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European Network of Ombudspersons for Children (ENOC)
Statement on Juvenile Justice:
Europe's children's champions challenge governments to respect young offenders' rights

As children's ombudspersons in 21 European states, we are very concerned at the tone of political and media debate and the direction of public policy and legal changes concerning juvenile offenders in many of our countries.

Children in conflict with the law are still children first and do not lose their human rights, including rights to special treatment and protection, to education and to health.

We believe that current trends to reduce the age of criminal responsibility and to lock up more children at younger ages must be reversed. The treatment of young people placed in penal institutions in many of our countries is a scandal – breaching their fundamental human rights.

Across Europe, ages of criminal responsibility vary from as young as 7, 8 and 10 up to 16 in some states and 18 – but with exceptions – in a few; the definition also varies. We believe that the concepts of “responsibility” and of “criminalisation” need to be separated. The Convention on the Rights of the Child (CRC) proposes a separate, distinct system of juvenile justice; it requires that this must be focused on respect for all the rights of the child and on the aims of rehabilitation and re-integration. This focus and these aims are not compatible with “criminalising” child offenders.

We do believe that children should be held “responsible” for their actions in line with the concept of evolving capacities and our strong advocacy for respect for children's views in all aspects of their lives. It is essential to establish responsibility for crimes. Where responsibility is disputed, there has to be a formal process to determine responsibility in a manner which respects the rights of the alleged offender. But this process does not have to lead to criminalising children.

In promoting policies which respect the human rights of young offenders, we emphasise that we are not in any way neglecting the rights and concerns of victims of juvenile crime, who must receive appropriate reparation and support from the state. But their interests are not served by pursuing policies that fail to rehabilitate offenders and tend instead to make them more prone to offend and possibly more violent. We must also highlight the fact that children are far more often victims of crime, including violent crime, than perpetrators.

We believe that all states, far from considering lowering current ages of criminal responsibility, should aim progressively to raise them to 18, developing innovative systems for responding to all juvenile offenders below that age which genuinely focus on their education, reintegration and rehabilitation. As proposed in the CRC, states

need to develop a range of alternative measures to divert children from the juvenile justice system. They also need to ensure training and re-training, emphasising the human rights of children, for all those involved with children in conflict with the law. More broadly, states need to develop preventive strategies, as highlighted in the UN Guidelines for the Prevention of Juvenile Delinquency.

While it may be necessary to employ compulsory measures in responding to juvenile offenders, it is neither in the interests of children nor of the broader society to pursue measures which are purely punitive in intent, including the use of custody. Research tells us that rates of re-offending and in particular violent offending are increased by depriving children of their liberty. The only legitimate reason for detaining children, before or after trial, must be that they pose a serious and immediate risk to others. In these rare cases, the use of custody should be constantly reviewed and other alternatives of close supervision considered. Conditions in custody must respect all human rights as set out in the CRC and in the United Nations rules and guidelines on juvenile justice; all children must in particular have equal access to appropriate full-time education. In accordance with the CRC, in all cases children in custody should be separated from adults.

We note that international human rights monitoring bodies and the human rights mechanisms of the Council of Europe share our concerns: the European Committee of Social Rights, which monitors compliance of member states with the Social Charters, has expressed concern at the use of custody, including for remanded children, and also at proposals to reduce the age of criminal responsibility. The European Court of Human Rights has found that methods of trial and sentencing and treatment of juveniles in some states breach the European Human Rights Convention. The European Committee for the Prevention of Torture, following visits to countries and inspections of institutions, has frequently expressed concern about the treatment of juveniles deprived of their liberty and also underlined that deprivation of liberty must only be used as a last resort. The Committee on the Rights of the Child, monitoring states' compliance with the CRC, has echoed these and other concerns in its comments on reports from European states.

ENOC urges individual states urgently to review their juvenile justice systems against the requirements of the CRC and European human rights instruments. It urges the Council of Europe, including the Committee of Ministers and the Parliamentary Assembly, to give priority to highlighting, developing and enforcing the human rights standards applicable to children who are in conflict with the law in the 45 member states.

In addition, ENOC urges the Committee on the Rights of the Child rigorously to examine States' progress towards respecting the rights of children in conflict with the law and to encourage a single-minded focus on rehabilitation and re-integration, not criminalisation, for all children up to 18.

Summary of the major implications of the Convention on the Rights of the Child for juvenile justice systems

Children in the Convention are defined as everyone under 18 (*article 1*);

All the rights in the Convention must be respected and ensured for all children without discrimination on any ground (*article 2*);

The best interests of children must be a primary consideration in all actions concerning them (*article 3*);

Children's views must be heard and taken seriously on all matters that affect them, according to age and maturity (*article 12*).

There must be no torture, inhuman or degrading punishment or treatment, capital punishment nor life imprisonment without possibility of release;

Arrest, detention and imprisonment must only be used as a measure of last resort and for the shortest appropriate time;

Any child deprived of liberty:

- must be treated with humanity and respect, taking account of the needs of people of his or her age;
- must be separated from adults unless not in the child's best interests;
- has the right to maintain contact with family through contact and visits;
- has the right to privacy;
- has the right to prompt access to legal and other assistance;
- has the right to challenge deprivation of liberty through court, etc and to prompt decision.

(*article 37*)

Any child who may have offended has the right:

- To be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and the desirability of promoting the child's re-integration and assuming a constructive role in society;
- To detailed due process guarantees;
- To have their privacy fully respected at all stages of the proceedings;

States are required to:

- Promote the development of laws, procedures, authorities and institutions specifically applicable to children who may have offended;
- Promote as appropriate measures not involving judicial proceedings;
- Establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- Make available a variety of dispositions to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

(*article 40*)

Additional standards are provided by the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*the Beijing Rules*); the 1990 United

Nations Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (*the Riyadh Guidelines*)

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