendations for those institutions based on their visit.

Duration police cell custody

Following the 2007 visit the CPT recommended that The Netherlands authorities take appropriate measures to minimise the time detained persons have to spend in police cells. Moreover, particular efforts had to be made to ensure that juveniles were not detained in police cells for prolonged periods of time and would be transferred to appropriate juvenile detention facilities expeditiously. The CPT also recommended that immigration detainees be promptly transferred to suitable accommodation in keeping with their needs and status.

Activities of prisoners

Following the 2007 visit the CPT recommended The Netherlands to further develop the activities of prisoners, with a view to ensuring that all prisoners (including those on remand) be able to spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature.

Restrictive measures

A third recommendation is that every establishment where restraints are in use should have a comprehensive, carefully developed, policy on their application. The involvement and support of both staff and management in elaborating the policy is essential. Such a policy should make clear which means of restraint may be used, under what circumstances they may be applied, the practical means of their application, the supervision required and the action to be taken once the measure is terminated. The policy should also contain sections on other important issues such as: staff training; complaints policy; internal and external reporting mechanisms and debriefing. In the CPT's opinion, such a comprehensive policy is not only a major support for staff, but is also helpful in ensuring that residents and their guardians or proxies understand the rationale behind any measure of restraint that may be imposed.

The CPT considers that the rules on the use of means of restraint with respect to juveniles should be tightened. In those exceptional cases that juveniles are restrained, they should be the subject of direct, personal and continuous supervision and not only those judged to be at risk of suffocating. Further, the use of means of restraint should be for the shortest possible time (usually minutes or a few hours) and not such lengthy periods as currently provided for in the legislation. In the CPT's view, a staff member present in the room may have a calming effect on a restrained juvenile as well as being able to provide immediate assistance if needed. Further, such a presence is helpful in ensuring that means of restraint are applied for no longer than absolutely necessary

Strip searches

When the CPT visited institutions in 2011, numerous complaints were received throughout the visit, from various sources, concerning the frequency of strip searches carried out in prison establishments in The Netherlands and the manner in which they were performed. A strip search is a very invasive - and potentially degrading - measure. Therefore, resort to strip searches should be based on an individual risk assessment and subject to rigorous criteria and supervision. Every reasonable effort should be made to minimise embarrassment; detained persons who are searched should not normally be required to remove all their clothes at the same time, e.g. a person should be allowed to remove clothing above the waist and to get dressed before removing further clothing. In addition, more than one officer should, as a rule, be present during any strip search as a protection to detained persons and staff alike. Further, inmates should not be required to undress in the presence of custodial staff of the opposite sex. The CPT recommended that steps be taken to ensure that the above-mentioned principles are applied throughout the prison system in The Netherlands.

Recommendations for specific institutions

The CPT recommended improving the regime for young persons at De Talie unit

The CPT recommended that the equipment of the solitary confinement cells as well as the possibility of exercise be improved at JJI De Hartelborgt.

The CPT recommended placing a table and a chair in those segregations cells that are used as temporary residential accommodation. By expanding the number of places in the reception units, it will hardly ever be necessary to use cells in the segregation units as residential accommodation.

The CPT recommended changing the layout of the exercise yard of the solitary confinement unit.

1.3. Complaint mechanisms available to minors under abovementioned conventions

The Netherlands has not yet signed or ratified the Optional Protocol to the Convention on the Rights of the Child (CRC-OP3). This is the only convention mentioned in paragraph that would have foreseen in an international complaint procedure for minors in The Netherlands.¹

2. The national framework

This chapter will set out the national and regulatory framework governing places where children can be deprived of their liberty, information on the location of these places, available numbers on children detained there and information on the Dutch NPM system. Finally, information is provided on the available complaints mechanisms.

2.1 Legal and regulatory framework for the detention of children

Article 4 paragraph 1 OPCAT defines places of detention as 'any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'. The goal hereof is to – if necessary - strengthen the protection of persons held in these places of detention against torture and other cruel, inhuman or degrading treatment or punishment. Article 4 paragraph 2 defines deprivation of liberty as 'any form of detention or imprisonment of the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'. According to this definition minors in The Netherlands can be deprived of their liberty and kept in the places described in the paragraphs following below.

2.1.1 Closed institutions for youth care

The closed institutions for youth care fall under the responsibility of the Ministry of Health, Welfare and Sport. According to the Youth Care Act (*Wet op de Jeugdzorg*) it is possible to deprive children of their liberty by placing them in a closed institution for youth care.² A condition that must be fulfilled, is that these children suffer from severe developmental and/or behavioural problems, which seriously hamper their development to adulthood.³ The purpose of placing these children in an institution that is closed, is to prevent them from withdrawing themselves from the care they need, or being withdrawn from that care by others.⁴ There is no minimum age for children with regard to placing them in a closed institution for youth care.⁵ The Bureau for Youth Care (*Bureau Jeugdzorg*) is the competent authority to request a warrant to deprive children of their liberty in a closed institution for youth care.⁶ The Bureau for Youth Care submits this request to the judge on the basis of a needs assessment (*indicatiebesluit*). This needs assessment describes the problems of the child, the indicated care that will be necessary, the proposed duration of the measure and the location where the measure has to

¹ Some of the other conventions do foresee in a complaint procedure, such as the ESH, though this procedure is not directly accessible to minors. For example: the European Committee of Social Rights allows complaints to be lodged only by ETUC, BusinessEurope (former UNICE) and IOE, ngo's with a participative status with the Council of Europe or national ngo's if the State has agreed to this, employer's organisations or trade unions in the country concerned.

² Art. 29a Wjz; Institutions in which these children can be placed are defined in art. 29k Wjz.

³ Transitiebureau Jeugd, p. 2; Children who are detained in a closed institution for youth care suffer from severe behavioural problems, such as problems with addiction, problems with debt, domestic violence, psychiatric problems and children with an intellectual disability. Children often suffer from a combination of problems.

⁴ Art. 29b par. 3 Wjz.

⁵ Art. 29a par. 1 Wjz; the '*Wet op de Jeugdzorg*' is applicable to minors, but also to juveniles who have not reached the age of 21 when their warrant was granted by a judge.

⁶ Art. 29d Wjz. In some cases the Council for Child Protection will request the mentioned warrant, art. 29b par. 6 Wjz jo. art. 1:261 BW. It is not required for the Council for Child Protection to submit a needs assessment to the judge, but the Council is obliged to submit a consent statement from a behavioural scientist

be executed.⁷ A behavioural scientist⁸ is required to give his consent with regard to the problems and the necessity of the deprivation of the liberty of the child.⁹ However, the Bureau for Youth Care is not the only authority that is competent to request a warrant to deprive a child of his liberty. The Council for Child Protection (*Raad voor de Kinderbescherming*) is also allowed to do this.¹⁰ It is the judge that decides on the warrant for placement in a closed institution for youth care. Consent of the child with regard to his own placement is not required.¹¹ The judge decides on the period he grants the warrant for. The maximum possible duration for this warrant is one year.¹² Because of the closed character of the institution – which implies a deprivation of liberty for the children – it is important that children stay as long as necessary and as short as possible in a closed institution for youth care. If it is possible to treat a child in a lighter form of care, this care should be preferred.¹³

2.1.2 Arrest cells

Children who are suspected of committing a criminal offence can be arrested by the police in order to be interrogated.¹⁴ There is no age limit for the possibility to arrest and interrogate children. Children can be held at the police station in an arrest cell while they are waiting for their interrogation for a period of six hours. However, the time between 00:00 and 09:00 AM does not count, so in fact children of all ages can be locked up in an arrest cell for a maximum period of fifteen hours.¹⁵ Children under the age of 12 cannot be held criminally responsible.¹⁶ Therefore, they have to be released after their interrogation. Children who have reached the age of criminal responsibility can be taken into police custody after their interrogation if they are suspected of committing a criminal offence for which detention in an arrest cell at the police station is allowed.¹⁷ The (assistant) public prosecutor has to give a warrant for a child that is taken into police custody.¹⁸ Children can be taken into police custody for a maximum period of three days and fifteen hours in an arrest cell at the police station. In exceptional cases this period can be extended with another three days.¹⁹ A child can be taken into pre-trial detention in the interest of the investigation. This deprivation of liberty takes place in an arrest cell at the police station if there is no room for the child in a judicial youth detention centre or if there are problems with the transportation to the judicial youth detention centre.²⁰ These problems have consequences for the maximum period that a child can be detained in an arrest cell at the police station. Children in the age of 12 to 16 can be held in an arrest cell at the police station for a maximum period of nine days and fifteen hours. Children in the age of sixteen and seventeen can be deprived of their liberty in an arrest cell at the police station for a maximum period of sixteen days and fifteen hours.²¹ When this period has expired children have to be transferred to a judicial youth detention centre.²² From the moment a child stays in police custody, it is obligatory that the Council for Child Protection receives a notification of the fact that a child is deprived of his liberty in an arrest cell.²³ The Minister of Security and Justice has the final responsibility for these children who stay in police custody.²⁴

⁷ Art. 6 Wjz; Huijter 2012, p. 2.

⁸ This behavioural scientist needs to be qualified, see art. 1 under m of *Uitvoeringsbesluit Wjz*.

⁹ Art. 29b par. 5 Wjz; Rb. Oost-Brabant, 28 March 2014, ECLI:NL:RBOBR:2014:2310, without the consent of this behavioural scientist, a judge is not allowed to give a warrant for the deprivation of liberty of a child in a closed institution for youth care.

¹⁰ Art. 29b par. 6 Wjz.

¹¹ Art. 29b par. 1 Wjz.

¹² Art. 29h par. 3 Wjz.

¹³ Ministerie voor Jeugd en Gezin 2008, p. 10. This is in accordance with art. 37 sub b IVRK.

¹⁴ Art. 53 jo. art. 54 Sv.

¹⁵ Berger 2011, p. 13.

¹⁶ Art. 486 Sv.

¹⁷ Art. 58 Sv jo. art. 67 Sv.

¹⁸ Art. 57 Sv.

¹⁹ Art. 58 par. 2 Sv.

²⁰ Art. 15 Bjj.

²¹ Art. 15 Bjj.

²² Berger, 2011, p. 13.

²³ Art. 491 Sv.

²⁴ See: <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2010/10/14/portefeuilleverdeling.html>. Last checked on: 23-06-2014.

2.1.3. Judicial youth detention centres

The Minister of Security and Justice is responsible for all children who are detained in judicial youth detention centres.²⁵ The age of criminal responsibility in The Netherlands is 12 years old.²⁶ According to the Dutch Penal Code children can be deprived of their liberty as a result of a conviction for a serious crime.²⁷ After the conviction by a judge, these children are placed in a judicial youth detention centre.²⁸ The function of placing children in a judicial youth detention centre is twofold: ensuring the safety of society and preparing the detained children for a successful return to society.²⁹ The maximum duration of the juvenile detention depends on the age of the offender. For children below the age of 16 the maximum duration of imprisonment is twelve months. For children of 16 or 17 years old, the maximum duration is 24 months.³⁰ However, children who are sentenced to a measure *Plaatsing in een Justitiële Jeugdinrichting* (PIJ-measure) can be imprisoned for a longer than a period of 24 months. Children can be sentenced to a PIJ-measure if they suffer from an impaired development or morbid disorder.³¹ Children who are sentenced to a PIJ-measure can be imprisoned for two years, which period can be extended to seven years.³² Since the introduction of a new penal law for adolescents in April 2010, the judge can decide that after this period the PIJ-measure will be converted to a measure for adults called *terbeschikkingstelling* (TBS).³³

Pending their trial, children can be deprived of their liberty and placed in a judicial youth detention centre if they are suspected of an offence for which this imprisonment is allowed.³⁴ The maximum duration of this preventive detention is 104 days.³⁵ A final possibility for children to be deprived of their liberty in a judicial youth detention centre is when they are *unaccompanied minors who enter the Dutch territory without a valid passport or visa*. Since 2011 these children are usually placed under custody and are placed in an institution for asylum seekers.³⁶ However, in exceptional cases³⁷ these minors have to be deprived of their liberty in a judicial youth detention centre.³⁸

2.1.4 Psychiatric centres³⁹

The authority that has the final responsibility for the children who are deprived of their liberty in a psychiatric centre is the Minister of Health, Welfare and Sport.⁴⁰ According to the Dutch *Wet Bijzondere Opnemingen in Psychiatrische Ziekenhuizen* (BOPZ) it is possible to deprive children of their liberty if they suffer from a mental illness that causes harm to themselves or others, and which danger cannot be averted through the help of individuals or other institutions outside a psychiatric centre.⁴¹ The duration and the goals of the treatment are listed in a plan of care, which is adapted to the individual possibilities and needs of the patient.⁴² The request for a warrant to place a child in a psychiatric centre can be filed by a spouse, parents, an adult relative in the first bloodline, siblings,

²⁵ See: <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2010/10/14/portefeuilleverdeling.html>. Last checked on: 23-06-2014.

²⁶ Art. 486 Sv.

²⁷ Art. 77h par. 1 sub a Sr.

²⁸ Art. 8 par. 1 sub b Bjj.

²⁹ Dienst Justitiële Inrichtingen 2014, p. 2.

³⁰ Art. 77i Sr.

³¹ Art. 77s Sr.

³² Art. 77s par. 7 Sr. jo. art. 77t Sr.

³³ Art. 77tc Sr; A TBS-measure is a measure for adults who suffer from an impaired development or a morbid disorder. The TBS-measure has maximum duration, art. 37 Sr.

³⁴ Art. 67 Sv jo. art. 8 par. 1 sub a Bjj.

³⁵ Art. 66 Sv; Dienst Justitiële Inrichtingen 2014, p. 2.

³⁶ Ministerie van Binnenlandse Zaken en Koninkrijksrelaties 2011 (b), p. 2-4.

³⁷ Unaccompanied minors seeking asylum can be placed in a judicial detention centre when they (1) illegally reside in The Netherlands and are suspected of or have been sentenced for committing a criminal offence or (2) when they have withdrawn themselves from the supervision of the authorities or from a measure imposed on them restricting their freedom of movement or (3) have left the care/reception facility without permission.

³⁸ Letter from the Secretary of State of Security and Justice to the Tweede Kamer, 20 December 2012.

³⁹ Which are also often closed units at (psychiatric) hospitals.

⁴⁰ See: <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2010/10/14/portefeuilleverdeling.html>. Last checked on: 23-06-2014.

⁴¹ Art. 2 BOPZ.

