

Juvenile Justice, Restorative Justice & young adults

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2. UN Juvenile Justice standards

- 1989 Convention Rights of the Child (CRC), Art. 37, 39 and 40
- Additional Rules: 1985 Beijing Rules 1990 Havana Rules, 1990 Riyadh Guidelines
- 2007 UN CRC General Comment No. 10 Children's Rights in Juvenile Justice
- 2016 UN CRC Draft General Comment on the implementation of the rights of the child during adolescence, No. 20
- No specific rules 18+, but there are some references to young adult offenders

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CRC: Juvenile Justice

- Pedagogical objectives: take age into account; best interests of child; learn from mistakes
- Special procedures, laws and institutions
- Diversion and alternatives
- Detention as a last resort and for the shortest appropriate period of time
- Focus on restoration & reintegration
- Victim protection



CRC: Diversion

Research results in 4 theses (Dunkel,09)

Diversion:

- Is a meaningful & effective answer to juvenile first & second time offenders
- By 'non-intervention' should be given priority
- With *restorative or educational* measures often sufficient
- Comes first. Juvenile court dispositions should be preserved for persistent and/or more serious offenders



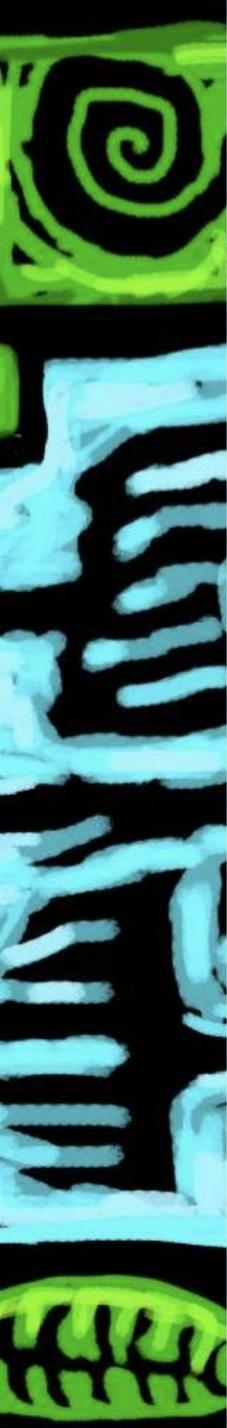
CRC referring to adolescents aged 16-18

- All rights apply equally to children up to 18, irrespective of age
- Take account of children's development and evolving capacities
- Approaches required to ensure the realization of rights of adolescents differ from those for younger children
- No reference of 18+



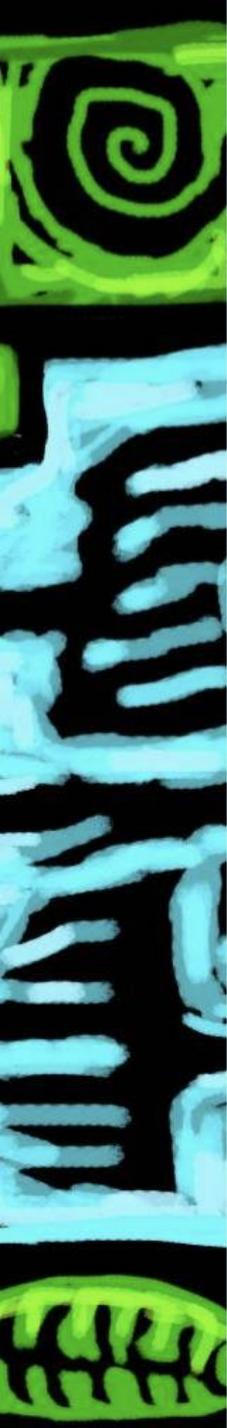
Implementation of the rights of the child during adolescence Draft GC(no.20)

- Challenging environment
- Respect evolving capacities
- UN stimulates to raise the MACR towards 18 years
- Lessons for young adults
- Priority for diversion and restorative justice



International standards for young adult offenders (YAO)

- But, reference in Beijing Rules, rule 3.3: *"efforts shall also be made to extend the principles embodied in the Rules to young adult offenders"*.
- Draft General Comment 20
- No clear definition of YAO, it varies between 18-25



European standards for young adult offenders

- 2003 Rec 20 on "new ways of dealing with juvenile delinquency and the role of JJ".

