‘Children and young people are routinely exposed to myriad forms of violence in criminal ‘justice’ systems around the world and those held in penal detention are especially vulnerable. This collection of essays both exposes such phenomena and charts ways in which it can be, and must be, addressed. The book makes a timely and important contribution to an evolving literature and it comprises an essential point of reference for researchers, advocates, policymakers and practitioners alike’.

*Professor Barry Goldson, Department of Sociology, Social Policy and Criminology, The University of Liverpool, UK*

‘To put children behind bars not only subjects them to the risk of violence, it is itself a form of structural violence. If we wish to protect children against violence in the criminal justice system, we must reduce the practice of detention and imprisonment to the absolute minimum permitted by the Convention on the Rights of the Child: as a measure of last resort and, if really not avoidable, then only for the shortest appropriate period of time. Most importantly, children in conflict with the law should be diverted from the criminal justice to the child welfare system. The global perspectives on prevention outlined in the present book contain valuable evidence which will inform the UN Global Study on Children Deprived of Liberty and reaffirm my strong belief that we must strive at a society where no child is left behind bars’.

*Professor Manfred Nowak, University of Vienna and Global Campus of Human Rights Vénice; Independent Expert leading the Global Study on Children Deprived of Liberty*

‘O’Brien and Foussard’s volume makes an important contribution of both societal and scientific relevance for the field of criminal justice in which, across the globe, many children suffer from violence and a denial of human rights and fundamental freedoms. The various chapters, written by leading authors from different parts of the world, provide diverse and enriching
insights into how to prevent violence and secure humane treatment for all children in the criminal justice system’.

Ton Liefaard, Vice-Dean and UNICEF Professor of Children’s Rights, Leiden Law School, Leiden University, The Netherlands.

‘Featuring the insights of experts from various parts of the world, this volume illustrates the persistent challenges to realising children’s rights in the field of criminal justice. Collectively, the volume identifies the importance of ending the needless criminalisation of very young children; ending violent and inhuman sentences; and ending violence within closed institutions. With a clarity that will appeal to specialists and non-specialists alike, this book presents rich insights into globally relevant violence prevention strategies such as diversion, restorative justice, reducing the use of pretrial detention, and ensuring therapeutic responses to child victims and children in conflict with the law.

As president of the Committee on the Rights of the Child, I warmly welcome this volume, and I wish the devoted editors a strong readership’.

Justice Renate Winter, President of the Committee on the Rights of the Child, United Nations
Children who come into conflict with the law are more likely to have experienced violence or adversity than their non-offending peers. Exacerbating the deleterious effects of this childhood trauma, children’s contact with the criminal justice system poses undue risks of physical, sexual, and psychological violence. This book examines the specific forms of violence that children experience through their contact with the criminal justice system.

Comprising contributions from leading scholars and practitioners in children’s rights and youth justice, this book profiles evidence-based prevention strategies and case studies from around the world. It illustrates the diversity of contexts in which various forms of violence against children unfold and advances knowledge about both the nature and extent of violence against children in criminal justice settings, and the specific situational factors that contribute to, or inhibit, the successful implementation of violence prevention strategies. It demonstrates that specialised child justice systems, in which children’s rights are upheld, are crucial in preventing the violence inherent to conventional criminal justice regimes.

Written in a clear and accessible style, this book will be of interest to students and researchers engaged in studies of criminology and criminal justice, youth justice, victimology, crime prevention, and children’s rights.

Wendy O’Brien is Adjunct Associate Professor at Deakin University, and Legal Officer with the Global Programme on Violence Against Children at the United Nations Office on Drugs and Crime, in Vienna. Wendy publishes on child justice, violence against children, and children’s rights in the digital age. Wendy’s academic research is conducted in a personal capacity, and is not a reflection of the views of the institutions with which she is affiliated.

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Violence Against Children in the Criminal Justice System

Global Perspectives on Prevention

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The right of the child to freedom from violence lies at the heart of the Convention on the Rights of the Child, the most widely ratified United Nations treaty in history. Indeed, the Convention bans the use of the death penalty and life imprisonment; prohibits torture, cruel, inhuman, or degrading treatment or punishment; it safeguards children from unlawful or arbitrary detention; it makes imperative the protection of children from sexual abuse, trafficking, and any other form of exploitation; it bans school discipline contrary to the child’s human dignity; and it prohibits the hidden manifestations of violence within the walls of institutions or the privacy of the home. The message of the Convention is clear, as highlighted by the 2006 UN Study on violence against children: no form of violence against children is justifiable and all forms of violence against children can be prevented.

This principle gains a particular relevance in the criminal justice system. In fact, the imperative to safeguard children’s freedom from violence is critical to protect children from ill-treatment, neglect, abuse, or exploitation in criminal proceedings and institutions. It is fundamental to secure children’s access to justice, to legal aid and assistance to prevent and respond to such acts. And it is indispensable to prevent the use of violence as a form of discipline, punishment, or sentencing.

The criminal justice system must respect and protect the rights of the child, including children’s freedom from violence. And it must also be a system that children understand, trust, and feel empowered to use, including when they are exposed to violence as victims, witnesses, or alleged offenders.

The criminal justice system is still often used as a substitute for weak or incipient child protection institutions, generating approaches that further stigmatise socially excluded children, including those who flee home as a result of violence, those who are victims of trafficking and sexual exploitation, those who are homeless and poor and in street situations, and those who suffer from mental health or substance abuse problems.

Violence and deprivation of liberty often go hand in hand. Violence can occur when children are arrested, during transfers in police vehicles, while in police custody, during pretrial detention, and after conviction. In some states,
children may be convicted and face the death penalty, life imprisonment, or other forms of inhuman sentencing, including canning, flogging, stoning, and amputation.

Thousands of children around the world are exposed to the risk of violence, awaiting trial for long periods of time; being held for minor offences; detained in inhuman conditions; and still too often lacking access to justice and to alternatives to custodial measures, as well as to community-based programmes to support their effective rehabilitation and long-term social reintegration. Held in closed institutions, psychiatric centres, migration facilities, or adult prisons, children are at heightened risk of harassment, sexual abuse, and acts of torture by staff and by other detainees. For asylum-seeking and migrant children, the risk of detention and abuse is particularly traumatic when children are unaccompanied and placed in overcrowded places with adults to whom they are not related.

Personnel working with children in justice institutions may lack the necessary knowledge and skills to respect and safeguard children’s rights; inspection, oversight, and ethical standards tend to be weak or non-existent; and alternatives to detention are weakly used, even when clear options are foreseen by the legislation. Moreover, there are still many countries where national independent mechanisms are not in place to monitor places of detention or address complaints presented by child victims.