⁴² Art. 38a BOPZ.

and the legal representative of the child.⁴³ Along with this request, it is required that a psychiatrist – who is not involved in the treatment of the child – gives a statement that the child is mentally ill. It is necessary that this psychiatrist conducted a recent examination of the child.⁴⁴ A BOPZ-warrant is valid for a maximum period of six months.⁴⁵ The warrant can be extended if there are indications that the risks and dangers still exist and a continued stay in a psychiatric centre is necessary.⁴⁶ The request for this extension can be done by the public prosecutor at the request of the centre, the family, the legal representative or the partner of the person.⁴⁷ The warrant for extended stay is valid for a maximum period of one year.⁴⁸

2.1.5 Border and immigration detention

Border detention and immigration detention are established in order to prevent immigrants and foreigners to enter or stay in The Netherlands illegally. These people are deprived of their liberty to prevent them from disappearing and remain illegal. Institutions for border detention and immigration detention fall under the responsibility of the Ministry of Security and Justice.⁴⁹ Asylum seekers⁵⁰ can be placed in border detention based on art. 6 Aliens Act 2000 (Vreemdelingenwet 2000). Asylum seekers can be placed in border detention if they do not have a valid passport or visa or for example if they constitute a danger to public order or national security.⁵¹ Access to The Netherlands will also be denied if the asylum seeker has not made clear the purpose of his intended stay or residence and/or if the asylum seeker has submitted insufficient supporting documents.⁵² With regard to the deprivation in border detention there is a special policy for children. As soon as a family with under-age children becomes removable after the rejection of their asylum application, they can only be detained in border detention for a maximum of two weeks after the asylum procedure.⁵³

Upon arrival families with children seeking asylum at the airport will now immediately be screened for their risks of being trafficked.⁵⁴ This process takes several hours. If there are no signs of human trafficking, the families are forwarded to an open application centre in Ter Apel where they can go through the asylum procedure in freedom.⁵⁵ If however there are signs of human trafficking, the families with children seeking asylum will be placed border detention.⁵⁶

It is possible to impose immigration detention based on art. 59 Aliens Act. This deprivation of liberty can occur when the foreigner⁵⁷ does not have a lawful residence (anymore)⁵⁸ and the deprivation is necessary in the interests of public order or national security, for instance if there is a risk that the foreigner is likely to evade surveillance or if the foreigner will hamper the preparation of the departure.⁵⁹ With regard to immigration detention, there is a special policy for families with children. On the 13 September 2013 the Secretary of State of Security and Justice announced that he will be

⁴³ Art. 4 BOPZ.

⁴⁴ Art. 5 BOPZ.

⁴⁵ Art. 10 par. 2 BOPZ.

⁴⁶ Art. 15 BOPZ.

⁴⁷ Art. 17 BOPZ jo. art. 15 par. 3 BOPZ.

⁴⁸ Art. 17 par. 3 BOPZ.

⁴⁹ See: <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2010/10/14/portefeuilleverdeling.html>. Last checked on: 23-06-2014.

⁵⁰ From non Schengen countries.

⁵¹ Art. 3 Vw 2000.

⁵² Art. 2.1. Vreemdelingenbesluit.

⁵³ A5/3.2 Vc 2013, formerly A6/2.7 Vc 2000.

⁵⁴ E.g. when children seem not to have a legal guardianship or kin relationship with the adults with whom they have entered the country and possibly may be, or become, a victim of exploitation.

⁵⁵ See: <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2014/05/28/brief-tweede-kamer-invoering-screening-en-nieuwe-locatie-voor-kinderen/pers5969ainvoeringsscreeningennieuwelocatievoorkinderen-1.pdf>. Last checked on: 12/08/2014.

⁵⁶ *Kamerstukken II*, 2012/13, 19637, No. 1881, p.1.

⁵⁷ According to art. 1 Vw a foreigner is a person who does not have the Dutch nationality and who should not be treated as a Dutchman on the basis of a statutory provision.

⁵⁸ Within the meaning of art. 8 Vw.

⁵⁹ Art. 5.1a Vreemdelingenbesluit.

paying special attention to vulnerable groups in the immigration detention policy (article 59 of the Aliens Act). Families with children in anticipation of their extradition will no longer be placed in detention, unless they have previously avoided their supervision.⁶⁰ If however, this does occur requiring a family to be placed in detention -for a maximum of two weeks-, an individual motivation is required.⁶¹

There has been a recent development with regard to the deprivation of asylum seekers who enter The Netherlands. Nils Muiznieks, the Council of Europe's High Commissioner of Human Rights stated after a visit to The Netherlands that the Dutch authorities "should stop automatic detention of asylum seekers arriving at Dutch international (air)ports from non-Schengen countries. In particular, children and their families do not belong there"⁶². The Dutch Secretary of State responded that he will make sure that asylum seekers – children and their family – will not be locked up in arrest cells in the future. Instead, they will be placed in a family-friendly location. This family friendly location is free of arrest cells and bars, but remains surrounded by walls.⁶³ The Secretary of State Teeven expects these location to open in 2015. The families will reside in separated pavilions to respect the family unity. In these 'closed family location' the people can move freely over the terrain, but cannot leave the location.⁶⁴

2.2 Mapping of detention facilities for children

Please refer to annex 3 and 4 for a list of the location of the places where children can be deprived of their liberty.

2.3 Numbers of minors deprived of liberty in 2013-2014

2.3.1 Closed institutions for youth care

Below there is a graph of closed institution for youth care with their theoretical capacity and their target group.⁶⁵

Closed institution for youth care	Theoretical capacity in 2013	Theoretical capacity in 2014	Target group
Transferium Heerhugowaard	80	80	boys and girls, age 12-18
De Koppeling Amsterdam	96	96	boys and girls, age 12-18
Almata Den Dolder	36	36	boys and girls, age 12-18
De Lindenhorst Zeist	60	60	boys and girls, age 12-18
Jutters Combinatie Den Haag	26	26	boys and girls, age 12-18
Schakenbosch Leidschendam	50	50	boys and girls, age 12-18
Horizon Harreveld	60	60	boys, age 12-18
Horizon Alphen aan den Rijn	24	24	boys, age 12-18
Horizon Sassenheim	108	108	boys, age 12-18
Horizon (national specialization)	29	20	boys and girls, age 7-12

⁶⁰ Kamerstukken II, 2012/13, 19637, No. 1721, p. 16.

⁶¹ Kamerstukken II 2007/08 19 637, No. 66; Vc 2013 - A5/2.4.

⁶² See: <http://www.coe.int/web/commissioner/country-report/the-netherlands>. Last checked on: 23-06-2014.

⁶³ Ministerie van Veiligheid en Justitie 2014, p. 6.

⁶⁴ The family will get more privacy and they can lock the 'house' from the inside. The families will be able to cook for themselves and access the internet and e-mail. There will work specialized care takers without uniform with specific attention towards the position of the child. Also involved organizations have the possibility to work on the location.

⁶⁵ See: <http://www.jeugdzorgplus.jeugdzorgnederland.nl/UserFiles/Kaartje%20capaciteit%20en%20zorgaanbod%20per%20zorggebied%202014%20def.pdf>. Last checked on: 27-07-2014.

Rotterdam			
De Hoenderloo Groep Deelen	80	80	boys and girls, age 12-18
LSG-Rentray Eefde	119	95	boys and girls, age 12-18
Het Poortje Drachten	24	24	boys and girls, age 12-18
Het Poortje Groningen	120	120	boys and girls, age 12-18
LSG-Rentray Nijkerk	24	24	boys and girls, age 10-18
LSG-Rentray (national specialization) Zutphen	14	14	pregnant girls and mothers, age 12-24
Zikos (national specialization)	12	12	boys and girls with psychiatric problems, age 12-24
Otto Gerhard Heldringstichting Zetten	150	151	boys and girls, age 11-18
Bijzonder Jeugdwerk Brabant Deurne	40	40	boys and girls, age 12-18
Icarus Cadier en Keer	74	74	boys and girls, age 12-18
Juzt Oosterhout	36	36	boys and girls, age 12-18
Juzt Kortgene	27	27	boys and girls, age 12-18
Juzt Rijsbergen	9	9	boys and girls, age 12-18
Almata Ossendrecht	70	70	boys and girls, age 12-18
Total	1368	1336	

No recent data was found on the actual occupancy. The most recent figures are the ones shown in the graph below.⁶⁶

	2009	2010	2011
Actual Occupancy ⁶⁷	2.038	2.952	3.261

2.3.2 Arrest cells

The graph below shows the amount of children who are interrogated by the police, the total amount of minors that were taken into police custody, the amount of minors in a youth custodial institution, the percentage of minors in pre-trial detention on a fixed date of 1 January, and the average amount of days that children spent in pre-trial detention for the years 2009-2013.⁶⁸

	2009	2010	2011	2012	2013
Total amount of minors interrogated by the police	54.048	50.969	46.477	41.601	34.772
Total amount of minors in police custody	8.059	9.234	8.240	7.603	6.963
Total amount of minors in a youth custodial institution	2.557	2.406	2.136	1.999	1.520
Percentage of	73%	79%	74%	75%	74%

⁶⁶ UNICEF Nederland & Defence for Children, 2014, p.24. While there is certain data available on the institutions for closed youth care, it was not possible to ascertain the number of children residing in the closed institutions for youth care. This data should be readily available

⁶⁷ The actual occupancy refers to the amount of children that have been treated there in that year. There are no known signs of overcrowded facilities; in fact the theoretical capacity has been reduced because the theoretical capacity was never reached in practice. The minister of Health, Welfare and Sports addressed this in a letter dated 27 September 2011.

⁶⁸ UNICEF Nederland & Defence for Children, 2014, p.20; www.dji.nl.

minors in pre-trial detention in a youth custodial institution on 1 January ⁶⁹	(=265)	(=252)	(=219)	(=171)	(=137)
Average amount of days minors spent in pre-trial detention ⁷⁰	36	38	40	40	38

2.3.3 Judicial youth detention centres

Below there are two graphs. The first graph shows the theoretical capacity of judicial youth detention centres in 2014 and 2013.⁷¹ The second graph shows the occupancy of children who stay in judicial youth detention centres for the years 2009-2013.⁷²

Theoretical Capacity	Number of places in 2014	Number of places in 2013
De Hartelborgt	115	115
De Heuvelrug, Eikenstein	43	52
De Hunnerberg	66	66
Den Hey-Acker	68	68
Amsterbaken	80	80
Het Keerpunt	56	36
Juvaïd	62	48
JJI Lelystad	64	64
Teylingereind	96	92
Total	650	621

	2009	2010	2011	2012	2013
Total amount of minors in a judicial youth detention centres ⁷³	2.557	2.406	2.136	1.999	1.520

2.3.4 Psychiatric centres

⁶⁹ As a percentage of the total number of persons in pre-trial detention.

⁷⁰ The maximum for pre-trial detention differs per age group (12-15 yrs/16-17 yrs). In general you could say the maximum duration is up to 110 days. This includes the period the minor may have spent in police custody. The time awaiting trial can be spent in pre-trial detention up to a period of 16 months (HR17 juni 2008, LJN BD 2578).

⁷¹ <http://dji.nl/Onderwerpen/Jongeren-in-detentie/Straffen-en-maatregelen/>. Last checked on: 07/08/2014.

⁷² UNICEF Nederland & Defence for Children, 2014, p. 20.

⁷³ The numbers refer to the number of minors in a judicial youth detention centre on the first of January to which the number of minors that has been placed there over the course of the relevant year has been added.

No information was found with regard to the theoretical capacity and occupancy of children that have been hospitalized on psychiatric grounds. However, it is known from previous legislation evaluation of the BOPZ that a cautious approach is used with regard to the imposition of a BOPZ-measure on a child due to the fact that this would have a stigmatizing effect and that it would not be beneficial to the further treatment of the child. For these reasons only few children are sentenced with a closed BOPZ-measure.⁷⁴ Information from GGZ Nederland confirms this situation. According to GGZ Nederland there are approximately 170.000 children who receive psychiatric help every year, of which 96,8% receive ambulatory care and only 3,2% of the children remain in an institution for some time.⁷⁵ We were unable to verify what percentage of the children that remain in an institution for some is placed in a closed facility is unknown.

2.3.5 Border detention and immigration detention

Border detention and immigration detention take place in detention centres. Below there are two graphs. The first graph shows the theoretical capacity of detention centres in 2013.⁷⁶ The second graph shows the amount of children in detention centres for the period 2010-2013.⁷⁷

	Theoretical capacity in 2013
Badhoevedorp (JCS)	750
Rotterdam	583
Zeist	600
Total	1933

	2010	2011	2012	2013
Number of (un)accompanied children in border and immigration detention	450	410	420	310

2.4 National monitoring mechanisms

Article 17 OPCAT requires the State Parties to designate or establish one (or more) independent national preventive mechanism(s) (NPM('s)) for the prevention of torture at the domestic level within one year after ratification of the OPCAT. The OPCAT sets out certain requirements for the NPM's. Article 8 OPCAT states that State Parties are to guarantee the independence of the NPM and their personnel, ensure that NPM experts are sufficiently capable and dispose of the necessary expertise to carry out their tasks and that the State shall strive for a gender balance and adequate representation of ethnic and minority groups within the personnel of the NPM.⁷⁸ With regard to the powers of the NPM, article 19 OPCAT states that the NPM shall (at minimum) be granted the power to undertake these three tasks:

- (a) to regularly examine the treatment of persons deprived of their liberty in places of detention⁷⁹;
- (b) to make recommendations to the relevant authorities;
- (c) to submit proposals and observations concerning existing or draft legislation.

⁷⁴ Kamerstukken II 1997/98, 25 763, nr. 1, p. 20; Monster, 2013, p. 25.

⁷⁵ GGZ Nederland, 2013, p. 2; However, this number does not distinguish between a voluntary and an involuntary stay in an institution. The interviews that have been conducted for this research show that a large proportion of children living in an institution stay there on a voluntary basis. This means that the percentage of children who are staying involuntary in a psychiatric centre is probably even lower than 3,2%.

⁷⁶ Amnesty International, 2013, p. 14. The detention centre in Alphen aan den Rijn was closed down at the end of 2013.

⁷⁷ UNICEF Nederland & Defence for Children, 2014, p.28; This number refers to the amount of children who were present in a judicial youth detention centre on 1 January of the year concerned plus the amount of children that were placed throughout that year.

⁷⁸ As well as that sufficient funding should be made available and that due consideration is given to the Principles relating to the status of national institutions for the promotion and protection of human rights.

⁷⁹ As defined in article 4 OPCAT.

In order to enable the NPM(s) to fulfil these tasks, State Parties will grant the NPM(s) access to all information concerning the number of persons deprived of their liberty in places of detention as well as access to all information referring to the treatment of those persons as well as their conditions of detention. Additionally, the NPM(s) and Subcommittee for the Prevention of Torture (SPT) will be granted access to all places of detention and the opportunity to interview persons deprived of their liberty privately (or anyone else that may be able to supply relevant information to the NPM).⁸⁰ The NPM(s) will have the liberty to choose which places to visit and persons to interview. Lastly, the NPM(s) will have the liberty to have contacts with the SPT, send it information and meet with it.⁸¹ Article 21 OPCAT states that information provided to the NPM(s) shall be privileged. Article 22 OPCAT requires the competent authorities to examine the NPM(s) recommendations and enter into a dialogue with the NPM(s) about these recommendations and possible implementation measures. State Parties are obligated to publish and disseminate the annual reports of the NPM(s).⁸² Last but not least, article 35 OPCAT obligates State Parties to accord the NPM(s) such privileges and immunities as are necessary for the independent exercise of their functions.