Rule 11: reflecting the extended transition to adulthood (...). young adults under 21 should be treated in a way comparable to juveniles and be subject to the same interventions(...)

- 2008 Rec 11 "European Rules for Juvenile Offenders subject to Sanctions or Measures". *Rule 17: young adult offenders may, where appropriate, be regarded as juveniles and dealt with accordingly.*



National standards for young adult offenders

Law: Adolescents aged 18-21 tried in juvenile courts. Adult penal law can be applicable

➤ *Germany, Austria, Croatia*

Law: Juvenile law can be applied on adolescents aged 18-23

➤ *The Netherlands*

Specific approach, no specific JJ system

➤ *Finland and Sweden*

Different sentences for young adults

➤ *England and Wales*



3. Brain Research

Prof. dr. Eveline Crone

- Neuro biologic research shows that the brain is only fully developed at 23-25 years of age
- The social context is merely influencing goals and motivation of adolescents aged 10-22

When young adults grow older:

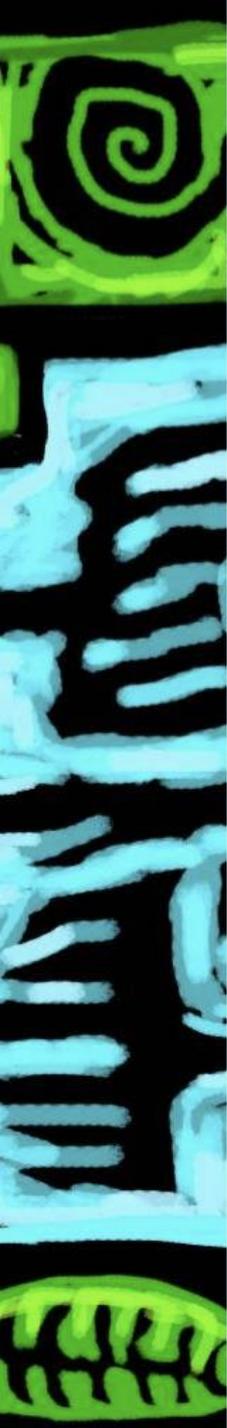
- their decisions are less impulsive
- they become more empathic with other people



Brain Research

Prof. Theo Doreleijers

- *“The brain of young people above 18 is fully developing. In the care and penal system, the latest insights about the brain of adolescents should be used better.”*
- *“Young people should not be held in youth custodial institutions away from their own environment. Recidivism appears to be less when young offenders are treated in a daily program nearby”.*



4. Dutch penal law for adolescents

Legislation

- 1 April 2014: Adolescent law for young adult offenders 16-23 years of age
 - Juvenile justice can be applied until age of 23
 - Adult law can be applied from 16 years of age (= reservation art 37 CRC)

Data

- In 2013 a total of 56 minors (16-17) was convicted by adult law. No data for 2015/14
- Data on young adults sentenced by JJ not yet available (now: WODC pilot study)