This situation is at times aggravated by sensationalist media that promotes a misleading connection between juvenile delinquency, an increase in crime rates, and fear of social unrest. As a result, children and adolescents are easily portrayed as perpetrators of serious crimes, while security in society is largely perceived as dependent on the lowering of the minimum age of criminal responsibility and a rise in the length of measures of deprivation of liberty.

Altogether this is a pattern that helps to create a culture of impunity and of tolerance of violence. Due to the real or perceived mistake of having infringed the law, children feel stigmatised as citizens, frightened to speak up and seek help, and excluded from the opportunity of experiencing life with dignity. And yet, the situation of children within the criminal justice system remains largely hidden and surrounded by stigma; and it is often a low priority on the national policy agenda. This explains why it is often difficult to access accurate data on the numbers of children deprived of liberty, and on the reasons that have led to their detention.

The Global Study on Children Deprived of Liberty, called upon by the United Nations General Assembly, provides a strategic opportunity to break the silence around this reality and gather more and better information on the drivers and conditions of child detention. Very especially, the Global Study opens avenues to document good practices and promising experiences to prevent children’s criminalisation and deprivation of liberty, to safeguard their right to freedom from violence, and to strengthen peaceful, inclusive, and cohesive societies, as called for by the 2030 Agenda for Sustainable Development.
This publication is a critical contribution to this process. Guided by the Convention on the Rights of the Child and other international standards, it provides sound evidence to inform solutions that are guided by the best interests of the child to prevent the risk of violence and promote a child-friendly justice system where no child is left behind.
Introduction

Wendy O’Brien

Globally, we know that children in conflict with the law are especially vulnerable to violence (UNODC 2015). Even prior to their criminal justice involvement, children in conflict with the law are significantly more likely to have experienced violence or adversity than their non-offending peers (SRSG-VAC 2015; OHCHR, UNODC, & SRSG-VAC 2012). Multiple studies at the country or local level demonstrate that adjudicated children bear disproportionate histories of childhood trauma, neglect, child sex abuse, and exposure to substance abuse, conflict, or family violence (Van Keirbilck & Grandfils 2017, p. 209; Matthew 2017; Goldson & Muncie 2015, p. 250; Schiraldi 2018). Additionally, and in some cases consequently, justice-involved children are more likely than their non-adjudicated peers to have a developmental delay, neuro-disability, or a traumatic brain injury (Williams et al. 2015). There are, in addition, so many children inappropriately detained in criminal justice institutions, including children with mental health problems, substance abuse problems, or unaccompanied children and children in need of care and protection (OHCHR, UNODC, & SRSG-VAC 2012, para 16).

Exacerbating the deleterious effects of these various forms of childhood trauma and adversity, children’s contact with the criminal justice system poses additional and undue risks of physical, sexual, and psychological violence (Pinheiro 2006; Liefaard, Reef, & Hazelzet 2014). Contrary to the international legal requirement that the primary purpose of the penal system is to rehabilitate and reintegrate, children face these criminogenic and deeply harmful risks of violence at all stages of criminal justice involvement. Commencing at the point of police contact, children face acute risks during police pursuit and arrest, police and legal questioning, charge, pretrial detention, transportation, hearing, and sentencing, with the risks of violence persisting for the duration of the custodial or community sanction, and beyond. Indeed, various forms of violence suffuse children’s experiences long after the criminal justice sanction has been served, a situation which profoundly compromises both child well-being, and children’s prospects of assuming a constructive role in society.

At these various stages, children are at risk of violence at the hands of the adults in positions of authority, including physical, psychological, and sexual violence.
by police, security officers, prison wardens, and various criminal justice actors including prosecutors and judges. Children endure the violence of harsh sentencing practices, including in cases where violence is a sentence in itself – as is the case with whipping, stoning, amputation, or death sentences for children. Children held in custody are at risk of various forms of violence at the hands of adult prison officers, or the adult prisoners or children with whom they are detained. Violence is understood, in the broadest sense, to encompass verbal and psychological violence, all forms of sexual and physical abuse, as well as the violence that often accompanies searches, and procedures to collect samples or determine a child’s age. Additional forms of violence, that are legally sanctioned in many jurisdictions, include the use of physical and chemical restraints, and solitary confinement (OHCHR, UNODC, & SRSG-VAC 2012, para 36).

Severe deprivations are, themselves, forms of violence and, in many custodial settings, children in conflict with the law are deprived of food, water, space, sanitation, social interaction, sunlight, exercise, education, legal support, cultural support, and the range of stimuli that are biologically necessary to nurture a child's neurological development and their social and emotional well-being. While conditions of detention vary, the profound damage that even brief periods of incarceration cause, for children, is evident in the disproportionate rates of self-harm, psychological trauma, and suicide among children enmeshed in the criminal justice system.

The United Nations World Report on Violence Against Children estimated that at least one million children are deprived of their liberty worldwide (Pinheiro 2006). More than a decade after the publication of this landmark study, it is generally held that the scale of the problem is likely to be far worse. Indeed, in recent years, international concern about the plight of detained children has prompted the Global Study on the Situation of Children Deprived of Their Liberty (‘The Global Study’). Endorsed by the United Nations General Assembly (A/Res/67/157), and under the leadership of Independent Expert, Professor Manfrek Nowak, The Global Study seeks to achieve a more precise understanding of the number of children deprived of their liberty globally, and a nuanced understanding of the conditions that children face in these settings.

While the situation of children deprived of liberty is, quite rightly, a matter of international concern, it is crucial that we recognise that violence against children in conflict with the law neither begins, nor ends, with a child’s custodial term. Compounding the myriad forms of violence that justice-involved children endure, is the structural violence of stigma and harmful stereotypes that so profoundly marginalise children in conflict with the law. Collectively, the chapters in this book recognise the harmful effects borne by pejorative assumptions about justice involved children, and the intersectional forms of discrimination that bring disproportionate numbers of already marginalised children into conflict with the law. The book proceeds from the view that the (harmful) dominant conceptual frameworks about childhood, and about crime, should be countered by the longstanding evidence base from the disciplines of
developmental psychology, developmental crime prevention, and neurodevelopmental science, which evince both the harms of child maltreatment (in all its forms) as well as the various factors that are known to be protective for a child over the life course.