In The Netherlands it was decided to designate several existing monitoring bodies as NPM's.⁸³ Additionally, The Netherlands appointed four additional associates (*toehoorders*). The reason for this was that places where persons could be held against their will were already being monitored by a number of bodies. That way, as a system, they cover all areas where persons can be deprived of their liberty and meet the requirements set out by OPCAT. Initially, six bodies were designated as NPM's through a letter from the Secretary of State of the Ministry of Security and Justice on 20 December 2011.⁸⁴ In 2012 two of the initial six bodies merged and in 2014 the tasks of one of the remaining five bodies were transferred to the coordinator of the NPM's. Thus currently there are four bodies with NPM status in The Netherlands. The Netherlands appointed another four bodies as additional associates.

The NPM's are the following:

- the Inspectorate of Security and Justice (IV&J, coordinator);
- the Health Care Inspectorate (IGZ);
- the Inspectorate for Youth Care (IJZ);
- the Council for the Administration of Criminal Justice and Protection of Juveniles (RSJ).

The additional associates (*toehoorders*) are the following:

- the Commission of oversight for Penitentiaries;
- the Commission of oversight for the police cells;
- the Commission of oversight for military detention;
- the National Ombudsman.

The Inspectorate of Security and Justice (IV&J) acts as the NPM coordinator.⁸⁵ Its tasks are to promote cohesion between the different NPM members, to facilitate a collective understanding of the OPCAT and its requirements and to make sure there is a collaboration between several groups of organisations in order to share experiences, while respecting the independence of the individual NPM members. The coordinator is required to gain an overview of all the monitoring activities of all the NPM members and to report to the SPT on a yearly basis.⁸⁶

⁸⁰ Art. 4 OPCAT.

⁸¹ Article 20 OPCAT.

⁸² Article 23 OPCAT.

⁸³ The OPCAT does not specify a particular organisational form that NPMs must take, see APT & IIHR, OPCAT Implementation Manual, 2010, p. 48. Civil society organisations were not consulted in the designation process, Van Gerven-Mandjes, 2010, p. 22; Derckx, 2013, p. 30.

⁸⁴ Letter of the Ministry of Justice dated 21 December 2011, reference number: 207511. No special legislation was adapted setting out the mandate for the NPM's in The Netherlands, Thus, the NPM mandate is based on international law, i.e. article 3 OPCAT. See also Derckx, 2013, p. 30.

⁸⁵ According to Van Gerven-Mandjes, an internal document (not publicised) suggests the government deemed it most logical appoint the former Ist as the NPM-coordinator, based on the tasks and powers already attributed to this Inspectorate, Van Gerven-Mandjes, 2011, p. 22.

⁸⁶ NPM Second Annual Report-2012, p. 7.

2.4.1 Inspectorate of Security and Justice (IV&J, coordinator)

The IV&J was established in 2012 after the Inspectorate for Implementation of Sanctions (ISt) merged with the Public Order and Safety Inspectorate (IOOV) and acts as the coordinator of the Dutch NPM's.⁸⁷ As of 1 January 2014 the tasks of the former CITT have also been brought under the mandate of the IV&J. In December of 2012 a total of 59 fte⁸⁸ worked at the IV&J. About 10 inspectors are involved with NPM-related functions on a regular basis.⁸⁹ These inspectors are not appointed as 'special NPM-inspectors'. However when performing their regular inspection work they take into account the requirements following from the OPCAT. The IV&J forms an organisational division within the Ministry of Security and Justice and falls within the ministerial responsibility.⁹⁰

Mandate and Functions

The task of the IV&J is to supervise the implementation of sanctions with regard to the improvement of the effectiveness and quality of these sanctions. The IV&J also supervises the return process of aliens who do not have a legal basis for staying in The Netherlands and are (in)voluntarily returned to their country of origin or a third country. An additional function of the IV&J is that they are the interlocutor of the European Committee for the Prevention of torture and inhuman or degrading treatment or punishment (CPT).⁹¹ The IV&J performs its monitoring tasks at the following locations: probation, juvenile detention facilities, migration detention and other locations where persons can be detained as a sanction.⁹²

Monitoring activities

The IV&J monitors through four different types of research:

- Firstly, they can screen (*doorlichting*) an institution or centre. Screenings take a couple of weeks (i.e. one week preparation, one week actual visit and a couple of weeks reporting).
- Secondly, they can do a subject-specific research (*thematisch onderzoek*): inspection of specific aspects of detention (e.g. solitary confinement or food). The time required for this type of research differs and depends on the subject and nature of the research, as well as the number of institutions to be visited in the framework of the subject-specific research.
- Thirdly, it is possible to do an incident-based investigation (*incidenten onderzoek*). This type of investigation can be requested by the Minister or be conducted at the IV&J's own initiative.
- Fourthly, the IV&J can do a follow-up research (*vervolgonderzoek*) in which it is possible to do a research conducted as a follow-up to a previous investigation to determine whether or not improvements have been made.⁹³ Each inspection is conducted by a minimum of two inspectors, who use specific frameworks for their inspections, specifying which aspects of an institution they monitor. These frameworks can be found on the website of the IV&J.⁹⁴

Reporting

The IV&J drafts a report of its visit. Institutions are given two weeks to respond to factual inaccuracies. The draft report is to be amended within two weeks and adopted by the Chief Inspector. The IV&J submits the adopted report to the Minister and/or Secretary of State of Security and Justice. The Minister is not allowed to make any changes to the text and is to send the report to Parliament within 6 weeks (House of Representatives (*Tweede Kamer*)). He is allowed to send along an accompanying letter expressing his point of view on the text and elaborate on the recommendations made (e.g. the

⁸⁷ NPM Second Annual Report-2012, p. 25.

⁸⁸ Fte stands for full time equivalent. This means that if the persons were to be working full time there would be 59 of them. An fte can also be filled up with two or more people working part-time. E.g.: if a full workweek is 38 hours, someone could be working 0,5 fte meaning that person works 19 hours a week.

⁸⁹ NPM Second Annual Report-2012, p. 25.

⁹⁰ Article 2 par. G jo. art. 3 Organisatieregeling Ministerie van Veiligheid en Justitie 2011. After the ISt and IOOV merged to form the IV&J no new regulation concerning its mandate and tasks was adapted. A regulation to that effect is currently being drafted; Inspectie Veiligheid en Justitie, 2013, p. 6.

⁹¹ NPM Second Annual Report-2012, p. 25.

⁹² Derckx, 2013, p. 49.

⁹³ NPM Second Annual Report-2012, p. 25-26.

⁹⁴ Inspectie Veiligheid en Justitie, 2013, p. 6-7.

extent to which recommendations will be implemented or not and on what grounds). One year after publication of the report a short visit is conducted to establish to what extent recommendations have been followed up in a satisfactory manner.⁹⁵

2.4.2 Health Care Inspectorate (IGZ)

The Health Care Inspectorate is part of the national mechanism for monitoring the general health care in The Netherlands. The IGZ forms an organisational division within the Ministry of Health, Welfare & Sport.⁹⁶ The Minister is competent to determine how the IGZ performs its tasks, although the Minister does so only rarely.⁹⁷ The IGZ employs 537 persons⁹⁸, including 140 Inspectors and 60 Inspectorate Officers. Thirty of these employees are regularly involved in NPM-related functions.⁹⁹ The head of the IGZ is the Inspector General, who is appointed by the Minister of Health, Welfare and Sport as well as other senior officials. The other employees are appointed by the Inspector General.¹⁰⁰

Mandate and functions

The mandate for the IGZ is found in article 36 of the Health Care Act. The IGZ's work covers four main areas: public and mental health, curative care, nursing and long-term care, and pharmaceuticals and medical technology. The Health Care Inspectorate promotes public health through effective enforcement of the quality of health services, preventive measures and medical products.¹⁰¹ In order to ensure responsible care the IGZ can advise responsible Ministers and apply various measures, including advice¹⁰², encouragement and coercion. The IGZ is to perform its tasks in a professional and impartial manner, independent of party politics.¹⁰³

Monitoring activities

The IGZ distinguishes three types of monitoring activities, which are the following:

- monitoring activities based on risk indicators (*risico-indicator toezicht*);
- incident-based research (*incident toezicht*);
- subject-specific research.¹⁰⁴

The IGZ does not investigate all incoming reports itself. It may request the health care provider/institution to conduct an internal research, though it sets certain requirements with regard to the quality and scope of the investigation. In forthcoming situations the IGZ instigates its own investigation, in addition to the internal investigation carried out by the health care provider/institution.

Reporting

Almost all IGZ reports are made public under the national Freedom of Information Act (*Wet Openbaarheid Bestuur*). There is no statutory obligation to publish reports on specific institutions, however the IGZ generally does publicize these report in conformity with its proactive publication policy. Reports on individual health care providers or those which are subject to criminal or disciplinary proceedings are not 'proactively' published. The proactive publishing policy has been in place since 2008. Reports remain available through the IGZ website for a period of three years.¹⁰⁵

⁹⁵ NPM Second Annual Report-2012, p. 25, 26.

⁹⁶ Inspectie Gezondheidszorg, 2013, p. 30; NPM Second Annual Report-2012, p. 26.

⁹⁷ Art. 65 BOPZ; Van der Steenhoven, p. 15, 19, 20.

⁹⁸ According to the IGZ Annual Report 2013 the number of employees was 552, though no information is given on inspectors involved in NPM-related activities.

⁹⁹ NPM Second Annual Report-2012, p. 26.

¹⁰⁰ Van Gerven-Mandjes, 2010, p. 53.

¹⁰¹ Art. 36 par. 1 Gw.

¹⁰² Art. 36 par. 2 Gw.

¹⁰³ Ibid.

¹⁰⁴ Derckx, 2013, p. 53; NPM Second Annual Report-2012, p. 26-27.

¹⁰⁵ NPM Second Annual Report-2012, p. 27.

2.4.3 Inspectorate for Youth Care

The IJZ was established in 1988 and monitors the quality of the Dutch Youth Care and its compliance with legislation.¹⁰⁶ The IJZ has a staff of 45 full-time equivalents¹⁰⁷ of which 28 are inspectors. All of them are involved in NPM-related functions. Nine of them on a regular basis.¹⁰⁸ The IJZ staff is appointed by the Minister of Health, Welfare and Sport.¹⁰⁹ The IJZ falls within the ministerial responsibility of the Ministry of Health, Welfare and Sport. The Minister is competent to determine how the IJZ performs its tasks.¹¹⁰

Mandate and functions

The mandate and tasks of the IJZ are set out in the Youth Care Act.¹¹¹ The tasks of the IJZ are the following: to conduct inspections with regard to the quality of youth care, to monitor the quality of the youth care and to monitor the compliance with applicable legal quality standards and proposing measures for improvement.¹¹² The IJZ monitors the following institutions: Bureaus for Youth Care, youth care providers, prisons for juveniles, licensees for inter country adoption, residence centres for unaccompanied minors, the Council for Child Protection and boarding schools for children of sailors.¹¹³ In carrying out its tasks, the IJZ is competent to enter all places¹¹⁴, to demand information, to request insight into business data and documents and making copies of it and the obligation to request cooperation from all persons within a reasonable period of time.¹¹⁵ The IJZ is free to make unannounced visits to places of its choice.¹¹⁶ Therefore, the IJZ uses different strategies. At occasion, the IJZ shows up as a mystery guest. More often, the IJZ announces their visit, but thereby they do not always give all information with regard to this visit. It is possible that the IJZ does not inform the institution about the time, the topics of the planned inspection or the sources the inspection is going to use for their inspection.¹¹⁷ The IJZ uses specific frameworks for its inspections. These frameworks are specifically developed for certain themes or topics. At the end of 2011 the IJZ started a multiannual project in order to develop a set of frameworks that cover all these themes and topics. Inspections are carried out by a minimum of two inspectors. The duration of the supervisory activities depends on the nature, gravity and content of the issue at hand and varies from several weeks to several months.¹¹⁸

Monitoring activities

The IJZ employs a number of monitoring methods.¹¹⁹

- The first method is a thematic research, which is based on a risk model.¹²⁰ The IJZ monitors where the risks of shortcomings in quality are greatest.¹²¹ These risk indicators¹²² give an overview of the extent to which institutions with residential care, Bureaus for Youth Care or institutions for foster care succeed in delivering sufficient quality in the execution of their tasks (caring for, raising and treating minors). A risk assessment profile is drawn and used to determine how supervision will be conducted.¹²³ Thematic researches usually consist of the

¹⁰⁶ Art. 47 jo. art. 48 Wjz.

¹⁰⁷ Full-time equivalent.

¹⁰⁸ NPM Second Annual Report-2012, p. 28.

¹⁰⁹ Van Gerven-Mandjes, 2010, p. 42.

¹¹⁰ Art. 47 par. 1 jo. art. 47 par. 4 Wjz.

¹¹¹ Art. 47 jo. art. 48 Wjz.

¹¹² Art. 47 par. 1 Wjz.

¹¹³ Follows from: Wjz, Bji, Wobka, Wet Coa, Subsidieregeling opvang kinderen van ouders met een trekkend bestaan; Inspectie Jeugdzorg, 2012, p. 31.

¹¹⁴ With exception of the home without the permission of its occupant.

¹¹⁵ Art. 47 par. 3 Wjz.

¹¹⁶ The IJZ can also do so at the request of the Minister of Health, Welfare and Sport, the Minister of Security and Justice or at the request of the Provinces, see art. 47 par. 5 Wjz.

¹¹⁷ Inspectie Jeugdzorg, 2012, p. 25.

¹¹⁸ NPM Second Annual Report-2012, p. 29.

¹¹⁹ NPM Second Annual Report-2012, p. 28-29; Derckx, 2013, p. 51.

¹²⁰ NPM Second Annual Report-2012, p. 28-29.

¹²¹ Reports and incidents play a role in the risk analysis.

¹²² Which are the following: Structural safety assessment and evaluation, stability, substantive steering, promotion of expertise, premature termination and sequel, see: <http://risicoindicatoren.nl/#risicoindicatorenresidentielejeugdzorg>. Last checked on: 08/06/2014.

¹²³ NPM Second Annual Report-2012, p. 29.

preparation phase, the study of the policies of the institution and visits to the institution in question during which visits the inspectors talk to children and young people, group leaders, behavioural experts, team leaders and management members.