Future developments young adult offenders

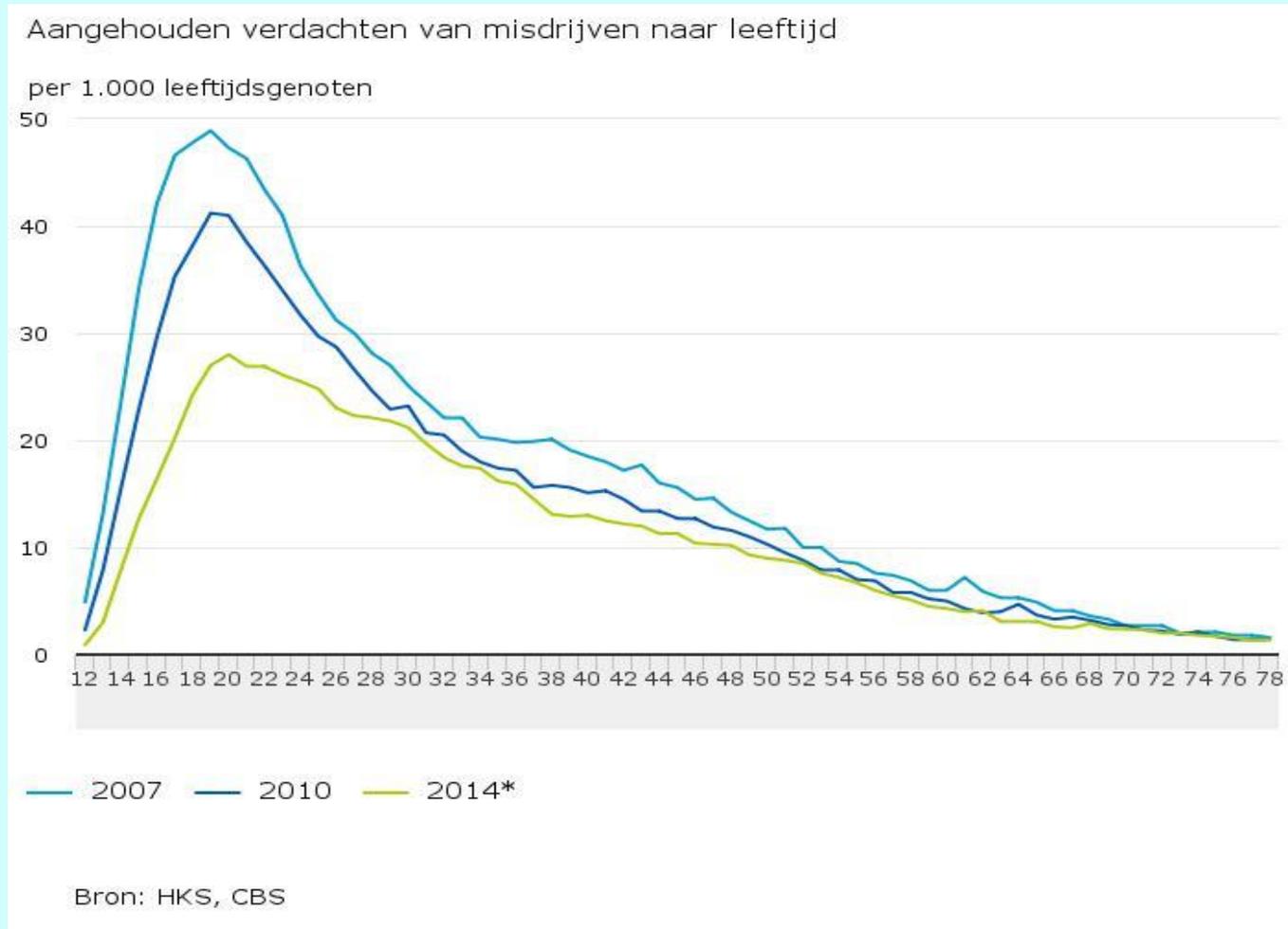
Advice to Dutch ministry of Justice and Safety

The number of young people in youth custodial settings is decreasing

New concept/alternative to deprivation of liberty:

- Small scaled local / regional provisions (max 8 young people)
- Individual approach
- More open systems; during the day they can go to school, work etc
- A few national specialized provisions

The Netherlands: Arrested suspects of crime versus age





5. Restorative justice

- Imagine if... case
- *You are walking on the pedestrian street....*
- *Somebody grasps your bag (boy 19 years old, diagnosed with a minor mental disorder)*
- *You go to the police*
- *Mediation is offered*
- *What would you do?*

