

ENOC

European Network of Ombudspersons for Children

ENOC Study report on National Human Rights Institutions and Child/Juvenile Delinquency

ENOC SURVEY 2012

**Prepared by Nevena Vuckovic Sahovic
September 2012
REPORT**

“It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights. The Committee’s principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children’s rights”. Committee on the Rights of the Child, General Comment No. 2, 2002



The European Network of Ombudspersons for Children (ENOC)

The European Network of Ombudspersons for Children (ENOC) is a not-for-profit association of independent children's rights institutions (ICRIs). Its mandate is to facilitate the promotion and protection of the rights of children, as formulated in the UN Convention on the Rights of the Child:

- to serve as a forum of colleagues for the exchange of information, capacity-building and professional support among the members;
- to promote and safeguard children's rights and to work on strategies for the fullest possible implementation of the Convention on the Rights of the Child;
- to promote the establishment of independent children's rights institutions (ICRIs) in countries worldwide and offer support to such initiatives;
- to stimulate contacts and support with and among other ICRIs worldwide and their networks.

ENOC was established at a meeting in Trondheim, Norway in 1997, when an initial group of 10 institutions met, together with UNICEF (UNICEF's regional office for Western Europe in Geneva agreed to provide a Secretariat for ENOC for the first 10 years). In 2008 ENOC established an independent Secretariat in Strasbourg, with office accommodation provided by the Council of Europe. ENOC holds an annual meeting each year. By November 2012 it had grown to include **41 member institutions in 33 countries**, including in **22 of the 27 EU member states**. The Network adopted detailed "Standards for independent children's rights institutions" in 2001.

There are two categories of membership of ENOC – full and associate. Full membership is open to independent children's rights institutions within the 47 Council of Europe member-states which meet certain criteria, including being established through legislation with the function of protecting and promoting children's rights. Where the Bureau of ENOC decides that these criteria are not fully met, the institution may be considered for associate membership, if it demonstrates it is actively seeking to meet the criteria. Associate members are able to attend ENOC meetings and participate fully in ENOC activities and information-sharing.



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Report
September 2012

ENOC SURVEY 2012:

**National Human Rights Institutions and Child/Juvenile
Delinquency¹: main findings**

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The report reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

¹**ENOC Bureau's comment:** despite some criticism regarding the title/wording of the report referring to 'juvenile delinquency', the ENOC Bureau decided to maintain it since this terminology has been used throughout the whole mapping process. It should however be underlined that the survey and the discussions on the subject matter that took place on the occasion of the 16th ENOC Annual Conference in Cyprus (Oct.2012) resulted in the adoption of an **ENOC position statement** on "**The rights of children in conflict with the law**", available on the ENOC website under "position papers".

INTRODUCTION:

❖ **The Survey:**

A first step in the survey on NHRIs and child/juvenile delinquency was to develop and distribute a questionnaire. The questionnaire on the monitoring² role of the NHRIs in dealing with the rights of child/juvenile delinquents (C/JD) was sent in May 2012 to all ENOC member institutions (to date ENOC is made up of 41 members). The members were asked to provide some basic information on their **involvement in the protection of the rights of C/JD**. The questionnaire consisted of groups of questions which covered all measures of implementation in the area of the rights of C/JDs, with special attention to the rights of children who are alleged as, accused of or sentenced as having infringed the Penal law. However, children below the age of criminal responsibility also perpetrate offences (sometimes crimes) as well as “status” offences, for which they are deprived of liberty, taken into custody and intervened against. Therefore, children of all ages were subject of this survey.

❖ **Structure of the Questionnaire:**

The questions were grouped into three chapters:

- **Chapter one**, dealing with basic information on the protection of the rights of C/JD in ENOC members’ States;
- **Chapter two** dealing with the role of NHRIs in the implementation of general measures needed for the realization of the rights of C/JD and
- **Chapter three** dealing specifically with the role of NHRIs in monitoring and evaluation of prevention and intervention in the area relevant for C/JD.

Each Chapter was divided into **sections**.

The Questionnaire was elaborate but simple, with most questions requiring yes or no answers. Members were asked to provide comments and proposals for improvement for each group of questions.

❖ **Structure of the Report**

This report follows the structure of the questionnaires and is thus divided in three Chapters and sections within.

² Monitoring of children’s rights can be defined as: all activities for the purpose of “*assessing and measuring the compliance of national laws and practice with the provisions of the CRC and other international instruments*” (such as resolutions, standards and guidelines or similar) relevant to the implementation of the CRC provisions. In its General Comment No. 5 on the Article 4 of the CRC (General Measures of Implementation), the monitoring body of the CRC – the Committee on the Rights of the Child (the Committee) recognized the importance of monitoring.