- The second monitoring method is the inspection of incidents and calamities.¹²⁴ Calamities are to be reported to the IJZ immediately. The IJZ evaluates the reported calamity and decides on further action. Incidents are not reported individually, but they are systematically registered by the institutions themselves, who periodically analyse them and enforce measures for improvement based on these analyses. The IJZ assesses the quality of the analyses and improvement measures twice yearly.
- The third method concerns the regional monitoring method. Every year the IJZ inspectors draw up regional monitoring plans in which they specify which monitoring activities will take place that year in the different youth care institutions in the country.¹²⁵
- In addition to these monitoring methods, the IJZ has also developed a form of monitoring called 'increased supervision' (*verscherpt toezicht*). If the IJZ has determined that an institution does not meet the required standards, this institution will be placed under increased supervision for a maximum period of one year. The institution is required to draft a plan of improvement. Subsequently, the institution is required to inform the IJZ on the implementation of this plan and the achieved results. The IJZ will retest the institution. If the institution improved its practices, the increased supervision will be abolished.¹²⁶

Reporting

The IJZ drafts an annual report with regard to its activities in which they set out recommendations. This report is sent to the provincial governments, Ministers and the House of Representatives.¹²⁷ These annual reports are published at the website of the IJZ.¹²⁸ The IJZ always draws a report in response to a thematic research. If necessary, a report at national level is drawn up, containing recommendations addressed to the responsible managers and members of the Provincial Executive or Minister. Independent research into emergency cases always leads to reports being issued at institutional level. If necessary a report can be issued at national level as well (e.g. when several emergency cases have taken place). The Inspectorate always issues a letter providing brief feedback after every visit. These letters may include points of attention or concerns and recommendations. The monitoring reports prepared by the IJZ are made public on their website.¹²⁹

2.4.4 Council for the Administration of Criminal Justice and Protection of Juveniles

The Council for the Administration of Criminal Justice and Protection of Juveniles (The Council) was established by law (*Instellingswet Raad voor Strafrechtstoepassing en Jeugdbescherming*) in 2001.¹³⁰ The Council advises the Minister of Security and Justice on the implementation and execution of rules and policies regarding sanctions and youth affairs and administers justice in cases defined by law. The Council does not have a supervisory role.¹³¹ The Council has a chairman and a maximum of 60 members.¹³² Its members (including the chairman) are nominated by the Minister of Security and Justice and appointed through a royal decree. Prior to the nomination The Council is consulted.¹³³

¹²⁴ The IJZ considers a calamity to be an event that has taken place during the time in which the institution was concerned with the minor, which event unexpectedly and unintentionally led or could have led to deadly or hazardous consequences for the minor, or a third party as a result of the actions of a minor.

¹²⁵ For the regional monitoring plans for the years 2006-2014, see: www.inspectiejeugdzorg.nl/organisatie/jaarwerkprogramma. Last checked on: 07/08/2014.

¹²⁶ Inspectie Jeugdzorg, 2012b, p. 14.

¹²⁷ Art. 47 par. 10 Wvz.

¹²⁸ For the annual report for the years 2004-2013, see: www.inspectiejeugdzorg.nl/organisatie/jaarbericht/. Last checked on: 07/08/2014.

¹²⁹ See: www.inspectiejeugdzorg.nl. Last checked on: 12/08/2014.

¹³⁰ *Instellingswet RSJ*.

¹³¹ Art. 3 par 1 jo. 2 *Instellingswet RSJ*.

¹³² Art. 4 *Instellingswet RSJ*. On the website however it says that the Council consists of about 75 members of deputy members and according to the list of members on their website The Council currently has 67 members.

¹³³ Art. 4 *Instellingswet RSJ*.

Members are appointed for a maximum of six years with the possibility of being re-elected for another maximum of six years. The Minister of Security and Justice is responsible for publicising vacancies for a position within The Council.¹³⁴ Requirements with regard to the expertise of the members of The Council are set out by law as well.¹³⁵ Paragraph 2 of said article sets out which areas of expertise must be covered by the members of The Council.¹³⁶ With regard to its composition The Council aims at a fair balance between men and women and persons belonging to an ethnic or cultural minority group.¹³⁷ The Council falls within the ministerial responsibility of the Minister of Security and Justice. The Minister can order the Council to give him advice on the application and implementation of policies and regulations in the field of criminal law and on juvenile law.¹³⁸

The Council is required to submit its work programme for the coming year to the Minister in order for him to approve the work programme.¹³⁹ The Council fulfils its tasks based on the resources awarded to The Council through the *Comptabiliteitswet*.¹⁴⁰

Mandate & functions

The Council has two functions. First of all they have to monitor whether sanctions are enforced in a legally correct manner and in accordance with principles of proper treatment of individuals.¹⁴¹ The Council gives advice (recommendations) to the Minister and the State Secretary of Security and Justice and the State Secretary for Health, Welfare and Sport. Recommendations concern issues in the areas of the prison system, the forensic care system and youth protection. The Council gives this advice on its own initiative as well as on request.¹⁴² The Council publishes these advices on its website. The Minister of Security and Justice sends the Advice of The Council to the House of Representatives, but The Council can also choose to do so.¹⁴³ Besides giving advice The Council functions as a court of appeal and reviews decisions made with regard to persons serving a prison sentence or custodial measures (prisoners, offenders under a hospital order and juveniles in juvenile detention facilities and closed youth care institutions). Judgments given by The Council are binding. The Council can give judgments on appeals concerning decisions made by the Director of a penal institution, the medical treatment given by the institution's doctor, decisions made by the selection officer or decision made by the Minister of Security and Justice.¹⁴⁴ The members of The Council are allowed access to all places where persons undergo a prison sentence or custodial measures.¹⁴⁵ The members of The Council can ask the director or personnel of the places they visit for any relevant information, which information is to be supplied to them.¹⁴⁶ The members of The Council are obligated to keep confidential any information they receive of which they know or suspect is confidential, unless a statutory obligation obligates them to make this information public.¹⁴⁷ The Council does carry out visits, however, carrying out monitoring visits is not part of the mandate of The Council. The visits are function as informational visits and the information gathered is used for preparing a specific advice. The Council does not expedite concrete lobby activities, however its members will discuss and make public their ideas and points of view (e.g. through publications in journals). In this way the advices and recommendations of The Council form part of the public debate on a specific topic.¹⁴⁸

¹³⁴ Art. 4 par. 4 Instellingswet RSJ.

¹³⁵ Art. 5 Instellingswet RSJ.

¹³⁶ It mentions members of the judiciary, experts within the field of social work, experts within the field of behavioural science, lawyers and doctors.

¹³⁷ Art. 5 par. 4 Instellingswet RSJ.

¹³⁸ Art. 3 par. 1 Instellingswet RSJ.

¹³⁹ Art. 17 Instellingswet RSJ.

¹⁴⁰ Art. 16 jo. art. 18 Instellingswet RSJ. The Council is to send the Minister of Security and Justice a budget for the following calendar year before the first of April.¹⁴⁰

¹⁴¹ The Council's mission statement as described on their website <http://www.rsj.nl/english>. Last checked on: 20 June 2014.

¹⁴² Art. 3 par. 1 Instellingswet RSJ.

¹⁴³ Van Gerven-Mandjes, 2010, p. 22; Derckx, 2013, p. 31.

¹⁴⁴ See: <http://www.rsj.nl/english/>, last checked on 20/06/2014. Examples are placement and transfers, disciplinary punishments and measures, prescribed medication, refusal to grant leave.

¹⁴⁵ Art. 15 par. 1 Instellingswet RSJ.

¹⁴⁶ Art. 15 par. 2 Instellingswet RSJ.

¹⁴⁷ Art. 15 par. 3 Instellingswet RSJ.

¹⁴⁸ Van Gerven-Mandjes, 2010, p. 22; Derckx, 2013, p. 31.

Monitoring activities

The RSJ is the only one of the NPM's without a supervisory role. The RSJ does however have access to all places where persons can be held sanctions are enforced (as part of its advisory role).¹⁴⁹

Reporting

The Council reports about its proceedings (expediency and efficiency) and general policies on a yearly basis. This report is sent to the Minister of Security and Justice and is made publicly available.¹⁵⁰

(Internal) Rules and policies

The Council draws up a yearly work programme and sends this work programme to the Minister of Security and Justice before the first of September each year.¹⁵¹ The work programme is drawn up based on suggestions from people within The Council as well as people outside of The Council.¹⁵² In preparation of its recommendations, the Council uses scientific research and national and international literature, analyses the views in the field and in the social debate, pays working visits to prisons, custodial clinics, juvenile detention facilities, closed youth care institutions and the probation and aftercare service.¹⁵³ The Council is obligated to adopt a procedural document (*bestuursreglement*) which includes rules on the methods according to which The Council is to conduct its tasks, procedures aiming at a correct execution of its tasks.¹⁵⁴

2.4.5 Commission of oversight for Penitentiaries (*Commissie van Toezicht voor justitiële jeugdinrichtingen*)

Mandate and functions

The Commissions of oversight for Penitentiaries form a supervisory system consisting of 71 commissions, each of them linked to a penitentiary institution. Their functions are limited to oversight of the detention centre and of the treatment of detainees, handling of complaints, provision of advice and information to the relevant bodies.¹⁵⁵

Monitoring

activities

Members of the Commission of oversight for penitentiaries have access to all institutions at all times.¹⁵⁶ Almost all commissions visit institutions once a month to have contact with detainees. The commissions generally consist of civilians, with the inclusion of some experts (there has to be a minimum of one judge, one lawyer, one medical expert and one social work expert).¹⁵⁷ They vary in size, with an average number of 10 members, all appointed by the Minister of Security and Justice for a maximum term of five years, with the possibility of being re-appointed twice.

Reporting

Annual reports are drafted each year and sent to the Minister of Security and Justice and the RSJ. Only two third of the commissions compiled an annual report in 2011. Thanks to a recent decision, these reports are made public on the website of the Custodial Institutions Agency.¹⁵⁸

¹⁴⁹ Art. 15 Instellingswet RSJ.

¹⁵⁰ Art. 19 Instellingswet RSJ.

¹⁵¹ Art. 17 par.1 Instellingswet RSJ.

¹⁵² Raad voor Strafrechtstoepassing en jeugdbescherming, 2013, p. 1.

¹⁵³ Idem.

¹⁵⁴ Art. 12 Instellingswet RSJ.

¹⁵⁵ See: http://www.commissievantoezicht.nl/dossiers/dossier_verblijf_in_jeugdinrichting/commissie-van-toezicht-binnen-een-justitiële-jeugd/. Last checked on: 31/07/2014. Their mandate lies within art. 66 Bjj.

¹⁵⁶ Art. 15 par. 1 PM.

¹⁵⁷ Art. 11 par. 3 sub c PM.

¹⁵⁸ NPM Second Annual report-2012, p. 30; See: www.apc.ch/en/opcat_pages/opcat-situation-51/?pdf=info_country. Last checked on: 07/08/2014.

2.4.6 Commission of oversight for the police cells (*Commissie van Toezicht Arrestantenzorg*)

Mandate and functions

The police organisation in The Netherlands has changed significantly in the year 2013, which has had its effect on the Commissions of oversight for the police cells. The number of commissions of oversight for the police cells has been reduced from 25 to 10. The members of the commissions are appointed by the police force manager for a maximum of four years. Members can be reappointed once. In appointing its members attention is paid to the background of the different members.¹⁵⁹ The commissions comprises of three to seven members, supported by a secretariat. The commissions for oversight's tasks consist mainly of supervising the treatment, accommodation conditions and safety of people held in premises used by the regional police.¹⁶⁰ They also provide advice and information to the police force manager.

Monitoring activities

The members of the Commission of oversight for the police cells are allowed access to police cell complexes at any given moment and are allowed to question both persons deprived of their liberty as well as visitors.¹⁶¹ Additionally the police force manager is to provide the members with all requested information and documentation.¹⁶²

Reporting

Each visit of the Commission of oversight for the police cells is followed by a written report¹⁶³, and each year an annual report is compiled and discussed with the police force manager and the regional executive of the police region. The annual report is shared with other relevant bodies and made public through the press.¹⁶⁴

2.4.7 Commission of oversight for military detention (*Commissie van Toezicht Detentieplaatsen Koninklijke Marechaussee*)

There is a Commission of oversight for military detention facilities consisting of at least 3 and at most 5 members. Members are appointed for a period of three years and can be reappointed twice.¹⁶⁵ In appointing members regard is to be given to the diversity in background, expertise and expertise of the members.¹⁶⁶ Members are not allowed to work for or under the responsibility of the Ministry for Defense.¹⁶⁷ The secretary, who is not part of the commission, is appointed

Mandate and functions

The Commission of oversight for military detention supervises, through regular inspections and meetings, the detention areas used and managed by the Royal Netherlands Marechaussee¹⁶⁸ (RNLM). The Commission is allowed to submit recommendations for the improvement of the detention areas that fall under the responsibility of the RNLM.¹⁶⁹ The Commission inspects whether the detention spaces are used in accordance with the guidelines and assesses whether relevant regulations are observed. Also, the Commission inspects the structural state of repair of the spaces, checks whether technical facilities are functioning, whether logs are being kept, whether the work instructions are being observed, the state of maintenance and cleanliness, and whether there are regulations in place with regard to medical and other forms of care. Finally, the Commission checks

¹⁵⁹ Art. 2 Regeling toezicht arrestantenzorg.

¹⁶⁰ Art. 3 Regeling toezicht arrestantenzorg.

¹⁶¹ Art. 3 par. 2-3 Regeling toezicht arrestantenzorg.

¹⁶² Art. 3 par. 6 Regeling toezicht arrestantenzorg.

¹⁶³ Art. 3 par. 8 Regeling toezicht arrestantenzorg.

¹⁶⁴ NPM Second Annual report-2012, p. 37.

¹⁶⁵ Art. 2 par. 1-2 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee.

¹⁶⁶ Art. 2 par. 3 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee.

¹⁶⁷ Art. 42 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee.

¹⁶⁸ The Commission of oversight for military detention supervises the detention areas used and managed by the Royal Netherlands Marechaussee, for instance the detention centres at Schiphol Airport. Children who enter the Airport can be detained there. So yes, there are minors deprived of their liberty in these facilities.

¹⁶⁹ Art. 6 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee.

whether there is a contingency plan and if this plan is practiced regularly.¹⁷⁰ The Commission is allowed access to the detention facilities at all times and is allowed to speak to the detainees.¹⁷¹

Monitoring activities

The Commission focuses primarily on cells in which arrested persons and aliens are deprived of their liberty for a period longer than six hours and where they also spend the night.

Reporting

An annual report is compiled each year and this report is shared with the Commander of the RNLM.¹⁷²

2.4.8 National Ombudsman (Nationale Ombudsman)

The National Ombudsman is an independent body with a constitutional legal basis.¹⁷³ The National Ombudsman is appointed by the Parliament for a period of six years¹⁷⁴ and it is supported by an Institution comprising about 170 staff members.¹⁷⁵ The Children's Ombudsman office is part of the National Ombudsman's office.