**SHUT
UP!!**

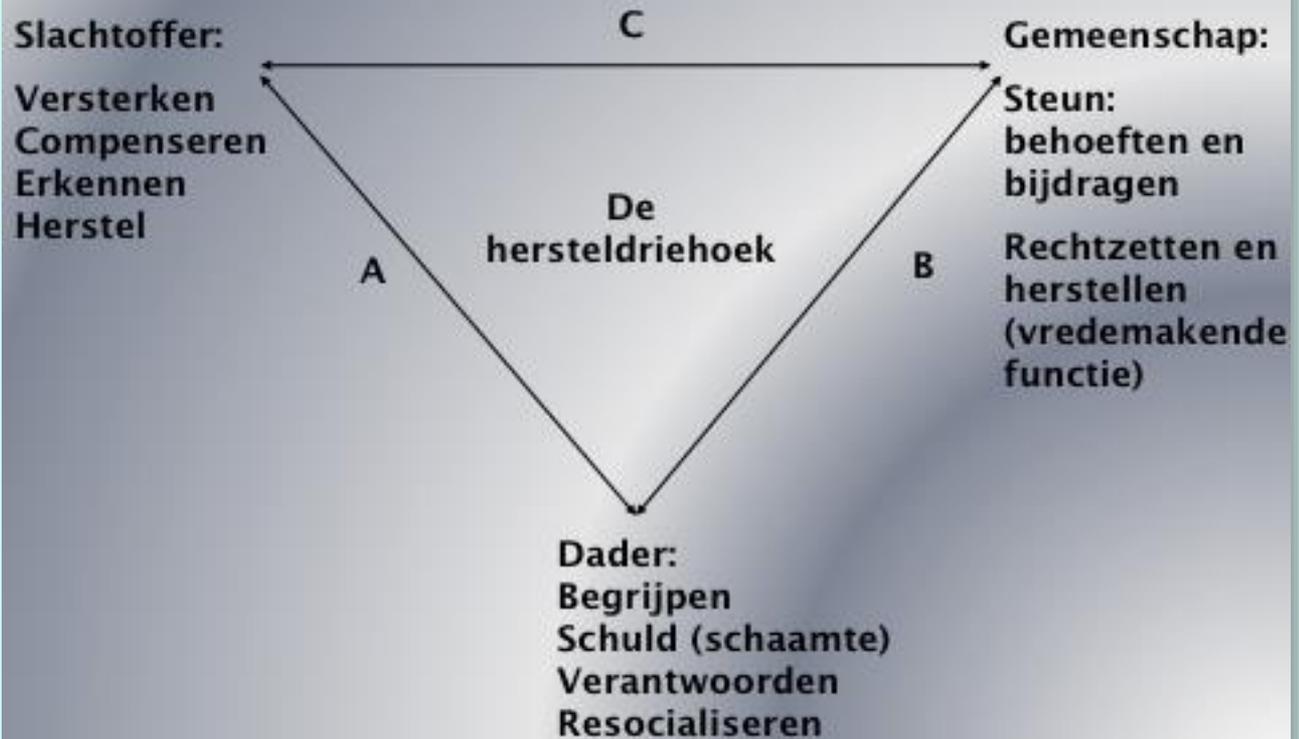




RJ: Central notions

- No clear definition ‘umbrella’
- Formal RJ : reaction crim. behaviour
- Started often with juvenile offenders
- Central notions:
 - restoration of harm
 - taking responsibility
 - participation - human interaction
 - doing justice towards victim, offender and society

Herstel vanuit een drievoudig perspectief





RJ: Forms and history

- Most common: mediation & FGC
- History: indigenous peoples - Maori New-Zealand, Inuit Canada, ubuntu S-Africa, until middle ages also here
- Recently (since nineties): rise of alternative sanctions, development of children's rights, alt. dispute settlement & emancipation of victims
- In many countries: RJ initiatives started with youth

Does it work?

- Meta studies (US/UK/NZ) show:
- high satisfaction rates victims, offenders & professionals
- feeling of justice increases
- taken serious, taking responsibility
- less recidivism
- a new beginning
- Examples: Restorative justice: the evidence, Shermann & Strang 2007; Shapland 2008
- Recidivism: Claessen 2015



International RJ standards

- 1999 Council of Eur Rec No. R (99) 19 on mediation in penal matters
 - 2001 EU Council Framework Decision on the standing of victims in criminal proceedings & 2012 Directive
 - 2002 UN minimum standards on RJ practices
 - all JJ instruments since 1996
- > RJ as a priority in reaction on crime**



General Comment (no.10) says

... “The protection of the best interests of the child means, for instance that the traditional objectives of criminal justice (repression/retribution) **must give way to rehabilitation and restorative justice objectives in dealing with child offenders.** This can be done in concert with attention to public safety.”