➤ **Chapter one: the Report reflects ENOC members' assessment of what their States are doing to protect rights of C/JDs.**

➤ **Chapter 2 & Chapter 3: the Report reflects ENOC members' inputs on their roles in protection of the rights of C/JDs.**

Recommendations at the end of each section of the Report are based on ENOC members' comments and proposals for improvements. The list of recommendations is not exhaustive; ENOC members should develop them in a more precise way, which can be a good task for group work at the Annual meeting in Nicosia. Those members who have not had the time to fill the questionnaire should also participate in formulation of specific recommendations.

❖ **Timeframe:**

A deadline was ultimately set for August 15 in order to finalize the report for ENOC's annual meeting in Nicosia (October 2012), by which time 22 members replied.³ As with earlier surveys, they did so in very different ways; not all offices replied on/responded to all questions, some answered very extensively and others answered only to yes/no questions.

❖ **The review and opportunities for ENOC:**

The results of the survey provides ENOC with an opportunity to assess how the network can strengthen its efforts in advocating for further implementation of international and national standards in the area of child rights and rights of C/JDs.

❖ **Terminology:**

For the sake of brevity and ease of reading, full titles of ENOC members are not used in the report; instead, the name of the institution and/or the country/city/region is used, or sometimes there is a reference to unspecific "children's ombudsperson" or "institution". The designation "States" is used to reference ENOC members' States. The designation "States parties" is used to reference parties to the CRC.

❖ **Basic international standards and material used for the survey:**

- The Convention on the Rights of the Child
- The United Nations Guidelines for the Prevention of Juvenile Delinquency

³ List of members who submitted responses to the questionnaire: **Belgium (Flanders & French community), Catalonia, Cyprus, Denmark, England, Finland, France, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Moldova, Northern Ireland, Norway, Poland, Scotland, Serbia, Slovakia, Wales**

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- The United Nations Standard Minimum Rules for Non-custodial Measures
- The United Nations Guidelines for Action on Children in the Criminal Justice System
- The United Nations Basic Principles on the use of Restorative Justice Programmes in Criminal Matters
- The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime
- The General Comment No. 10 (2007): Children’s rights in juvenile justice, Committee on the Rights of the Child
- The General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child.
- General Comment No 5 (2005): General measures of implementation of the Convention on the Rights of the Child.
- UNODC, UNICEF: *Manual for measurement of juvenile justice indicators*, UN, UNODC; New York, Vienna; 2007.

❖ **General impressions:**

Below is a list of general impressions, based to a great extent on the comments provided by ENOC members. They are further developed in the recommendations within each section of this report. It is intended for ENOC members to work with, supplement and improve this list as well as the recommendations.

The States:

- There seems to be a large discrepancy between law and practice
- There is a lack of well tailored practices
- Legislation in most of the States has to be improved
- A systematic review of placement of C/JDs is often missing
- Children do not benefit sufficiently from available complaints procedures (not aware, not accessible)
- There is an overall lack of data on C/JDs

NHRIs:

- Need better funding to deal with C/JDs
- Need more trained staff
- Need broader mandates, so as to allow for a more proactive approach to monitoring and protection of rights of C/JDs

- Need to improve cooperation with each other and within ENOC

❖ **Abbreviations**

ENOC – European Network of Ombudsman for Children
NHRI - National Human Rights Institution
CRC – Convention on the Rights of the Child
CRC Committee – CRC Committee on the Rights of the Child
C/JD – Child/juvenile delinquent or child/juvenile delinquency
OP – Optional Protocol(s) to the CRC
MACR – Minimum age of criminal responsibility
UN – United Nations
UPR – Universal periodic review
NPM – National preventive mechanism
OPCAT- Optional Protocol to the Convention against Torture
GC – CRC Committee’s General Comment

❖ **Personal notes and acknowledgments:**

Extensive efforts have been made to incorporate most of the NHRIs’ answers, comments and proposals for improvements. Due to the limited length of the report, a selection of NHRIs comments and proposals was necessarily operated.

My special thanks go to ENOC members who worked hard to fill-in the questionnaire and who had many valuable comments and proposals for improvements. Besides, the Working Group on Juvenile Justice helped me to channel their ideas and transform them into the list of questions. Last but not least, ENOC Secretariat, especially Polina Atanasova, who has helped me in all stages of this survey, have my deepest gratitude.