Mandate and functions

The National Ombudsman has the power of investigating and handling complaints coming from individuals which are directed against the government's practices. The National Ombudsman also initiates investigations on its own initiative from which recommendations can follow, and it guarantees the effectiveness of human rights¹⁷⁶.

Monitoring activities

Specifically with regard to detention centres, the National Ombudsman investigates complaints where no substantive opinion can be given by inspections or other institutions. He is also allowed to advise the government and parliament on laws and policies that affect the rights of children.

Reporting

Each year the National Ombudsman sends an annual report to parliament. The National Ombudsman makes recommendations with regard to individual cases or with regard to investigations conducted on his own initiative.¹⁷⁷

2.5 Joint Inspectorate

The Inspectorate for Youth Care, Health Care Inspectorate, Inspectorate for Education, Inspectorate for Security and Justice and the Inspectorate for Social Affairs en Employment have created a partnership known as *Samenwerkend Toezicht Jeugd*, The Joint Inspectorate for Youth. The Joint inspectorate oversees a broad range of services available to children and their families and problems that they could face (e.g. child abuse, youth criminality, addiction, poverty). The members of the Joint Inspectorate for Youth can conduct joint inspections in various constructions, depending on the theme being researched. The Joint Inspectorate has its own work programme. Every investigation starts with setting down the hard facts.¹⁷⁸ In the municipalities in which the investigation is carried out, the Joint Inspectorate checks how the cooperation between the services is progressing and what the results are for the children.¹⁷⁹ The results of the investigation are laid down in a report, which is sent to the responsible persons within the municipality in order for them to

¹⁷⁰ NPM Second Annual report-2012, p. 38.

¹⁷¹ Art. 7 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee.

¹⁷² Art. 10 Regeling commissie van toezicht detentieplaatsen Koninklijke Marechaussee; NPM Second Annual report-2012, p. 39.

¹⁷³ It was established by the National Ombudsman Act of 1981 and enshrined in the Constitution in 1999.

¹⁷⁴ Art 2 par. 3 WNo.

¹⁷⁵ NPM Second Annual Report-2012, p. 39.

¹⁷⁶ Art. 1a WNo.

¹⁷⁷ NPM Second Annual Report-2012, p. 40.

¹⁷⁸ E.g. how many children are involved in the problem, what is already done by municipalities and services to solve the problem, what policies are implemented, which services are involved to resolve the problem and what is already known about these services.

¹⁷⁹ The methods for this investigation include the use of questionnaires, interviews, observing meetings, dossier studies and talks with children and/or their parents.

improve the situation. The steps that are made by the municipality are followed by an inspector of the Joint Inspectorate, mostly for a period of two years. The investigation is closed by the performance of a self-evaluation report by the municipality, in which it will be made clear what the effects were of the actions for the children.¹⁸⁰

2.6 Complaint mechanisms available to children who are detained

2.6.1 Closed institution for youth care

Children who are deprived of their liberty in a closed institution for youth care have a right to complain.¹⁸¹ Closed institutions for youth care are required to draft a regulation and establish a complaints committee in order to effectuate this right to complain. The institution is required to bring this regulation under the attention of children and their legal representatives in an appropriate manner.¹⁸² For children who reside in a closed institution for youth care there are two ways to complain: a general and a special complaints procedure. With regard to **the general complaints procedure** it is possible to file a complaint about the actions of persons who work at or for the institutions for youth care.¹⁸³ The decision of the complaints committee in a general complaints procedure is not binding. If a child disagrees with the decision, it is not possible to appeal. The remaining possibility is to file a complaint with the (children's)ombudsman. Children who are deprived of their liberty in a closed institution for youth care also have the opportunity to file a complaint through the **special complaints procedure**.¹⁸⁴ With regard to the special complaints procedure it is possible to file a complaint against a limited number of decisions, which are listed in art. 29w Wvz. It is possible to file a complaint about the staff working in the closed institution, about measures that have been applied in order to restrict the freedom of the child and about decisions with regard to leave. The complaint must be filed in writing and must be submitted 'within a reasonable time' by the child or his legal representative.¹⁸⁵ If a child is not competent to file a complaint in the Dutch language, the chairman of the complaints committee is responsible for the appointment of an interpreter.¹⁸⁶ The child is allowed access to a confidant (*vertrouwenspersoon*).¹⁸⁷ The complaint is handled by the complaints committee which – at minimum - consists of the following persons: a lawyer, a qualified behavioural scientist and a doctor.¹⁸⁸ None of the persons in the complaint committee are or have been working at the closed institution for youth care.¹⁸⁹ The complaints committee is required to take a decision on the complaint as soon as possible, but at least within a period of four weeks.¹⁹⁰ The complaints committee can decide that they are not competent to handle the complaint, they can declare the complaint inadmissible, the complaint can be declared ill-founded or the complaint can be declared well-founded.¹⁹¹ If the complaint is declared admissible, the complaints committee is competent to deconstruct the decision in whole or in part and give orders to the persons that took the initial decision to take a new decision.¹⁹² The complaints committee may also reward compensation.¹⁹³ It is possible to appeal to the decision of the complaints committee.¹⁹⁴ This appeal can be filed in writing with the committee of appeal, which is the *Raad voor de Strafrechtstoepassing en Jeugdbescherming (RSJ)*.¹⁹⁵ Both the complainant and the person against

¹⁸⁰ Integrated Supervision of Youth Affairs, date unknown, p. 2; See also:

http://www.jeugdinspecties.nl/onderwerpen/Fases_onderzoeken. Last checked on: 11/08/2014.

¹⁸¹ Art. 29w par. 1 Wvz.

¹⁸² Art. 68 par. 1 Wvz.

¹⁸³ Art. 68 Wvz.

¹⁸⁴ Art. 29w Wvz.

¹⁸⁵ Art. 29w par. 1 Wvz.

¹⁸⁶ Art. 55c par. 2 Uitvoeringsbesluit Wvz.

¹⁸⁷ Art. 55c par. 1 Uitvoeringsbesluit Wvz.

¹⁸⁸ Art. 55d Uitvoeringsbesluit Wvz; The presence of a doctor is only required in case of a complaint about medical treatment.

¹⁸⁹ Art. 68 par. 2 Wvz.

¹⁹⁰ Art. 29w par. 3 Wvz; If the complaints committee exceeds this period, the complainant has the right to appeal directly to the committee for appeal.

¹⁹¹ Art. 29w par. 4 Wvz.

¹⁹² Art. 29w par. 5 jo. par. 6 Wvz.

¹⁹³ Art. 29w par. 7 Wvz..

¹⁹⁴ Art. 29y Wvz jo. Art. 74-76 Bjj.

¹⁹⁵ Art. 1 Klachtenregeling RSJ 2007.

whom a complaint has been filed are allowed access to a confidant.¹⁹⁶ If translation of the complaint is necessary in order to handle the complaint, the RSJ is to make sure the complaint is translated.¹⁹⁷ The complainant will receive a confirmation of receipt of the complaint within two weeks.¹⁹⁸ Complaints that have previously been submitted and handled or that regard incident that have taken place more than a year ago are not admissible. The RSJ is to inform the complainant of this in writing as soon as possible though at its latest within four weeks after having received the complaint.¹⁹⁹ Both the complainant and the person against whom a complaint has been filed are given the opportunity to express their views on the matter.²⁰⁰ The RSJ handles the complaint within a period of six weeks.²⁰¹ The RSJ notifies both the complainant and the person against whom a complaint has been filed about the outcome and the consequences of the complaint.²⁰² The RSJ publishes registered complaints anonymously on a yearly basis.²⁰³

2.6.2 Arrest cells

Children who are deprived of their liberty in an arrest cell at the police station are competent to file a complaint with a complaints committee.²⁰⁴ It is possible to file a complaint in written or electronically through a special complaints form on the Internet. This has to be done within a year.²⁰⁵ If there is a verbal complaint, police officers are required to point to the possibility to file a complaint in written. If a person is not capable of doing so, assistance will be provided.²⁰⁶ A written complaint can be filed with the police chief of the unit where the police officer about whom is complained works.²⁰⁷ After the complaint is filed, the complainant receives a confirmation of receipt as soon as possible as well as further information about the manner in which the complaint will be handled.²⁰⁸ A copy of the complaint is also sent to the mayor and the chief prosecutor in order for them to give advice on the matter.²⁰⁹ The complaints committee exists of – at least- three members, with a fixed chair who is responsible for the independence of the complaints committee.²¹⁰ Every committee is composed of persons with the necessary legal expertise, skills in the field of dispute resolution or mediation and knowledge of police work.²¹¹ The hearings of the committee are not public, unless the chairman decides otherwise.²¹² The complaints committee has to decide on the matter within a period of fourteen weeks.²¹³ The decision on the complaint is communicated – in writing - to the complainant and to the police officer about whom is complained. This decision contains the judgment of the committee in which is stated that the complaint is admissible, ill-founded, well-founded or that a decision cannot be taken.²¹⁴ If given, the decision can also contain the recommendation of the mayor and the chief public prosecutor. The decision of the complaints committee is not binding. If applicable, the decision states whether, and if so why, the decision of the complaints committee differs from the recommendations of the mayor and/or chief public prosecutor. A record of complaints that are filed with the police is maintained. Once a year the police chief reports to the Minister of Security and Justice about the handling of complaints with regard to the conduct of police officers.²¹⁵

¹⁹⁶ Art. 1 par. 3 Klachtenregeling RSJ 2007.

¹⁹⁷ Art. 2 par. 3 Klachtenregeling RSJ 2007.

¹⁹⁸ Art. 4 Klachtenregeling RSJ 2007.

¹⁹⁹ Art. 5 Klachtenregeling RSJ 2007.

²⁰⁰ Art. 7 Klachtenregeling RSJ 2007.

²⁰¹ Art. 8 Klachtenregeling RSJ 2007. This term can be extended once with a period of four weeks.

²⁰² Art. 9 Klachtenregeling RSJ 2007.

²⁰³ Art.10 Klachtenregeling RSJ 2007.

²⁰⁴ Art. 67a Politiewet 2012.

²⁰⁵ Toelichting bij Uitvoeringsregeling klachtbehandeling politie.

²⁰⁶ Art. 4 par. 1 Uitvoeringsregeling klachtbehandeling politie.

²⁰⁷ Art. 71 par. 1 Politiewet 2012; For complaints about other police officers, see art. 71 par 2-5.

²⁰⁸ Art. 4 par. 5 Uitvoeringsregeling klachtbehandeling politie.

²⁰⁹ Art. 71 par. 6 Politiewet 2012.

²¹⁰ Art. 3 par. 1 Regeling klachtbehandeling politie. The explanatory note accompanying the *Uitvoeringsregeling klachtbehandeling politie* (January 2013) states that formal complaints will be handled by independent members of the complaintscommittee.

²¹¹ Art. 3 par. 3 Regeling klachtbehandeling politie.

²¹² Art. 3 par. 7 Regeling klachtbehandeling politie.

²¹³ Art. 72 Politiewet 2012; art. 6 Uitvoeringsregeling klachtbehandeling politie.

²¹⁴ Art. 7 Uitvoeringsregeling klachtbehandeling politie.

²¹⁵ Art. 6 par. 2 Regeling klachtbehandeling politie.

The information in this report is public, but it does not contain information that can be traced to individuals.²¹⁶

2.6.3 Judicial youth detention centre

Children who are deprived of their liberty in a judicial youth detention centre have the right to complain with an independent complaints committee.²¹⁷ Upon arrival at the juvenile detention centre, the director is to inform the child about this right to complain. This has to be done in writing, in a way that is understandable for the child.²¹⁸ The multiple ways to complain are listed below.

Object and appeal (bezwaar en beroep)

Minors have the opportunity to object to certain decisions (*bezwaar maken*) and subsequently to appeal the decision taken on the objection (*bezwaar*). Objections can be filed against decisions of the selection officer (*selectiefunctionaris*) with regard to placement and transfers. This objection has to be filed within seven days after the day on which the child has been notified of the decision.²¹⁹ The selection officer must give the child the opportunity to explain (orally or in writing) his objection. After this hearing, the selection officer is required to take a decision within a period of six weeks.²²⁰ Objections can also be filed against decisions with regard to the extension of the period that a minor (who receives a PIJ or TBS measure) is placed. It is possible to appeal with the RSJ against this decision of the selection officer.²²¹ A minor may also appeal against the failure or untimely delivery of a warrant to participate in an education and training program. If the director fails to request a warrant or declines the request of the minor to participate in an education and training program, the minor is competent to file a complaint with the selection officer as well.²²²

Mediation (bemiddeling)

It is possible for a minor to complain by submitting a *grief* with the month commissioner (*maandcommissaris*, member of the complaints committee) in order for him to mediate. A *grief* can be filed about the way in which the director²²³ has treated the child. This *grief* does not have to be submitted in writing but can be done orally by the minor himself or by his legal representative(s).²²⁴ The submission of a *grief* has to be done within seven days. The month commissioner has to see whether he can find a solution that is acceptable for all parties involved and he is to send both the child and the director a written report of his findings within a period of six weeks.²²⁵ As a reaction to this report, the director has to report to the minor and the supervisory committee whether he agrees with the report of the month commissioner and whether he will take measures, and if so, which measures. The director has to do this within a period of four weeks.²²⁶ If the minor does not agree with the decision of the director, he is competent to file a formal complaint (*beklag*) with the complaints committee.²²⁷

Complaint and appeal (beklag en beroep)

A minor is competent to file a complaint with the complaints committee about decisions taken by or on

²¹⁶ Art. 6 par. 4 Regeling klachtbehandeling politie.

²¹⁷ Art. 65 Bjj. The independence of the complaints committee is guaranteed through art. 16 Rjj.

²¹⁸ Art. 60 Bjj. The Minister of Security and Justice established a model for house rules for judicial youth detention centres in which the complaints procedure for children has been set out, see: <http://wetten.overheid.nl/BWBR0030266/>. Last checked on: 03/07/2014.

²¹⁹ Art. 18 Bjj.

²²⁰ Art. 18 par. 4 Bjj.

²²¹ Art. 77 Bjj.

²²² Art. 65 Bjj.

²²³ The conduct of a staff member or employee of the institution is equated with the conduct of the director.

²²⁴ Art. 64 par. 1 jo. art. 80 Bjj.

²²⁵ Art. 64 par. 3 jo. par. 5 Bjj.

²²⁶ Art. 64 par. 5 Bjj.