Important contextual differences at national and local levels play a role in shaping both the circumstances that bring children into conflict with the law, and the strategies likely to prevent children from entering criminal justice contexts in which they are at risk of violence. There is variance, too, in the legislative and procedural bases for formal and informal responses to children in conflict with the law. In recognition of these specificities, this volume comprises contributions from both scholars and practitioners in children’s rights and youth justice globally. Contributors profile evidence-based prevention strategies that draw on case studies from contexts as diverse as Australia, India, Latin America, the Netherlands, New Zealand, the Philippines, South Africa, Spain, Thailand, the United Kingdom, and the United States. In bringing together contributions from diverse regions, this volume illustrates the diversity of contexts in which various forms of violence against children unfold, and enhances knowledge about the specific situational factors that contribute to, or inhibit, the successful implementation of violence prevention strategies.

While recognising the nuanced challenges and opportunities for ensuring the safety and well-being of children across different legal systems, socio-economic, and socio-cultural settings, the chapters in this book are bound by a commitment to children’s rights, as enumerated in both the Convention on the Rights of the Child (‘CRC’) and internationally agreed minimum standards relevant to the treatment of children in justice settings. Community safety, crime prevention, and a range of associated public interests are served (not undermined) by child rights-based responses that prioritise the best interests of the child and preserve a child’s dignity and prospects for assuming a meaningful role in society.

While the chapters in this volume delve into violence prevention strategies in a range of national and regional contexts, the collection makes no claim to an exhaustive examination of either the root causes of violence or promising prevention practices for the multitudinous types of violence endured by children in criminal justice settings globally. Such a project would be prohibitive, for one volume, and would risk conflating the nuanced and intersectional forms of violence faced by children who transition in and out of various institutional settings. Important work of this kind includes attention to the revolving doors that make multiple contact with justice and welfare institutions inevitable for some children. Holistic and integrated supports, that recognise both the risk and protective factors of a child’s ecology are required the first time a child has contact with a relevant institution. This is not to suggest that children should be needlessly assessed as being at-risk, or pathologised or stigmatised with unnecessary interventions. On the contrary, the CRC provides for a rights-based approach that offers meaningful opportunities for child participation, and which simultaneously respects, inter alia, a child’s right to life, to protection
from violence, and a child’s right to family, and to privacy. While not given specific focus in the present collection, topics of cross-cutting relevance include: the importance of specific arrangements to prevent violence against girls in criminal justice settings (see SRSG-VAC 2015); the importance of violence prevention for children with disabilities; and, in recognition of the fundamental role that non-discrimination plays in specialised child justice systems, effective strategies to redress racialised patterns of over-criminalisation of Indigenous children, and children from a minority background; as well as the acute forms of discrimination and violence faced by LGBTI children.

A primary tenet of the book is that all contact with the criminal justice system risks adverse effects for children, including the violent disruption of a child’s life and developmental trajectory. Accordingly, the violence prevention strategies canvassed in this book are not limited to those delivered only in formal criminal justice settings or custodial institutions. Rather, broad-based primary prevention strategies to ensure children’s well-being, to prevent rhetorical violence against children, and to prevent the stigmatisation and criminalisation of children for developmentally normative behaviours, such as running away, are seen as fundamental to reducing the number of children who come into conflict with the law. While law reform is an important pillar of efforts to prevent the unnecessary criminalisation of children, and States can play an important role in this by adopting an internationally acceptable minimum age of criminal responsibility, there is also work to be done to challenge punitive assumptions about children, and to dislodge the specious means by which children are blamed for a range of social ills. Where children engage in theft, for example, including as a means of ensuring their survival, individual punishment diverts much needed attention from addressing the structural causes of economic inequality, and the disproportionate burden that poverty places on children.

All too often children come into conflict with the law due to shortfalls in child protection and welfare services that leave children bereft of support. Strengthened national child protection systems are integral to the prevention of various forms of violence against children, including the risks of violence faced by children living and working on the streets and children at risk of being exploited or trafficked. Closing the gaps in child protection is fundamental for preventing the unnecessary violence and criminalisation of children who require a welfare or child protection response.

In addition to strengthened child protection systems, the prevention of violence against children demands increased cooperation and integration among the various sectors with which children interact. Health, education, justice, child protection, and social welfare services all have a role to play in ensuring child well-being; preventing violence against children and effectively criminalising and prosecuting such violence; preventing children from coming into conflict with the law; and in ensuring that when children do come into conflict with the law they are treated in accordance with their age and human dignity, and protected from the risks of further violence and abuse borne by their contact with either formal or informal systems of justice.
Improved multi-sectoral cooperation that prioritises the best interests of the child is central to violence prevention for several reasons. Primary among these is that where systems are properly organised to prioritise a child’s well-being, non-stigmatising and minimally interventionist social supports can be provided to spare children the violence of criminal justice involvement. Multi-sectoral cooperation is also important, because children who come into contact with criminal justice institutions, whether as accused persons, victims, witnesses, or as recognised offenders, are very likely to have had prior contact and/or inadequate response from welfare or care and protection systems and services. Furthermore, the complex and intersecting needs of children in conflict with the law mean that such children are likely to require additional and ongoing services, including health, education, and in some cases child protection services, drug and alcohol counselling services, or mental health services.

As identified by the Global Study, children are vulnerable to violence in all situations in which they are deprived of liberty – not only in the custodial facilities of the criminal justice system. For this reason, the conceptual scope of this book is broad, and the analysis presented here sits alongside, and complements, work on the prevention of violence against children detained due to their migration status, as well as children held in closed institutions of care or protection, including health and mental health institutions.

Part I: Problematising the (in)visibility of children in conflict with the law

The book is organised into three interrelated sections. The first considers questions of (in)visibility, by focusing on the violence that children endure by being silenced, and rendered invisible by criminal justice institutions, while also often being subjected to harsh forms of public shaming and stigmatisation. These apparently contradictory effects are, in fact, a dual means of objectification, in denial of children’s status as full and active bearers of rights. In the first chapter on this theme, Wendy O’Brien problematises the mechanisms that make violence against children in criminal justice settings visible (only) in times of youth justice ‘crisis’. Critically engaging with an array of contemporary youth justice crises in Australia and comparable jurisdictions, O’Brien reads youth justice inquiries as mechanisms of formal closure that ultimately do little to redress the structural causes of violence in youth justice settings and, rather, reinforce the inscrutability of everyday violence in youth justice detention. Attributing youth justice ‘crises’ to a shortfall in the implementation of specialised child justice systems, O’Brien makes practical recommendations for human rights led reform to prevent cyclical and structural violence against children.