Draft General Comment 20

- 92 *“The Committee emphasises that the rights to protection in respect of juvenile justice apply equally to adolescents, all the way up to 18 years. States are urged to introduce comprehensive juvenile justice policies **with an emphasis on restorative justice, diversion from judicial proceedings, alternative measures to detention,** and preventive interventions to tackle the social factors and root causes, consistent with Articles 37 and 40, and the Riyadh Guidelines. The focus must be on rehabilitation and reintegration, including for those adolescents involved in conflict, and activities categorised as terrorism.”*

Try it out model

Prevention first!

Rights of the child as a leading factor

O: oh learning aspects central

Best interests of the child first

E: eh..to specify their own development and responsibility

Emotions deserve a place, as well as victims

Re-integration as a goal

H: harm reduction & restoration where possible

E: end locking up, use only as a measure of last resort

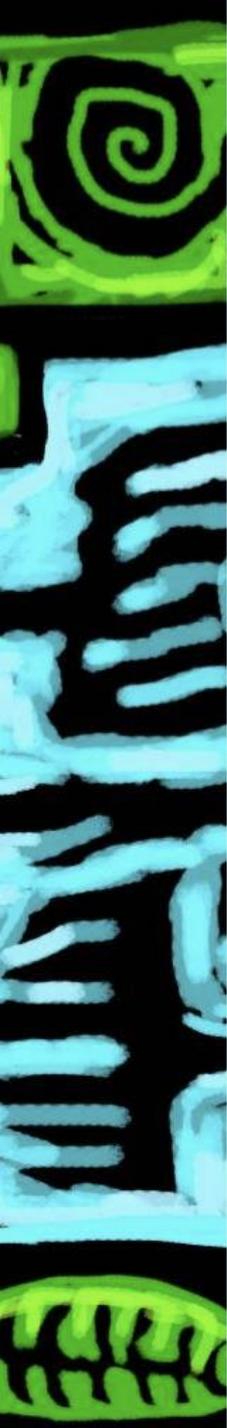
T: to check human rights

(Wolthuis, 2012)



RJ developments for youth

- Heart JJ system New-Zealand: FGC since 1989 1th option in the law - Maori tradition, national system, all partners in the chain know it
- Also in Europe: Northern Ireland, Austria, Belgium, Hungary just to mention a few
- NL also start there
- all Eur countries have RJ projects
- int. movement, active EFRJ:
www.euforumrj.org



Initiatives Netherlands

- Nineties: VOM, conferencing, pilots youth
- After experimental stage main focus victim offender conversations
- Victim in Focus > 1000 per year
- Pilots court level, police level & probation
- RJ in juvenile detention centres & youth protection
- more attention for victims, initiatives in neighbourhoods and by citizens themselves
- active organisations: RJNL, Eigen Kracht, org for mediators, schools
- article in criminal procedure law on victims and RJ
- policy statement on RJ in penal cases



Restorative Justice stages

Applied in cases of children, adolescents & young adults

1. Prevention phase
2. Arrest & investigation stage police
3. Stage public prosecutor
4. During a court session
5. While being in detention
6. After a penal case



6. Conclusion & discussion

Conclusions:

- Brain research shows that it is evidence based to apply juvenile law in the period of young adulthood
- Int standards: States cannot avoid RJ in cases of young adult offenders
- Obligation under EU law (Victim Directive)
- Strong moral support by CoE and UN



Discussion

- Should there be specific UN rules for young adults offenders, like a General Comment or an optional protocol?
- Does Restorative Justice require a specific approach for young adults?
- Do you know best practices working with Restorative Justice and young adults aged 18-25?
- Should all adolescents (18-25) be tried under juvenile law?