²²⁷ Art. 64 par. 7 Bjj.

behalf of the director of the institution.²²⁸ The complaint has to concern a concrete application of a regulation.²²⁹ The director shall ensure that a minor who wants to file a complaint is able to do so as soon as possible.²³⁰ The complaint has to be filed in written and can be done with the assistance of the director. It has to be filed within a period of seven days.²³¹ The director has to inform the month commissioner about the complaint, so that he can investigate whether mediation is possible.²³² If mediation is not possible, the complaints are handled by the complaints committee, which is a subcommittee of the supervisory committee of the institution.²³³ The president or a designated member of the complaints committee may handle the complaint on their own if the complaint is of a simple nature.²³⁴ A complaint that is more complicated will be handled by a complaints commission consisting of multiple persons. The complaints committee handles the complaints at the prison in a closed setting.²³⁵ Both complainant and the accused person will be given the opportunity to be heard. If necessary,²³⁶ it is possible for the complaints committee to hear both parties in each other's absence.²³⁷ The complaints committee may also obtain written or oral information from other persons.²³⁸ In principle, this information is freely accessible to both parties. The complaints committee will test whether the contested decision is lawful and equitable.²³⁹ The decision can be declared inadmissible, founded or ill-founded.²⁴⁰ The complaints committee is competent to request the director to take a new decision, to replace the contested decision by the decision of the complaints committee or to destroy the contested decision wholly or in part.²⁴¹ It is possible for the complainant to receive compensation.²⁴² The complainant who disagrees with the decision of the complaints committee can appeal with the RSJ within a period of seven days.²⁴³ This appeal can be handled in writing (which means without a hearing, however this is not a common practice).²⁴⁴ The RSJ decides on the matter as soon as possible, but at least within a period of four weeks.²⁴⁵ Both complainant and the director receive a copy of the decision of the complaints committee.²⁴⁶

2.6.4. Psychiatric centres

Patients who enter a psychiatric centre receive house rules in which their rights are explained. The person who is responsible for the patient has to provide for an oral explanation of these rights.²⁴⁷ Every psychiatric centre ensures that patients can rely on a counselor.²⁴⁸ This counselor has to be independent of the management of the institution. For a proper performance of his duties, the counselor has the right to access to all confidential information and documents.²⁴⁹ In The Netherlands there is an **independent Foundation called PVP** which provides confidential work for clients in (mental) healthcare. Approximately sixty people work on location as a counselor, who are all employees of PVP.

²²⁸ Complaints can be filed on matters that are listed in art. 65 Beginselenwet justitiële jeugdinrichtingen. However, this list is not exhaustive.

²²⁹ De Jonge & Van der Linden 2013, p. 374; According to set case law it is not possible to complain about a general rule, this complaint will be declared inadmissible.

²³⁰ Art. 65 par. 3 Bjj.

²³¹ Art. 66 par. 7 Bjj.

²³² Art. 66 par. 2 jo. par. 5 jo. par. 4 Bjj.

²³³ The complaints committee is appointed by the supervisory committee and consists of three members of the supervisory committee.

²³⁴ Art. 67 par. 2 Bjj; They can declare the complaint manifestly inadmissible, manifestly founded or manifestly ill-founded.

²³⁵ Art. 67 par. 4 Bjj.

²³⁶ Art. 69 par. 3 Bjj.

²³⁷ Art. 69 par. 4 Bjj.

²³⁸ Art. 73 par. 2 Bjj.

²³⁹ Art. 73 par. 1 Bjj.

²⁴⁰ Art. 73 par. 3 Bjj.

²⁴¹ Art. 73 par. 7 Bjj.

²⁴² Art. 74 Bjj; De Jonge & Van der Linden, 2013, p. 376.

²⁴³ Art. 74 par. 3 Bjj.

²⁴⁴ Art. 76 par. 1 jo. art. 72 Bjj.

²⁴⁵ Art. 72 Bjj.

²⁴⁶ Art. 37 BOPZ.

²⁴⁷ Art. 1 Besluit patiëntvertrouwenspersoon BOPZ; art. 59 BOPZ.

²⁴⁸ Art. 4 Besluit patiëntvertrouwenspersoon BOPZ.

A minor in a psychiatric centre has the right to file a complaint.²⁴⁹ It is possible to complain about the decision of the caregiver that the patient is not capable of forming his own will, the decision of the caregiver to start a treatment without the permission of the patient, to apply means and measures in emergency cases (such as separation, fixation, isolation, forced medication etc.) and restrictive measures (such as mail checking and visitation rights, freedom of movement and telephone traffic). In addition, complaints can also be filed by a minor about the non-application of the agreed treatment plan. Minors can file these complaints with the board of the psychiatric centre²⁵⁰ and they will be handled by a complaints committee which is appointed by the board of the psychiatric centre.²⁵¹ The complaints committee exist of at least three members. The chairman is not working at or for the psychiatric centre in order for the committee to be independent and impartial. The person against whose decision the complaint is filed cannot be a member of the complaint committee.²⁵² If a person complains who is hospitalized in a psychiatric centre, it is obligatory that a psychiatrist takes place in the complaints committee.²⁵³ The complaints committee is competent to suspend the decision against which the complaint is filed.²⁵⁴ After the reception of the complaint, the complainant receives a notification of receipt. The complaints committee invites the complainant and the person(s) against whom the complaint is filed to be heard. However, these persons are not obliged to attend this hearing. When parties decide to attend the hearing, they both have the right to be assisted by a confidant or a lawyer.²⁵⁵ The complaints committee is obliged to decide on the matter within a period of two weeks after the complaint is received.²⁵⁶ This decision on the complaint has to be reasoned and it has to be notified to the complainant, the patient, the doctor, the medical director, the board and the inspector of the IGZ.²⁵⁷ The decision can be one of the following: the committee is not competent, the complaint is inadmissible, the complaint is ill-founded or the complaint is well-founded.²⁵⁸ If the complaint is declared well-founded, the decision can be destroyed wholly or in part and the complaints committee can request that the responsible person takes a new decision or that he has to perform another action within a fixed period of time.²⁵⁹ The patient is competent, optionally with the intervention of an inspector of the IGZ, to file a petition (*verzoekschrift*) with the court within a period of six weeks if the complaint is declared inadmissible or if no decision has been taken within a reasonable time.²⁶⁰ At the complainant's request, the inspector of the IGZ files a petition with the court within two weeks, unless he considers the petition manifestly inadmissible. If he thinks so, he has to notice that within a period of two weeks as well.²⁶¹ In cases where a judicial procedure is started, a judge is required to take a decision within a period of four weeks after the complaint is received. There is no possibility to appeal against the decision of the judge. The judge can declare that he is not competent, that the complaint is inadmissible, that the complaint is ill-founded or that the complaint is well-founded.²⁶² If the judge declares the complaint well-founded, he can destroy the decision wholly or in part and he can request the responsible person to take a new decision on the matter or to perform another action with consideration of the verdict. It is possible to set a fixed period of time for him to do so.²⁶³ The judge is also competent to give a compensation.²⁶⁴

2.6.5. Border detention

²⁴⁹ The BOPZ is not applicable to complaints of patients who reside in an institution voluntarily. To patients who are hospitalized voluntarily, the Wet Klachtrecht Clienten Zorgsector (WK CZ) is applicable.

²⁵⁰ Art. 41 par. 1 BOPZ.

²⁵¹ Art. 41 par. 2 Wet BOPZ.

²⁵² Art. 2 par. 2 under a Besluit klachtenbehandeling BOPZ.

²⁵³ Art. 4 par. 1 jo. par. 2 Besluit Klachtenbehandeling BOPZ.

²⁵⁴ Art. 41 par. 4 BOPZ.

²⁵⁵ Art. 2 par. 2 Besluit klachtenbehandeling BOPZ.

²⁵⁶ This period is four weeks when it comes to a decision that did not have any consequences at the time of filing or to a decision that has no consequences at the time that the complaints committee has to decide upon the matter, see art. 41 par. 6 BOPZ.

²⁵⁷ Art. 41 par. 6 Wet BOPZ.

²⁵⁸ Art. 41 par. 7 Wet BOPZ.

²⁵⁹ Art. 41 par. 8-10.

²⁶⁰ Art. 41a par. 1 jo. par. 5 BOPZ.

²⁶¹ Art. 41a par. 2 BOPZ.

²⁶² Art. 41a par. 9 jo. par. 10 BOPZ.

²⁶³ Art. 41a par. 12 jo. par. 13 BOPZ.

²⁶⁴ Art. 41b BOPZ.

Children who are deprived of their liberty²⁶⁵ in centres for border detention have the right to complain.²⁶⁶ Such a complaint can be filed with the complaints committee of the detention centre where the child resides.²⁶⁷ The complaints committee exists of three persons of the supervisory committee.²⁶⁸ The independence of the complaints committee is not explicitly guaranteed in the applicable legislation.²⁶⁹ It is possible to complain about – an exhaustive list of – decisions which are taken by or on behalf of the chief of the detention centre.²⁷⁰ This complaint has to be filed within a period of fourteen days.²⁷¹ The secretary of the complaints committee informs the chief of the detention centre about the fact that a complaint has been filed and sends a copy to him in order for the chief to give a written respond.²⁷² In response to the filing of the complaint, a hearing will be organized in which the complainant and the chief have the opportunity to be heard.²⁷³ During this hearing, the complainant has the right to the assistance of a lawyer.²⁷⁴ If the complainant does not speak the Dutch language sufficiently in order to participate, the chairman of the complaints committee ensures that an interpreter will attend the hearing.²⁷⁵ The complainant and his lawyer have the right to insight in all relevant information with regard to the complaint.²⁷⁶

The complaints committee declares the complaint inadmissible, ill-founded or well-founded.²⁷⁷ The complainant and the chief of the detention centre will be informed about the decision. If the complainant does not understand the Dutch language sufficiently, an interpreter will be provided for the child.²⁷⁸ Appeal to the decision of the complaints committee is not possible.²⁷⁹

2.6.6 Immigration detention

Children who are deprived of their liberty²⁸⁰ in centres for immigration detention have the right to complain. A complaint can be filed with the complaints committee in case of a decision that is taken by or on behalf of the chief of the detention centre. The chief of the detention centre is to ensure that a child who wishes to complain will be provided the opportunity to do so.²⁸¹ The child who wishes to complain can file his complaint with the complaints committee of the detention centre where the decision was taken. Thereby, it is necessary that it is stated as accurate as possible about which decision the child complains and the reasons why this complaint is submitted. It is required that the complaint is filed within a period of seven days after the decision is taken.²⁸² The secretary of the complaints committee sends the chief of the detention centre a copy of the complaint.²⁸³ If the detainee does not speak or understand the Dutch language sufficiently, the chief of the detention centre is responsible for the appointment of an interpreter. After the complaint is submitted, it will be handled by the complaints committee. The three members of this committee are appointed by the supervisory committee.²⁸⁴ The complaints committee provides the complainant and the chief of the detention centre the opportunity to be heard.²⁸⁵ The chief and the complainant can request the

²⁶⁵ On the ground of art. 6 Vw 2000.

²⁶⁶ Against decisions as defined in art. 14 Rrg.

²⁶⁷ Art. 16 par. 1 Rrg.

²⁶⁸ Art. 15 par. 1 jo. par. 2 Rrg.

²⁶⁹ Art. 10 jo. Art. 15 Rrg. Additionally, the director is allowed to attend the meetings of the commission of oversight unless the commission decides otherwise, this follow from art. 13 par. 3 Rrg.

²⁷⁰ Art. 14 Rrg.

²⁷¹ Art. 16 par. 2 Rrg.

²⁷² Art. 16 par. 4 Rrg.

²⁷³ Art. 17 par. 1 Rrg.

²⁷⁴ Art. 17 par. 2 Rrg.

²⁷⁵ Art. 17 par. 3 Rrg.

²⁷⁶ Art. 17 par. 4 Rrg.

²⁷⁷ Art. 18 par. 1 Rrg.

²⁷⁸ Art. 19 Rrg.

²⁷⁹ Unless the deprivation of liberty takes place in a location where the Pbw is applicable.

²⁸⁰ On the ground of art. 59 Vw 2000.

²⁸¹ Art. 60 Pbw.

²⁸² Art. 61 par. 5 Pbw.

²⁸³ Art. 63 par. 1 Pbw.

²⁸⁴ Art. 62 Pbw jo. Art. 7 Pbw.

²⁸⁵ Art. 64 par. 1 Pbw.

complaints committee to ask each other questions.²⁸⁶ The complainant has the right to assistance of a lawyer or other confidant, with permission of the complaints committee. In order to participate effectively, the complainant who does not speak the Dutch language sufficiently has the right to the assistance of an interpreter.²⁸⁷ The hearing does not take place in public, unless the complaints committee is of the opinion that no public hearing is not compatible with international binding treaties.²⁸⁸ The complaints committee is required to take a decision as soon as possible, but at least within a period of four weeks. This period can be extended with a period of four weeks in special circumstances. The complainant and the chief of the detention centre have to be informed about this extension.²⁸⁹ A decision from the complaints committee is reasoned and dated and is sent to the complainant and the chief of the prison. This decision also informs parties about the possibility to appeal to the decision. If the complainant does not speak the Dutch language sufficiently, the decision will be translated.²⁹⁰ If the complainant or the chief of the detention centre wishes to appeal to the decision of the complaints committee, it is required that this appeal is filed within a period of seven days after the decision has been received. This notice of appeal has to be filed with an appeal committee, which exists of three members and one secretary who are appointed by the *Raad voor de Strafrechtstoepassing en Jeugdbescherming*.²⁹¹ The committee of appeal takes a decision as soon as possible.²⁹² The committee of appeal can decide that the appeal is not admissible, they can confirm the judgment of the complaints committee or they can destroy the judgment of the complaints committee.²⁹³

2.6.7 Children's ombudsman

The Children's Ombudsman was instated in 2011 and is part of the National Ombudsman's office. The Children Ombudsman has the task of promoting children's rights as laid down in the Convention on the Rights of the Child and ensuring that these rights are respected by government institutions as well as private organisations. The Children's Ombudsman does so by providing information, by giving (un)solicited advice to the government and both Houses of Parliament on legislation and policies that affect the rights of children and by supervising the way in which complaints of children and/or their legal representatives are handled by the competent authorities (other than the ombudsman).²⁹⁴

Children can also file a complaint with the Children's Ombudsman himself when certain requirements are met. It is obligatory that the complaint:

- concerns children's rights;
- regards the governments, organisations in the fields of health care, youth care, childcare or education;
- regards an incident that occurred when the child concerned was under the age of 18 and the incident happened less than one year ago;
- does not regard the decision of a judge;
- has been submitted to the organisation that the complaint is about, and a reaction from that organisation concerning the complaint has been received.

Complaints can be filed both orally or in writing. When a complaint meets the abovementioned requirements action can be undertaken. The type of action will depend on the complaint. In certain cases it suffices to call or visit the organisation concerned. In Other instances an investigation is started upon which a report follows. The Children Ombudsman notifies the complainant of the action that will be undertaken. Although the children's ombudsman has authority, his statements and reports are not binding for those concerned. The Children Ombudsman is to report to the House of Representatives on a yearly basis.²⁹⁵

²⁸⁶ Art. 64 par. 2 Pbw.

²⁸⁷ Art. 65 Pbw.