Also concerned with the mechanisms by which children in conflict with the law are made (in)visible, Faith Gordon’s historicised account, in Chapter 2, positions the practice of publicly identifying children in conflict with the law as a particularly pervasive form of violence against children. Drawing on historical
cases from the United Kingdom, Gordon identifies that media vilification of ‘child offenders’ serves, de facto, to deny children’s meaningful prospects of assuming a constructive role in society. Noting that the reach and permanence of digital communications necessitates increased vigilance to ensure the anonymity of children at all stages of criminal justice proceedings, the chapter closes with clear recommendations to ensure effective legal and regulatory mechanisms to curtail the harmful practice of naming and shaming children in conflict with the law. Gordon identifies that safeguards of this kind are particularly important when public interest arguments arise about the need to name children who have committed, or who are accused of having committed, serious offences.

In Chapter 3, Nessa Lynch casts further light on the complexities of responding to children who commit serious violent offences. An understudied topic in children’s rights and criminal justice scholarship, the question as to how to best respond to children who commit very serious offences is, in fact, riven with contradiction. The seriousness of the harm (and, indeed, the rarity of such incidents) renders the case – and often the child – highly visible. The child’s case may be heard in an adult court, for example, and media/public interest arguments may mean that age specific safeguards are lifted to permit the publication of the child’s image and name. Against the context of this heightened visibility, the complex circumstances of a child’s situation are largely effaced. Drawing on case analyses from New Zealand, Lynch demonstrates that children who commit crimes of this kind very often have complex trauma histories that are not properly understood or acknowledged in criminal justice sentencing. Lynch concludes by arguing for a reconceptualisation of responsibility, and punishment, to prevent secondary violence against traumatised children, while also balancing the needs and rights of victims, and the public interest in accountability and the rule of law.

These questions about the contexts in which the visibility and invisibility of children are determined, and the narrow parameters by which children’s experiences are made visible to and by criminal justice institutions, point to the importance of standards regarding independent monitoring and oversight of all facets of a child’s criminal justice involvement. In Chapter 4 Louise Forde and Ursula Kilkelly detail the development of a range of monitoring mechanisms which aim to better protect children deprived of their liberty. Crucially, this chapter identifies that effective monitoring has the potential to play a key preventive role with respect to violence against children, in addition to effective accountability for instances in which children are subjected to violence or other rights violations. Independent oversight and monitoring is fundamental to ensuring that children are not rendered invisible by virtue of their custodial sentence.

An important facet of this theme, of the (in)visibility of children in conflict with the law, is the extent to which children are permitted a voice, and given meaningful opportunities to articulate their experiences of criminal justice involvement. This theme is elaborated in the chapters that comprise the first part
of the book. O’Brien identifies that children’s voices are regularly silenced in detention. Furthermore, youth justice ‘crises’ offer little redress, as the strict legal procedures of commissions of inquiry curtail both children’s right to be heard with respect to decisions that affect them (CRC 1989, art 12) and children’s right to appeal the legality of their deprivation of liberty (CRC 1989, art 37 (d)). For Gordon, challenges of this kind can be usefully addressed by child sensitive research practices that allow meaningful opportunities for children’s participation. In Gordon’s research, children articulate their concerns about the violence inflicted by sensationalist and punitive media about youth crime, including in cases where children are publicly named. The importance of mechanisms for child participation is taken up by Forde and Kilkelly, in their discussion of the communications procedure established by third Optional Protocol to the Convention on the Rights of the Child (OPIC). The OPIC is important not only as a mechanism for enhanced transparency and accountability in places of detention, but as a means of enabling children’s participation when decisions, and actions, taken against children result in a breach of children’s rights.

**Part II: Strategies to ensure the implementation of protective statutory and procedural safeguards**

The three chapters that comprise Part II draw on diverse national and regional contexts to highlight the risks of violence that children face when practice falls short of the protections enshrined in law. In Chapter 5, Nicolás Espejo provides an in-depth analysis of the respective legal frameworks that seek to prevent violence against children in conflict with the law in various Latin American countries. While noting the enactment of several progressive statutory protections for children, Espejo details the harm that accompanies a shortfall in implementation. As with each of the chapters in this section, Espejo identifies that legal protection is insufficient, if violence against children is met with impunity. The establishment of fully functioning specialised child justice systems, in Latin America, requires full adherence to the legislative guarantees of respective States, and the binding legal protections for children enshrined in international law.

In Chapter 6, Rowena Legaspi-Medina also reflects on important lessons about the risks to children when otherwise sound protective and diversionary statutory provisions are not robustly implemented. Sharing insights from her legal and advocacy work in the Philippines, Legaspi-Medina identifies that deficiencies in the implementation of specialised child laws means that children are enmeshed in punitive systems designed for adults. Exacerbating this implementation gap, is the risk that the Philippines will erode statutory safeguards for children by lowering the minimum age of criminal responsibility. Against this challenging context, Legaspi-Medina provides legal practitioners, and child advocates, with practical recommendations about measures to protect children from the violence of criminal justice involvement.
Central to the chapters in this volume is the shared understanding that children who come into conflict with the law are, very often, also already victims. The apparent clarity of the victim/offender binary is confounded by the complex circumstances and trauma histories of children who come into conflict with the law, as well as the expansive neurobiological evidence about the need for child specific safeguards based on an understanding of children’s evolving capacities. While the balance of emphasis, in this book, is on safeguards and preventive mechanisms to end violence against children accused or convicted of breaching the law, there is a far broader context in which children face risks of violence while in contact with the criminal justice system, including as victims or witnesses. This is an important area of legal and procedural reform to ensure effective justice responses for children who have experienced or witnessed violence. As noted by the Secretary-General’s Special Representative on Violence against Children (‘SRSG-VAC’), for children who experience violence ‘recourse to the law seems like entering an impenetrable labyrinth’ (Santos Pais 2018, p. 13).

Asha Bajpai makes a fundamental contribution, in Chapter 7, with respect to the secondary violence that child victims can experience when seeking justice. Bajpai commences by identifying that effective access to justice for abused children requires a child-rights approach that ensures holistic and multi-disciplinary supports that recognise the child’s developmental stage, and the specific needs and rights engaged by their prior victimisation. Examining the legal pathways available to child victims of sexual abuse in India, Bajpai identifies that the necessary supports are not always available in legal and institutional settings, and additional work needs to be done to prevent profound risks of physical, sexual, and psychological violence for children seeking justice. Drawing on her empirical work in India, Bajpai shares practical recommendations about the holistic, multi-disciplinary, and child-sensitive supports that reduce secondary and institutionally sanctioned violence against children.