²⁸⁸ Art. 62 par. 4 Pbw.

²⁸⁹ Art. 67 par. 1 Pbw.

²⁹⁰ Art. 67 Pbw.

²⁹¹ Art. 69 Pbw.

²⁹² Art. 71 par. 1 Pbw.

²⁹³ Art. 71 par. 2 Pbw.

²⁹⁴ Art. 11b WNo.

²⁹⁵ Art. 11e WNo.

3. From theory to practice: analysis

In this chapter the results of the analysis of the documentary study and field research is presented. Paragraph 3.1 sets out striking features and bottlenecks with regard to the NPM system and the monitoring activities, based on the results of the field research. The same is done for the complaint procedures in paragraph 3.2.

3.1 Monitoring

As set out under paragraph 2.4 regarding the tasks of NPM's, NPM's shall (at minimum) be granted the power to undertake these three tasks:

- (a) to regularly examine the treatment of persons deprived of their liberty in places of detention²⁹⁶;
- (b) to make recommendations to the relevant authorities; and
- (c) to submit proposals and observations concerning existing or draft legislation.

To this end the NPM's should:

- have access to all information concerning the number of persons deprived of their liberty in places of detention as well as access to all information referring to the treatment of those persons and the conditions of detention;
- be granted the opportunity to interview persons deprived of their liberty privately (or anyone else that may be able to supply relevant information to the NPM);
- have the liberty to choose which places to visit and persons to interview;
- have the liberty to have contacts with the SPT, send it information and meet with it.

3.1.1 Multiple NPM system

As set out in chapter 2, The Netherlands has a multiple NPM system that monitors places where minors can be deprived of their liberty. The bodies designated as NPM's and additional associates were all existing bodies. No new entities were created, there was no new legal document on which their mandate was based and no new tasks were added to the already existing monitoring tasks. Therefore no additional funds were assigned to these bodies for their newly acquired role as NPM.

The OPCAT allows for a multiple NPM system but demands that each of these bodies meet the OPCAT requirements.²⁹⁷ In The Netherlands not all of the separate NPM bodies meet the OPCAT requirements (e.g. the RSJ is no longer a monitoring body). In addition to having designated bodies as NPM's, The Netherlands has also chosen to designate 'additional associates'. This is not a known OPCAT construction. This distinction seems to have been created because the additional associates have no official legal status and could therefore not be appointed as NPM.²⁹⁸ To our knowledge there is no hierarchy between the NPM's and the additional associates.

Not a lot of information is available on the Dutch NPM's as a system. Not all of the websites of the respective NPM's and additional associates mention their role as NPM and even when this is mentioned the information provided is quite brief. The NPM's have the obligation to report on their work on a yearly basis. So far, the Dutch NPM's have presented two annual reports (2011+2012). In these reports an overview was given of the work of the separate NPM's and associates with regard to places where minors can be deprived of their liberty. Only briefly does it touch on the joint activities of the NPM's and additional associates as a system. The report is put together based on the work of the separate Inspectorates, which is carried out based on their respective work programmes, not on a joint NPM work frame designed in light of the joint NPM responsibilities. In the 2012 annual report it states that various mechanisms have been developed to safeguard the basic human dignity of those deprived of their liberty (referring mainly to the CPT and SPT). A conference was organised mid-2012

²⁹⁶ As defined in article 4 OPCAT.

²⁹⁷ APT & IIHR, 2010, p. 87.

²⁹⁸ College voor de Rechten van de Mens, 2013, p. 13.

to discuss the practical cooperation between these international monitoring bodies and the national NPM's and additional associates. A report on the conference makes it clear that a lot of questions on the NPM system (who does what and why and how do we cooperate) remained unanswered: '*While all participants agreed that the role of NPM's is paramount, it also became clear that we are still in the stage of exchanging best practices*'. Two of the original NPM bodies have merged (ISt & IOOV) and one has transferred its tasks to this new body (CITT), but those changes were not NPM-related.

Independence

While none of the parties that have been interviewed doubt the independence of the NPM bodies in practice²⁹⁹, *in theory* their independence is not guaranteed. Several of the NPM bodies, including the coordinator, form organisational divisions within Ministries. Annual work programmes have to be approved by the responsible Minister and sometimes personnel is even appointed by the Minister or his Secretary General. The fact that the work programme is usually adopted and carried out as presented and that the responsible Minister rarely makes any remarks with regard to the programme doesn't change the fact the independence of NPM's cannot be guaranteed in theory.

Discussions on design of the system

Serious thought is being given to the way in which best to fulfil the obligation to put in a place an effective NPM system. There is frequent contact between the different NPM's about their work and organisation (about 4 meetings a year and informal contact). However, the discussion on the organisation of the system has to be settled first before the discussion can move to a more content based discussion. For example, there is debate on whether the RSJ should take part in the NPM system considering the fact they no longer have a monitoring task in The Netherlands. Additionally the Ombudsman is said to want to reconsider being part of the NPM system considering the fact that Inspectorates, responsible for carrying out monitoring activities on behalf of certain ministries, which could affect the (perceived) independence of the Ombudsman. These issues remain to be resolved. In this regard a challenge that was brought up was that there's a difference between the NPM bodies that focus more on monitoring policies (RSJ and Ombudsman) and the NPM's that monitor the execution thereof (Inspectorates and the commissions of oversight). The collaboration between these 'two types' of monitoring bodies is said to present somewhat of a challenge because they do not necessarily 'speak the same language' due to the difference in focus (more theoretical vs. more practical). Although this difference may present some challenges in their communications, they complement each other in the sense that within the NPM system there is a focus on laws and policy as well as a focus on they way this translates into practice.

It was brought forward that in most other countries the NPM role is fulfilled by the Ombudsman or Human Rights Institute. The Dutch Institute for Human Rights is currently researching whether or not they should play a role in the NPM system. It has been voiced that it would make sense to appoint them as the coordinator of the Dutch NPM's.

Because the design of the system is still subject of discussion and might be altered in the near future, the more content based discussion remains more in the background.

Increased collaboration – police cells

The NPM meetings have led to an increased collaboration between the Inspectorates. According to the Inspectorate for Youth Care, they are now included in the monitoring of arrest cell complexes, an area that formally does not fall under their mandate. But because of the expertise the Inspectorate for Youth Care on youth and the pedagogical aspects of working with youth, it was agreed that it would be of added value to include them in the supervision of police cell complexes as children are also kept there on a regular basis.

Caribbean part of The Netherlands

²⁹⁹ E.g. they have mentioned the fact that if changes need to be made to the approved work programme – due to certain incidents or calamities – they can go ahead and adjust the work programme without seeking permission to do so. They can simply report on the changes made and reasons behind the adjustments. What can be added to this is the fact the inspection reports are made public and usually include numerous recommendations for improvement, which suggests that the Inspectorates are able to operate independently.

Bonaire, St. Eustatius and Saba form an integral part of The Netherlands as of 10 October 2010. They have a status that is similar to that of a municipality, although specific regulations can apply. Neither one of the annual NPM reports contain information on the Caribbean part of The Netherlands. Information received from the Inspectorate for Security and Justice seems to suggest that the OPCAT is not applicable to the Caribbean part of The Netherlands.³⁰⁰ It is unclear what the motivation behind the exclusion of the Caribbean part of The Netherlands is. This should be made clear as there is currently no way to assess whether or not the exclusion is objectively justified.³⁰¹

3.1.2 Factual monitoring

As set out in chapter 2 minors can be deprived in The Netherlands based on different laws and thus fall under different monitoring regimes. There are no 'blind spots', meaning that monitoring activities are carried out in all the different places where minors can be deprived of their liberty. All the institutions visited confirmed regular inspection visits. The different inspectorates often combine efforts in carrying out monitoring visits. Although the monitoring activities are carried out by different inspectorates, the overall work method seems to correspond. The inspectorates and institutions alike consider the inspections that are carried out to be very thorough. Work plans, annual reports, regulations and protocols are examined³⁰², and interviews are held with personnel on different levels within the organisation. Additionally, minors themselves are also interviewed. Information gathered from documents and protocols can be checked through interviews. The inspection reports confirm the thoroughness of the inspection visits. They generally report on a wide number of topics, ranging from internal safety (e.g. prevention and response to calamities and controlling aggression and violence) to the way children are treated by the personnel and from the legal position of the minors in the institution (e.g. house rules, accommodation, access to medical care, activities programme) to organisational aspects such as management, communication and integrity.

Visits are usually well prepared for, well in advance. Institutions are often asked for documents up front and are usually informed of the time when the visit will take place. A lot of preparatory work is done by the inspectorates and at the institution, mostly at management level. The institutions mentioned to spend on average two months preparing for the yearly inspection visits. Inspection visits are always carried out by two inspectors per Inspectorate. Inspectorates will work together on monitoring visits, coordinating joint visits in order to reduce the strain on the institutions. The time the inspectors spend at the institution is generally two days.

Inspection leads to reflection

Every person that was interviewed, very much values the monitoring activities of the inspection, despite the fact that the monitoring visits sometimes lead to critical remarks regarding their daily work. It is said to keep everyone on their toes by making sure files are complete and protocols are adhered to. Additionally it forces moments of reflection on the work and daily routines, which only serves to improve the care that is given to minors deprived of their liberty. Recommendations are taken seriously and improvements based on these recommendations take place (and whether this is done is also checked in follow-up visits). Examples mentioned during the interviews of improvements based on recommendations following monitoring visits are the adjustment to the protocols regarding urine controls and addition of signal boxes within the institution that transport alarm signals, following an investigation into possible 'blind spots'.

Unannounced visits and surprise elements

Unannounced visits do not seem to take place. A monitoring visit can contain surprise elements, such as the inspectors deciding they want to talk to minors or personnel of their choice, but based on the results of the interviews these surprise elements are kept to a minimum. It has also been mentioned by personnel of the institution that the personnel that is picked to sit down with the inspectors is carefully chosen by the managing board. The interviewed minors indicated that they are very well

³⁰⁰ A reference was made to the Dutch treaty database in which under 'accession' only the box for the European part of The Netherlands was ticked: <http://www.minbuza.nl/producten-en-diensten/verdragen/zoek-in-de-verdragenbank/2002/12/009949.html>. Last checked on: 10/10/2014.

³⁰¹ See also: College voor de Rechten van de Mens, 2013, p. 12.

³⁰² Examples of documentation that is checked are: yearly work programmes, treatment plans, submissions for leaves, documentation on security staff, reports on complaints, reports on calamities.

aware of a monitoring visit coming up, because just before personnel becomes more helpful and the institution gets tidied up. The minors were all in favour of more surprise elements. Some were even convinced the place would be shut down, if the inspectors were to come around unannounced. While this last statement can be questioned, surprise visits can contribute to a more truthful representation of the situation.

Community oversight

In addition to the monitoring activities conducted by the State Inspectorates, the commissions of oversight provide an extra form of protection or control from within the community. These commissions of oversight are linked to the juvenile detention centres, arrest cells and military prisons. There are no commissions of oversight (and thus no oversight from within the community) to monitor the conditions under which minors are placed in closed institutions for youth care or psychiatric centres.

Points of attention

Two points of attention for the inspectorates were mentioned during the interviews. The first is that inspectorates need to make sure not to overburden the institutions. The monitoring visits are very thorough and a lot is asked of the management, personnel and the minors. Besides the Inspectorate visits, the closed youth care institutions, psychiatric centres and juvenile detention centres are also visited by an independent certification body for their *HKZ-certificate*.³⁰³ This certificate shows that the institution meets certain quality standards with regard to the care they provide.³⁰⁴ A *HKZ-certificate* shows that the institution is well organised, that the clients come first, that the institution is constantly optimising the forms of care it provides, that it achieves reliable results and adheres to the requirements set by the sector, government or clients as well as requirements set by financiers. A *HKZ-certificate* is valid for three years. The Inspectorates do seem to work together and combine visits as much as possible. For example, when visiting closed youth care institutions the Inspectorate for Youth Care will do this in combination with the Inspectorate for Education and the Health Care Inspectorate based on a joint framework, minimising the amount of visits for the institutions. Secondly, it was mentioned that inspectors show varying qualities in their ability to properly interview minors. In response to the question what could be an adequate way to resolve this it was mentioned that this is of course hard because the minors vary in character, history and specific problems. Nonetheless, it is important for inspectors to be educated on ways to conduct interviews with minors and for them to bear in mind as much as possible the background of the children they interview, in so far as that is possible.

3.2 Complaint mechanisms

It is important for minors deprived of their liberty to have access to effective complaint mechanisms. An effective complaint mechanism does not only serve to provide relief in the individual situation of the complainant, but can also lead to adjustments that benefit others that find themselves in a comparable situation. For minors deprived of their liberty, the complaint mechanism available to them will depend on the reason for their deprivation of liberty. Complaint mechanisms are in place for all of the different places of deprivation of liberty. While they are similar in many ways, there are also differences between them.

Effectiveness

It is striking that the majority of the interviewed minors feel that nothing was being done with their complaints if they submitted one, while the staff members of the institutions and members of the complaints committees seemed convinced that the complaint mechanisms were functioning adequately. While there are quite comprehensive complaint mechanisms in place, there are doubts whether minors or their representatives are aware of these mechanisms and the way they work. For example, in the juvenile detention centre three out five of the interviewed minors that whenever they submitted a complaint nothing would be done with it. In the institution for closed youth care both interviewed minors had complained about.

³⁰³ While it is not mandatory to obtain a HKZ certificate specifically, it is mandatory to have quality assurance. The HKZ certificate is often resorted to.

The complaint mechanism within juvenile detention centres is not the most straight forward. Depending on the topic or the person taking a certain decision, a child can 'object' to the decision, file an informal complaint '*grief*' (which can be done orally) or a formal complaint (which has to be done in writing). It seems as if the distinction between these 'ways of complaining' isn't at all clear. It is possible that minors sometimes assume they have submitted a formal complaint, when in fact the complaint was handled as an informal one (*grief*). There seems to be a distinct difference in the way the minors perceive the effectiveness of the complaint mechanisms as opposed to the way in which the staff members and members of complaint committees perceive its effectiveness. This could possibly have to do with the fact that complaints are often initially tried to be mediated. It could be that the minor takes this mediation to be the handling of the complaint and either doesn't know to pursue a formal complaint or doesn't feel like this is worth doing.