**Part III: Realising children’s rights through prevention**

The third and final section of the book turns to possibilities for the future, with attention to the complexities of pursuing promising practices in the fields of restorative justice, alternatives to detention, and the reduction of violent sentences for children. The first two chapters in this section focus on the risks borne by judicially sanctioned violence, and provide insights as to measures that have proven effective in reducing the use of violent sentences for children. In Chapter 8, Ann Skelton traces the history of violence against children in conflict with the law in South Africa, and documents the reforms that culminated in the abolition, in 1995, of whipping as a sentence. While this important progress now spares children an overt form of judicially sanctioned violence, Skelton provides clear recommendations about the work needed to redress ongoing incidents of violence and neglect of children in custodial facilities and other institutions in South Africa.
While Skelton’s chapter points to the promise of ending violent sentences for children, Chapter 9, by Veronica Yates and Leo Ratledge, charts the important, but partial, progress on the call to end the inhuman sentencing of children. Taking a global view, and situating this issue in terms of the robust international human rights prohibition against inhuman sentencing for children, Yates and Ratledge share practical strategies and lessons from the Child Rights International Network (CRIN) campaign to end these practices. The entrenched challenges, with respect to both inhuman and violent sentences for children, serve as a reminder of the importance of continued work to eliminate all forms of violence against children globally.

Consistent with this goal, the three remaining chapters in this section focus, in earnest, on effective diversion strategies, to not only spare children the violence of formal criminal justice involvement, but to ensure that children receive the non-stigmatising and holistic supports needed to promote their prospects of assuming a meaningful role in society. In Chapter 10, Yannick van den Brink and Bart Lubow direct much needed attention to strategies to prevent the excessive, unlawful, and arbitrary use of pretrial detention for children. Presenting evidence about pretrial detention as a form of violence against children, Van den Brink and Lubow present case studies from the Netherlands and the United States to identify the potential for reform of the use of pretrial detention, and the challenges that persist in this area of work. Ultimately, the empirical evidence presented in this chapter illustrates that a reduced reliance on pretrial custody for children has the potential to mitigate violence against children, while also attending to broader public concerns about community safety.

Building on the theme of diversion, in Chapter 11, Monique Anderson and Kattiya Ratanadilok explore the potential for restorative justice to offer child-sensitive and minimally interventionist measures to spare children the criminogenic effects of formal criminal justice involvement. Adopting a lens of thoughtful pragmatism, the authors caution against the risks of net-widening, unequal access to restorative programmes, and the risk that some restorative programmes, including those that are contingent on adjudication, actually prolong and deepen children’s formal criminal justice contact. To give this analysis focus, Anderson and Ratanadilok analyse the legislative basis for, and programme characteristics of, family and community group conferencing in Thailand. Through this applied work, the authors contend that restorative justice holds great potential to reduce children’s exposure to criminogenic harm, but only where such approaches are evidence-based, child rights compliant, and made available to children on an equal basis.

Among the impediments to ending violence against children in the criminal justice system, is the popular assumption that community safety demands an approach that is tough on crime. The tentacles of this pernicious misconception are far reaching, and ultimately play a role in facilitating, and often exacerbating, the various forms of violence studied in this collection. For example, the
naming and shaming of children, the responsibilisation of children for the dire conditions of their detention, and longstanding sentencing practices that sanction violence against children (corporal punishment, and life sentences without the prospect of release) are predicated on falsehoods about why children come into conflict with the law, and what measures might best reduce crime and ensure community safety. While the complexities of these arguments warrant book-length treatment on their own, in Chapter 12, Manel Capdevila and Cédric Foussard present compelling evidence that breaks the common-sense assumption that a reduction in crime is contingent on a strong architecture of punishment. Capdevila and Foussard begin by challenging the misconception that punitive responses ensure public safety, by arguing, instead, that community safety and community cohesion are served by non-custodial and other supportive measures for children in conflict with the law. Building on the international evidence base and the international legal and normative framework that illustrates the importance of minimally interventionist approaches to children in conflict with the law, Capdevila and Foussard present data from Catalonia to illustrate the success of non-custodial measures for children, in not only diverting children from the harms of detention, but also in achieving a demonstrable reduction in recidivism.

Taken together, the chapters in this book work from the premise that the unnecessary criminalisation of children is, in and of itself, a form of violence against children, and that this violence is preventable. With a shared focus on strategies to reduce the excessive criminalisation of children, these chapters direct attention to the role that structural factors of poverty, violence, trauma, and various neurodevelopmental factors play in bringing children into conflict with the law. Redress is required for both these factors, and the broader socio-cultural, and legal, forces that position children in conflict with the law as a locus of fear, blame, and control.

Having traced a range of criminal justice contexts in which children endure profound violence, the chapters in this book are united by a recognition that violence prevention requires that children receive individualised responses that are rights-based and appropriate to a child’s age and circumstances (see also United Nations Secretary-General 2008). Justice for children does not begin, or end, with the criminal justice system. Ensuring effective justice solutions for children requires a holistic approach to a child’s well-being for the life course. Achieving this requires the cooperation of a broad range of institutions and actors, and the establishment of non-stigmatising networks of support that divert children from criminal justice involvement wherever possible (Santos Pais 2015). Specialised child justice systems, in which children’s rights are upheld, are crucial to mitigating the systemic violence inherent to the undifferentiated application of the full force of the criminal law, and ensuring that children are treated in a manner consistent with their equal human dignity, in which the child’s best interests, for both the short-term and the life-course, are the primary consideration.
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The complex imbrication of political and media interests that are engaged in times of crisis pose risks to individual children and to broader efforts to reform systems that respond to children in conflict with the law. While the media attention given individual cases, such as Voller’s, may catalyse inquiry processes, effective reform requires that the process does more than seek to identify anomalous and adverse individual actors within what is assumed to be an otherwise effective and appropriate system. Preventing violence against children requires a human rights led national plan for reform, to align law and practice with the international legal framework and minimum standards on the administration of child justice. Such a move has long been sought by the UN Committee on the Rights of the Child, the Australian Law Reform Commission, and by the legal practitioners who work on a daily basis with children in conflict with the law.