Independence

The complaints committee for children involuntarily residing in a psychiatric centre does not foresee in an independent in an independent complaints committee.³⁰⁵ The complaints committee does have an independent chairman, but the remaining members (the committee must have at least three members) are not necessarily independent. Often a psychiatrist who works at the institution itself forms part of the complaints committee.³⁰⁶ The complaints committee for border detention and immigration detention are considered to be independent (the complaints committee consists of members of the commission of oversight), though their independence is not explicitly guaranteed on paper.³⁰⁷ The director of the institution is allowed to attend the meeting of the commission for oversight, unless the commission decides otherwise. The presence could negatively influence the independence of the complaints committee. It has been reported by the Netherlands Institute for Human Rights that the approach of the commissions of oversight differs and that in some cases the director is always present, whereas in other cases the director attends the meeting at a later stage.³⁰⁸

Limitation of topics

The topic on which a formal complaint can be submitted is sometimes limited. In institutions for closed youth care it is possible to file a complaint about the staff working in the closed institution, about measures that have been applied in order to restrict the freedom of the child and about decisions with regard to leave. Children in arrest cells can file complaints about actions which are directed at the child and which are performed by persons who work at the police, such as a police officer, a police chief or an official of the national department. Children in judicial youth detention centres can file a formal complaint (in written) about the topics which are described in the law.¹ The decision against which the complaint is directed, has to be taken by or on behalf of the director of the institution.¹ Children can also file an informal complaint (*grievan*). The number of issues that are eligible for mediation is greater than the issues that may be addressed in a formal complaints procedure. If a child has not received the desired result after the ending of the complaint procedure within the institution, it is possible to file a complaint with the (children's) ombudsman, who will handle the complaint as being directed against the Minister of Security and Justice since he is responsible for the judicial youth detention centres.¹ Complaints regarding the regime within the youth detention centres also have to be brought before the (children's) ombudsman. A last possibility to complain informally is by raising an objection with the selection officer. These objections can be filed against placement and transfers, the extension of the period that a minor (who receives a PIJ or TBS measure) is placed and against the failure or untimely delivery of a warrant to participate in an education and training program.

Children who reside in a psychiatric centre can submit a formal complaint with the board of the psychiatric centre. Complaints can be filed against the decision of the caregiver that the child is not capable of forming his own will, the decision of the caregiver to start a treatment without the permission of the child and to apply means and measures in emergency cases and restrictive

³⁰⁵ The independence of the complaints committee is guaranteed through art. 68 par.2 Wjz for the closed youth care, art.10 Rjj for the judicial youth detention centres, and art. 3 par 1 Regeling klachtbehandeling politie read together with the explanatory note *Uitvoeringsregeling klachtbehandeling politie (January 2013)*.

³⁰⁶ A new law has been drafted, *Wet verplichte GGZ*, that is to replace the *Wet BOPZ*. This new law does foresee in a completely independent complaints committee.

³⁰⁷ Border detention: art. 10 jo. 15 par 1 Rrg; immigration detention: art. 62 par 1 jo. 7 par 1 Pbw.

³⁰⁸ College voor de Rechten van de Mens, 2014, p. 14.

measures. In addition, complaints can also be filed by a minor about the non-application of the agreed treatment plan.³⁰⁹ Next to the complaint procedure based on the BOPZ, it is also possible to complain about actions that do not fall under the BOPZ, these complaints can be filed on the ground of the WKCZ. The WKCZ states that it is possible to complain about an action that is taken by or on behalf of the director of the institution. For children residing in border and immigration detention it is only possible to file a formal complaint with the complaints committee against decisions taken by (or in name of) the director of the institution. The topics about which a formal complaint can be filed are the following: the placement in isolation, the refusal to allow visitors, the confiscation of objects or substances³¹⁰ by or on behalf of the director and finally it is possible to complain about other measures which are imposed by or on behalf of the director, which are derogating from legal requirements but do relate to the stay in border or immigration detention.³¹⁰ Within border and immigration detention it is also possible to file an informal complaint, which is called a grief. A grief can be filed by the alien with the supervisory commission with regard to every aspect relating to his border or immigration detention.³¹⁰

Varying period for submitting and handling complaints

The period within which a complaint is to be submitted varies considerably. In the closed youth care institutions it was not deemed necessary to set a fixed period. Instead it is asked that complaints be filed within a reasonable period of time. Also no set period can be found within which complaints have to be filed with the complaints committee for psychiatric centres. The complaints committees for police cells demand complaints be submitted within a year. Border and immigration detention complaints have to be filed within fourteen days. Children in juvenile detention have to file their claims within a period of seven days. One of the minors that was interviewed in the juvenile detention centre said that this period, just a week, allows the minor only a small timeframe within which he is to decide whether or not to file a complaint.

The period within which a complaint has to be handled also varies. In closed institutions for youth care complaints have to be handled within four weeks. If this is not done, an appeal can be filed. The complaints committee for psychiatric centres has to decide on complaints within two weeks, unless the complaint regards a decision that no longer has any consequences for the child. In that case the complaint committee can take up to four weeks. No fixed term for handling complaints can be found for border and immigration detention. Complaints filed with the complaints committee for police cells have to be handled within fourteen weeks. The period within which a complaint has to be handled in a juvenile detention centre is either four or six weeks, depending on the type of complaint.

Appeal

While in most cases it is possible to file an appeal when the decision on the initial complaint is unsatisfactory³⁰⁹, there is no possibility for appeal in border and immigration detention.³¹⁰ None of the minors we have spoken in the course of this project have ever filed an appeal.

Access to a confidant

Children in border or immigration detention, unlike children deprived of their liberty in the remaining places discussed in chapter 2, do not have access to a confidant. This is worrisome as these are especially vulnerable children.

4. Conclusions and recommendations

This chapter contains conclusions and recommendations based on the results gathered through documentary study and the interviews.

4.1 NPM system

³⁰⁹ Or the complaint was not handled in time.

³¹⁰ Unless the deprivation of liberty takes place in a location where the Pbw is applicable.

Clarity on NPM system, tasks and consequences

The Netherlands has adopted a multiple NPM system. While this is allowed, the OPCAT does require every NPM body to meet the requirements set out on the convention. In The Netherlands however not all of the separate NPM bodies meet the OPCAT requirements (e.g. the RSJ is no longer a monitoring body).

The Netherlands has chosen to adopt a multiple NPM system for practical reasons. There was already a comprehensive monitoring system in place, for which reason no new entities were created to take on the role of NPM. No new legal document was created on which their mandate as NPM was based, no new tasks were added to the already existing monitoring tasks and no additional funds were assigned to these bodies for their newly acquired role as NPM. The report following the conference on the NPM's in 2012 makes it clear that a lot of questions on the NPM system (who does what and why and how do we cooperate) remained unanswered: *'While all participants agreed that the role of NPM's is paramount, it also became clear that we are still in the stage of exchanging best practices'*. Our exploratory study has revealed that today, two years later, this has not changed much. There is frequent contact between the different NPM's about their work and organisation (about 4 meetings a year and informal contact). However, the discussion on the organisation of the system has to be settled first before the discussion can move to a more content based discussion.

There has been a discussion going quite some time about whether the NPM system should remain as it is. Questions such as who does what - and why - and how do we cooperate remain to be answered. Additionally, the question whether all of the current NPM bodies should continue to be part of the NPM system and how to make sure that the NPM activities become more structured also remain unanswered. The Netherlands Institute for Human Rights is currently also researching whether they should be part of the NPM system in The Netherlands.

The Netherlands Institute for Human Rights has concluded that the NPM bodies are not equally aware of the possibilities that international human rights and standards in the field of monitoring places of detention offer in drawing up assessment frameworks for their monitoring activities.³¹¹ In order to ensure the full respect of human and children's rights it is paramount that these international human rights and standards are incorporated in or used alongside the usual monitoring framework of the NPM bodies.

Another issue that has been raised by several parties, including the CAT, is that of the perceived independence of the NPM's. In practice, no one seems to have any doubts about the independence of the NPM's. However, in theory their independence is not guaranteed as several of the NPM bodies, including the coordinator, form organisational divisions within Ministries.

Recommendation: *it is recommended that clarity is provided soon on the future design of the NPM system as soon as possible.*

This includes clarity on the specific tasks and responsibilities that the NPM status brings along with it, what are the consequences of obtaining the NPM status? This way the appointed body is able to make the necessary adjustments in priorities within the organisation. This will also make it possible to assess whether or not more attention has to be paid to building expertise and whether the available funding is sufficient. A coherent NPM vision can be created and the NPM tasks can be carried out in a more structured manner, taking into account the relevant international human rights and standards (e.g. by ensuring that personnel be adequately trained in interviewing minors, as it was mentioned that inspectors show varying qualities in their ability to properly interview minors). In this discussion the lack of perceived independence should be taken into account.

Caribbean part of the Netherlands Bonaire, St. Eustatius and Saba form an integral part of The Netherlands as of 10 October 2010, yet are excluded from the OPCAT and thus from the NPM's. It is unclear what the motivation behind the exclusion of the Caribbean part of The Netherlands is.

³¹¹ College voor de Rechten van de Mens, 2013, p. 12.

Recommendation: *Make clear the reasons for excluding the Caribbean part of the Netherlands from the OPCAT in order to make it possible to assess whether or not the exclusion is objectively justified.*

4.2 Factual monitoring activities

Monitoring activities are carried out in all the different places where minors can be deprived of their liberty, on a regular basis. The thorough monitoring visits are valued positively by almost everyone involved. The inspections force moments of reflection on the work and daily routines, which only serves to improve the care that is given to minors deprived of their liberty. A few points of attention, gathered from the field research follow below.

Unannounced visits

Visits are usually well prepared for in advance. Institutions are usually informed of when the visit will take place. Unannounced visits do not seem to take place, even though the possibility to carry out surprise monitoring visits exists. Surprise visits can contribute to a more truthful representation of the situation.

Recommendation: *make use of the possibility to carry out surprise monitoring visits.*

Community oversight

In addition to the monitoring activities conducted by the State Inspectorates, the commissions of oversight provide an extra form of protection or control from within the community. These commissions of oversight are linked to the juvenile detention centres, arrest cells and military prisons. There are no commissions of oversight (and thus no oversight from within the community) to monitor the conditions under which minors are placed in closed institutions for youth care or psychiatric centres.

Recommendation: *research whether it would be of added value to instate commissions of oversight to monitor closed institutions for youth care and psychiatric centres.*

4.3 Complaint mechanisms

It is important for minors deprived of their liberty to have access to effective complaint mechanisms. For minors deprived of their liberty, the complaint mechanism available to them will depend on the reason for their deprivation of liberty. Complaint mechanisms are in place for all of the different places of deprivation of liberty. In the course of the field research we have only been able to speak to minors in a judicial youth detention centre and a closed institution for youth care. It was however striking to see that the majority of them felt like nothing would be done with complaints if they submitted one. They report that this has to do with the fact that when they submit a complaint they don't receive a confirmation of receipt of the complaint and sometimes no reaction at all to the complaint.

Recommendation: *make sure that all children who file a formal complaint receive a confirmation of receipt and information on the follow up of the complaint so they know they are being taken seriously and can know what to expect.*

While there are quite comprehensive complaint mechanisms in place, there are doubts whether minors or their representatives are aware of these mechanisms and the way they work. Especially the complaint mechanism within judicial detention is not the most straight forward. The procedure to be followed depends on the topic of the complaint and this can be confusing. There seems to be a distinct difference in the way the minors perceive the effectiveness of the complaint mechanisms as opposed to the way in which the staff members and members of complaint committees perceive its effectiveness. This could possibly have to do with the fact that complaints are often initially tried to be mediated. It could be that the minor takes this mediation to be the handling of the complaint and either doesn't know to pursue a formal complaint or doesn't feel like this is worth doing.

Complaint mechanisms can be quite complex. Sometimes the topics on which a complaint can be filed are limited or different procedures apply depending on the topic of the complaint. Because complaint procedures can be quite complex it is extra important that children deprived of their liberty have access to a confidant. In theory children in a judicial detention centre or closed institution for youth care have access to a confidant, though most the children that were interviewed mentioned that they hardly ever saw this person, who is supposed to regularly visit the groups where the children reside.

Independence

The complaints committee for children involuntarily residing in a psychiatric centre does not foresee an independent in an independent complaints committee, only the chairman is guaranteed to be independent.³¹² The complaints committee for border detention and immigration detention are considered to be independent (the complaints committee consists of members of the commission of oversight), though their independence is not explicitly guaranteed on paper.³¹³ The director of the institution is allowed to attend the meeting of the commission for oversight, unless the commission decides otherwise. The presence could negatively influence the independence of the complaints committee. It has been reported by the Netherlands Institute for Human Rights that the approach of the commissions of oversight differs and that in some cases the director is always present, whereas in other cases the director attends the meeting at a later stage.³¹⁴

Recommendation: *make sure that the independence of all complaint committees are guaranteed both in theory and in practice.*

While information on complaint mechanisms is given to them when entering the respective institutions, not all of the children were aware of their possibility to complain. It is important to bring the information on complaint procedures under the attention of the minors on a regular basis. The group leader can play a role in educating the children on the available complaint procedures. Additionally, the institutions could promote knowledge on the complaint procedures by listing it on the agenda of the Youth Council on a regular basis.

Recommendation: *make sure that children are aware of the available complaint mechanisms by regularly informing them about the available complaint procedures.*

The interviewed minors have pointed out that they hardly ever saw the confidant that is supposed to visit them. While it is true that confidants do not have to visit every group within an institution on every visit, something seems to be wrong when more than one minor points out not to have seen the confidant more than twice in half a years' time.

Recommendation: *make sure that the confidant regularly visits the children and make it possible for children in border or immigration detention have access to a confidant.*

Recommendation: *ensure the independence of the complaints committees in practice.*

The period within which a complaint is to be submitted varies from 'seven days' in judicial youth detention centres to 'a reasonable period of time' in closed institutions for youth care. The period within which a complaint has to be handled also varies, from two weeks in psychiatric centres to fourteen weeks in cases where the complaint is issued with the complaints committee for police cells. No fixed term for handling complaints can be found for border and immigration detention. While the appropriate period for submitting or handling a claim is context bound, it could be useful to check whether the periods for submitting a complaint and handling a complaint are generally fair. For example, it was mentioned by a minor in the judicial youth detention centre that a period of seven days for submitting a complaint is too short.

Recommendation: *investigate whether it is necessary to extend or shorten the period within which a complaint has to be submitted and handled.*

Appeal

While in most cases it is possible to file an appeal when the decision on the initial complaint is

³¹² The independence of the complaints committee is guaranteed through art. 68 par.2 Wjz for the closed youth care, art.10 Rjj for the judicial youth detention centres, and art. 3 par 1 Regeling klachtbehandeling politie read together with the explanatory note *Uitvoeringsregeling klachtbehandeling politie (January 2013)*.

³¹³ Border detention: art. 10 jo 15 par 1 Rrg; immigration detention: art. 62 par 1 jo. 7 par 1 Pbw.

³¹⁴ College voor de Rechten van de Mens, 2014, p. 14.

unsatisfactory³¹⁵, there is no possibility for appeal in border and immigration detention, unless the deprivation of liberty takes place in a location where the *Penitenciaire beginselenwet* is applicable. A justification for the lack of possibility to appeal was not found.

Recommendation: *ensure that all children deprived of their liberty have the possibility to file an appeal.*

³¹⁵ Or the complaint was not handled in time.