Notes
1 Use of the term ‘child’ is consistent with the definition in the Convention on the Rights of the Child. That is: ‘a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier’ (CRC 1989, art 1).
2 The TOR for the Inquiry into Youth Justice Centres in Victoria is also silent on the need to review issues of specific relevance to Indgenous children, instead opting to take a broader view of cultural diversity by requiring the Committee to inquire into ‘the implications of separating young people from their communities and cultures’ (Parliament of Victoria 2016). By contrast the TOR for the Queensland review authorise Commissioners to conduct ‘a review of the current cultural programs and services delivered in Queensland’s youth detention centres and their effectiveness in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention’ (Queensland Department of Justice and Attorney-General 2016).
3 For a discussion of the role that political considerations have played in various cycles of youth justice reform in England and Wales, see Goldson (2015, pp. 170–190).
4 Within the CRC, articles 37 and 40 set down the most specific provisions for children’s rights with regards to juvenile justice yet the interdependence and indivisibility of children’s rights is reiterated by the Committee on the Rights of the Child (2007, para 4). Children in conflict with the law are therefore afforded all the protective safeguards enumerated in the CRC.
5 In addition to the statement by the Victorian Premier that children would be sent to adult jail as punishment for their misbehaviour in youth detention facilities, the Victorian Opposition spokeswoman for families and children attributed the unruly behaviour of young detainees to the loss of ‘disciplinary measures and consequences’ (quoted in Denholm & Taylor 2016).
6 The distance between police stations in some areas of Australia points to challenges with regards access to justice, and community safety, more generally. (For concerns of this kind with respect to police and medical intervention in instances of child sexual assault, see Mulligan 2008).
7 The RCIADIC recommended that ’except in exceptional circumstances, juveniles should not be detained in police lockups’ noting that bail measures should be prioritised (Commonwealth Government of Australia 1991 p. 242). The period of more
than 25 years since this recommendation was made has seen the continuation of the practice of holding children as young as 10 in police lockup for several days. See, for example, Gribbin (2015).

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### National legislation

Youth Justice and Other Legislation Amendment Act 2014 (Qld)
is exacerbated by the fact that children are denied effective redress, as they have limited or have no knowledge of the existence of the guidelines intended to safeguard their anonymity.

Ethics codes and practical recommendations have been devised in a number of countries, mainly by NGOs and key advocates working in the area of children’s rights. Examples include the guidelines developed by Mike Jempson, in partnership with UNICEF (Jempson 2010), and NGO-developed guidelines for advocates and children in Northern Ireland, informed by the voices of over 150 children (Include Youth 2015).

Workshops with the media employing a series of case studies on subjects covered by the press have been utilised to engage practitioners in critical thinking and the prioritising of implementing ethical principles into their practice (Gordon et al. 2015). Child rights training, and training on appropriately engaging with children and young people, needs to be embedded in journalism education at college and university levels, as does training relevant to practices in the digital age, such as journalists’ ethical use of social media platforms (Gordon 2018, p. 233).

Change must also be generated in the local community, at all political levels, and in all facets of the criminal justice system and the courts. As this chapter has noted, the harsh, reactionary ‘cultures of control’ surrounding children (Garland 2001) are maintained by an array of adult-centred and adult-controlled policies and practices. Unless children’s voices, participation, experiences, and well-being are positioned at the centre of future debates and discussions, hierarchies of access will remain to exclude, marginalise, and demonise children, in particular for children in conflict with the law.

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**National legislation**

Children and Young Persons Act 1933
Crime and Disorder Act 1998
Youth Justice and Criminal Evidence Act 1999
such as exposure to family violence or violence perpetrated in care or despite being in state care. Serious offending involves considerable harm to society and to victims of crime, but in the cases of these children, society itself frequently bears some responsibility, particularly where the child has been through the care system.

Consideration of reforms in such cases involve a tension between reformist and abolitionist views. While human rights bodies and children’s rights scholars alike call for abolition of long sentences for children, there has been little close examination of what appropriate responses look like in practice – particularly those which balance the child’s best interests with the needs of victims of offences and the public interest in accountability. In my own recent work (Lynch 2018c, 2018d), I have considered what the principles underpinning a children’s rights approach to serious crimes might look like, particularly in the re-conceptualisation of the public interest and public safety. I am currently working on further comparative and collaborative research to consider how jurisdictions outside the common law deal with such cases, in an effort to consider what a children’s rights approach might look like in practice.

While the goal must be a re-conceptualisation of the legal response, a re-imaging of how the common law countries treat cases of children who commit serious crime, particularly murder, is unlikely to occur in the near future. Though protective measures such as communication assistance for children in adult courts may be accused of being a quasi-endorsement of the appropriateness of the jurisdiction, advocates for children must continue to make every effort to mitigate the violence which these processes do to children.

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**National legislation**

Crimes Act 1961
Sentencing Act 2002
transparency of places where children are deprived of their liberty, and increase our knowledge base about children deprived of their liberty. Despite the progress made in setting standards and establishing toolkits for the training of professionals, it is clear that more needs to be done to ensure that effective national oversight mechanisms are in place. These oversight mechanisms play a central role in ensuring the rights and well-being of children in detention are upheld, and to ensure that they are not subjected to violence or ill-treatment. While the development of new standards and resource materials to guide implementation are important steps, it remains important for practitioners at the national level to adopt these measures and ensure that effective systems of accountability and oversight are in place.

Note

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Concluding remarks

Latin American legal systems have substantively advanced in adjusting their domestic legislation to the obligations set forth in the CRC. Except for Argentina, all Latin American countries have national laws that create specialised child justice systems. These new pieces of legislation have transformed the legal treatment of children in conflict with the law, including through the enactment of laws, and a range of rules and norms that are fundamental for the prevention of violence against children. In other words, it could be argued that the first stage of a process for consolidating juvenile justice in the region has been largely successful.

Despite this remarkable achievement in the formal implementation of the Convention on the Rights of the Child, many doubts remain about the future of juvenile justice in the region and the eradication of violence against children in the criminal justice system. A review of the implementation of these legal reforms indicates that there is little evidence – both in quantitative and qualitative terms – of the impact of these reforms in responding to juvenile delinquency and the prevention of violence against young offenders. As a matter of fact, there seems to be a significant distance between the normative discourse and the reality that children face while in contact with juvenile criminal justice systems (Palummo 2014).

By legislating for specialised child justice systems to respond to children in conflict with the law, Latin American countries have demonstrated a considerable commitment to upholding international legal obligations enshrined in the CRC. It should be noted, however, that these same countries have not shown a same pace, or depth of commitment, in providing the material supports necessary to ensure the effective operation of juvenile justice institutions. In practical terms, the child justice systems in the countries studied are characterised by: funding deficits; the ad hoc and incomplete implementation of legislative safeguards for children; the lack of a specialised child justice workforce; and a lack of investment in the independent monitoring and evaluation of existing services. In other words, Latin America may have a series of juvenile justice systems, but specific criminal policy for young offenders is lacking. There are many laws, but no systematic set of responses (normative, institutional, and programmatic) destined to the social control of offending and that determines a course of action that interprets a political will and a focus of the exercise of public power in the treatment of prevention, control, and management of juvenile delinquency by States (OIJJ 2015, p. 11). These structural shortcomings conspire against all serious and long-term efforts to evaluate and strengthen a regional agenda in the field of the prevention of violence against children in conflict with the law.

Notes

1 The chapter focuses on the analysis of the main legal norms on juvenile justice in Latin America. It should be noted that the study does not review administrative regulations (‘reglamentos’), which might provide useful additional information.
2 Several provinces within the country have enacted juvenile justice acts in the last few years. However, it is still pending the debate and approval of national act on juvenile justice, as expected for many years. Cf., www.justicia2020.gob.ar/eje-penal/sistema-penal-juvenil/.

3 For many years, the Brazilian Congress has been discussing different proposals for reforming Article 228 of the Constitution, lowering the ACM from 18 to 16 years of age and re-inserting doli incapax. At the same time other proposals aim at increasing penalties of deprivation of liberty, modifying the Estatuto da Criança e do Adolescente. By 2017, the Constitution and Justice Commission of the Federal Senate has approved the text that allows deprivation of liberty for up to 8 years for crimes with 'high offensive potential', and the discussion should follow for a second round of debates in the same Commission. In Uruguay, a national referendum was held in 2014 – alongside the general elections – to reform Article 43 of the Political Constitution. The proposed reform implied lowering the ACM from 18 to 16 years of age for a long list of crimes. The constitutional reform was rejected by the electorate. Finally, in 2017 the Government of Honduras announced its intention to review several norms related to children in contact with the criminal justice system, including reducing the ACM from 18 to 16 years of age (without reference to specific crimes).

4 Factors are: life, health, development, protection, sexual and reproductive rights, participation, and due process.

5 Factors are: education, health, identity, family, life and personal integrity, judicial protection, fair trial, participation, and culture.

6 These factors or ‘clusters of recommendations’ are: registries/administration, medical treatment, structural conditions of centres, overcrowding, hygiene, socio-educative measures, personnel, disciplinary regimes, internal regulations, treatment/ internment regime.

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CNAN: Código de la Niñez y la Adolescencia, Nicaragua, Ley N° 287, 1998  
CINNA: Código de Niños, Niñas y Adolescentes, Bolivia, Ley N° 548, 2014  
CPDNNA: Código para el Sistema de Protección de los Derechos Fundamentales de Niños, Niñas y Adolescentes, República Dominicana, Ley N° 136, 2003  
CRPA: Código de Responsabilidad Penal de Adolescentes, Decreto Legislativo N° 1348, 2017  
LESPJ: Ley de Ejecución de las Sanciones Penales Juveniles, Costa Rica, Ley N° 8.460, 2012  
LFJA: Ley Federal de Justicia para Adolescentes, México, Nueva Ley DOF 27 December 2012  
LPJA: Ley de Protección Integral a la Niñez y la Adolescencia, Guatemala, Decreto N° 27, 2003  
LPJ: Ley Penal Juvenil, El Salvador, Ley N° 863, 2004  
LRPA: Ley N. 20.084, que establece un Sistema de responsabilidad de los adolescentes por infracciones a la ley penal, Chile, Ley N° 20.084, 2007  
RPM: Régimen Penal de la Minoridad, Argentina, Ley N° 22.278, 1980  
L40: Ley N° 40, Panamá, Ley N° 40, 1999  
to protect children against the introduction of punitive state policies, or regressive law reform. Succinctly, the prevention of violence against children demands that in both law, and practice, a child’s best interests are the paramount concern. There is a strong international legal framework, and internationally agreed standards and norms to guide practice and law that safeguards children from all forms of violence. Sustained and principled action is required, at the national level, to make this translate to concrete protections for children.

Notes

1 CLRDC Inc is a non-stock, non-profit, non-government organisation that promotes and advances children’s rights, interests, and welfare through policy reform, advocacy, direct legal as well as psycho-social interventions, and research and documentation, specifically focused on the concerns of Children Deprived of Liberty (CDL) and sexually abused children. Apart from documenting violations committed against children in the context of anti-drug war campaign, CLRDC currently monitors the implementation of the juvenile justice law and the anti-torture law, respectively.

2 A barangay tanod, also known as a barangay police officer – and sometimes as BPSO (which can stand for barangay peace and security officer, barangay peacekeeping and security officer, or barangay police safety officer) – is the lowest level of law enforcement officer in the Philippines.

3 The author of this chapter, through her organisation, CLRDC, was invited by the Sub-Committee on Correctional Reforms to present the joint position paper of CLRDC, its partners, and network children’s organisations in the Philippines, before the Committee on Justice at the House of Representatives on why the Minimum Age of Criminal Responsibility (MACR) should not be lowered (presentation provided in August 2016).

4 OPLAN is military terminology for ‘Operational Plan’.

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The Malimath Committee, tasked with suggesting measures to reform the Indian Criminal Justice System, clearly stated in its report that the adversarial system of dispensing justice had not worked satisfactorily in India (Malimath 2003). If the current justice system doesn’t adequately serve its youngest victims (Krishnan 2018), then perhaps it is timely that the prevailing adversarial system gives way to at least some of the beneficial features of the inquisitorial system (Vij 2016).

Every child deserves to grow up free from harm and in a stable and nurturing environment, with the same opportunities to succeed as every other child. Our most vulnerable and disadvantaged children, such as those in state care, need more intensive support so that they lead a life of dignity and empowerment. Their vulnerability needs to be recognised, understood, and addressed by law and policy makers. Laws, policies, courts, judges, and law enforcers can be powerful tools in positively shaping children’s future lives. But making laws and policies is not enough. It is finally about how these laws are implemented and supported, in the best interest of the child, that justice for children will be determined.

Notes

2 Child-friendly manner means any behaviour, conduct, practice, process, attitude, environment, or treatment that is humane, considerate, and in the best interest of the child. (The Juvenile Justice (Care and Protection of Children) Act, (2015)).
3 The Juvenile Justice (Care & Protection of Children) Act 2015, Model Rule 12(3) holds that:

in every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining – (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a playschool) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In the light of such a statutory rule prevailing for ascertainment of the age of the juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of the ascertaining the age of a victim as well.

(See also Live Law News Network 2015)

4 Public Interest Litigation (PIL) is the use of the law to advance human rights and equality, or raise issues of broad public concern. In Indian law, public interest litigation is social action litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party (see, further, Pooja (n.d.)).
5 The Tata Institute of Social Sciences (TISS) is a deemed to be a University under Section 3 of the University Grants Commission Act (UGC), 1956.
Since its inception, the vision of the TISS has been to be an institution of excellence in higher education that continually responds to changing social realities through the development and application of knowledge, towards creating a people-centred, ecologically sustainable, and just society that promotes and protects dignity, equality, social justice, and human rights for all.

(TISS n.d.)

6 Sarva Shiksha Abhiyan (SSA) is the Government of India’s flagship programme for achievement of Universalisation of Elementary Education (UEE) in a time bound manner, as mandated by 86th amendment to the Constitution of India making free and compulsory education to children aged 6–14 years a fundamental right. It is now renamed Samagra Shiksha (All India Council for Technical Education n.d.).

7 The National Institute of Open Schooling (NIOS) was established in November 1989 as an autonomous organisation in pursuance of National Policy on Education 1986 by the Ministry of Human Resource Development (MHRD), Government of India. NIOS provides a range of academic and vocational and life-skills courses for secondary and senior students (NIOS n.d.).

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**National legislation**

Constitution of India 1949  
Code of Criminal Procedure 1973  
Criminal Law Amendment Act 2018  
Indian Evidence Act 1872  
Indian Penal Code 1860  
The Juvenile Justice (Care & protection of Children) Act (JJ Act 2015) 2015  
Protection of Children from Sexual Offences Act (POCSO) 2012  
University Grants Commission Act (UGC) 1956
responsibility under OPCAT, and live up to the promise of its Constitution, without delay.

Note

1 The project agreement was signed in 1999, with the Department of Justice as the government co-operating agency. The UN agencies that were parties to the agreement were UN Development Programme (UNDP), the CICP (now called UNODC), and the project was conducted via the UN operating system (UNOPS). The major donor was the Swiss Cooperation Development.

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Children’s Act, Act 38 of 2005
Correctional Services Act, Act 17 of 1994
or escalation of inhuman sentencing of children. The rapid reform to counter terrorism laws worldwide since 2001 has resulted in an increase in the number of offences for which life imprisonment may be imposed on children in the countries that retain this form of sentence. Further, of the four countries that have carried out executions of child offenders over the last decade, all permit the sentence for terrorism related offences (CRIN 2018a, pp. 32–40).

The campaign to end inhuman sentencing of children does not exist in a vacuum, it collides with larger forces influencing penal policy, including those of populism and counter-terrorism. As seen above, effective campaigning to end inhuman sentencing of children has made use of the full range of tools available to campaigners, from international human rights mechanisms to strategic litigation, individual case work and building mutually supportive campaigns alongside diverse partners. The lessons learned from campaigning to date, as well as an awareness of its limitations, can shape campaigns to move towards a world where inhuman sentencing of children is abolished everywhere.

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Despite the fact that both the principles of international children’s rights law, and the empirical evidence, underscore the dangers of pretrial detention for the immediate and lifelong well-being of children, a high reliance on pretrial detention is a reality in many juvenile justice systems across the globe. At the same time, the presented case studies also show encouraging reform efforts at the domestic level or local level. This chapter illustrates that effective implementation of children’s rights principles regarding pretrial detention of children requires a thorough understanding of how pretrial detention operates in practice, as well as knowledge of practical, evidence-based strategies to reduce reliance on the pretrial detention of children. The United Nations Global Study on Children Deprived of Liberty, which is currently in progress, can play an important role in this regard, as this project aims to collect and present data on juvenile pretrial detention practices and reform efforts in juvenile justice systems around the world. Notwithstanding the value of this global endeavour, effective children’s rights protection ultimately comes down to the policymakers and decision-makers on the ground; it is ultimately up to them to protect children against the violence of excessive, unlawful, and arbitrary pretrial detention and to give true meaning to the fundamental rights of children, established under the CRC.

Notes

1 This chapter is a product the international symposium ‘Deprivation of Liberty of Children in The Justice System: Towards a Global Research Agenda’, which was held on 13 April 2018 at Leiden University and was funded by the Leiden University Fund/Dr. H.A. van Beuningen Fund.

2 In the US, pretrial detention facilities are generally locally operated (by county or city governments). Even in the few states that have a completely centralised juvenile justice system, detention centres tend to reflect local legal culture more than state policy. When JDAI began, there were more than 600 such centres throughout the US.

3 Relevant publications, training courses and related materials can be found at: www.JDAIconnect.org.

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**National legislation**

Dutch Code of Criminal Procedure 1926


Explanatory Memorandum Dutch Code of Criminal Procedure 2014–2015, 28741/29270, no. 25
grounded in principles that contribute to effectiveness and uphold children’s rights. Diversionary interventions should be evidence-based, reduce formal system contact, be accessible and available, be flexible, avoid net-widening, not be compromised by procedural issues, and should be conducted by skilled personnel. The effective implementation of diversionary measures such as these is an important step in upholding children’s rights, not least because early and effective diversion has key role to play in protecting children from the detrimental, and sometimes violent, consequences of criminal justice involvement.

Notes
1 In this chapter the terms child and children are consistent with Article 1 of the United Nations Convention on the Rights of the Child, which defines a child as ‘every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier’.
2 Article 40(3)(b) of the CRC provides that

[w]henever appropriate and desirable, [States Parties shall seek to promote] measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

In addition to this legally binding provision, authoritative guidance on the use of diversionary and restorative measures for children is provided in a range of international legal instruments. For example, the 1985 United Nations Beijing Rules (rules 11.1–11.4 inclusive) set out conditions in which diversion is supported (United Nations General Assembly 1985). See also the Tokyo Rules (United Nations General Assembly 1990b) governing the administration of non-custodial measures, and the Riyadh Guidelines (United Nations General Assembly 1990a) on the prevention of juvenile offending.
3 The sample consisted of 24 young people aged 18–24 who had participated in at least two restorative justice conferences when they were under 18.
4 The use of restorative justice and reconciliation as an alternative to formal justice has a long history in Thailand. Prior to English and French colonial influence, an injured person (victim) would report to government officials only when there was a severe conflict. Less serious conflicts were reconciled by senior villagers who were trusted by both parties and impartial to the dispute. During the late nineteenth century, modifications to Thai law compromised the legal basis for traditional practices within villages, and reconciliation processes gradually fell into disuse.

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Juvenile and Family Court and Juvenile and Family Case Procedure, Act B.E. 2553 2010
Note

1 The measure of recidivism we have been using in studies in Catalonia consists of quantifying, during the follow-up period, the commission of new or repeat offences by children who have completed a programme or a measure in the Catalan juvenile justice system during the baseline year (2010 in the latest study). The follow-up period ended on 31 December 2013 and covered 3.5 years on average (minimum three years and maximum four). The recidivism data obtained were subsequently updated until the 31 December 2015 (an average of global follow-up of 5.5 years). This has been done in order to check whether the four-year period was sufficient or if it needed to be extended. The results of our latest report (Blanch et al. 2017) indicate that 96 per cent of repeat offenders were identified within four years and hence this confirms our hypothesis that a longer follow-up period was not required.

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