22 Responses received from:

Belgium (Flanders and French community)	Poland
Catalonia	Scotland
Cyprus	Serbia
Denmark	Slovakia
England	Wales
Finland	
France	
Greece	
Hungary	
Ireland	
Lithuania	
Luxembourg	
Malta	
Moldova	
Northern Ireland	
Norway	

CHAPTER ONE – General information on the protection of the rights of C/JD in the ENOC members’ States

The questions in Part one are of a general nature, so as to collect information on the overall context for C/JDs and find out whether there is a need for a broader involvement of all stakeholders in juvenile justice. Juvenile justice systems and situations are quite different across member states and regions. It is not our plan to analyze any of these in detail here, but the material collected is quite informative and simulative for further research. The answers, comments and suggestions for improvement are inspiring and valuable. In some countries/regions data and statistics on C/JDs are still unavailable or not even collected. Though it is the task of the (respective) States, ENOC members can contribute with their research and analysis.

1. Age of criminal responsibility

The overarching question of the age of criminal responsibility remains the most important and is a starter in any juvenile justice discussion. Interestingly, and that is proven here, the States find it extremely difficult to raise the MACR. In **Malta** it is still 9 (but an amendment to Maltese legislation has been presented in Parliament in order to raise the MACR to 14), in **England 10, Ireland 10, Northern Ireland 10, Scotland 8** (with some recent improvements) and **Wales 10**. All of these states were recommended by the CRC Committee to increase the age of criminal responsibility.⁴ In some States, members reported on a “variable” age, like in **France**: “*The required age for the imposition of an educational measure is 10 years and for penal sanction is 13 years.*”

There are examples, such as **Hungary** where there is a draft proposal (Criminal Code) to the Parliament to lower in some cases the MACR from 14 to 12, which the CRC Committee firmly denounce: “...the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system...”⁵The Hungarian Commissioner for Fundamental Rights reacted promptly. It is very important that institutions remain “guardians” of guarantees for improvements in MACR and scrutinize attempts for the decrease. Institutions of other states/regions mainly reported 14-16-18 as the MACR. **Greek Ombudsman** provided encouraging information that MACR was raised from 13 to 15 years in that State.

The upper age-limit for juvenile justice remains rather high: 18-21, though not in all states. In **Scotland**: “Young people aged 16 and over are routinely tried in the adult criminal courts, unless they are already in the children’s hearings system (above) at the

⁴ All observations and recommendations of the CRC Committee can be found at:

www.universalhumanrightsindex.org

⁵ GC 10, paragraph 33.

time of the charge. The courts have a power to remit cases of 16-17 year-olds to the children's hearings system."

Children below the MACR may be deprived of their liberty and be placed in "reformatory" or "correctional" institutions. In most of the States such cases are left to the civil procedure and departments like the ones on social affairs, health or education may be assigned to. Most institutions state that such protection of very young children is provided by their countries' laws. An unasked question could be added – who monitors the situation those children find themselves in? **England** reports: "Our office has the right of unannounced entry into any place where a child is cared for or accommodated apart from a private home – this includes the custodial estate and we undertake a programme of visits to monitor children's rights in custodial institutions and recommend improvements".

Recommendations:

- *Institutions should be outspoken and loud in support of the increase of the MACR and even louder against the decrease.*
- *They should make sure that children below 18 are not treated as adults, even when they serve sentence with adults.*
- *They should advocate for stricter legal control and protection of children below the MACR and get involved whenever possible.*
- *They should advocate that age of criminal responsibility is fixed at certain age, rather than "flexible".*

2. Children in conflict with the law and in detention

No institution carries its own research into numbers of arrested and detained children, nor should it. In many States it seems that some data and statistics are available and that it was not a problem for an institution to require the information. In some cases, information is on the Internet, in other, the institution had to request information from relevant state departments. Seven members have not collected information on arrest and detention of children. Others provided some information. Very few members commented or suggested improvements. The members' responses reflect quite uneven and scattered collection of information within the States. Such a situation is challenging for States and other stakeholders who deal with issues like prevention of C/JD or diversion from criminal proceedings.

Information provided on the number of arrested children, children in detention and in pre-sentence detention per 100.000 population, shows big differences in numbers and in ways the information is collected and presented. For example, **Malta** reports that "in

2011, 13 young people were held in detention out of the total Maltese child population (approximately 80,000). 2 of these young people were admitted twice” and that “minors are not usually held in detention prior to sentencing.” **Cyprus** informed that “2,5 children per 100 000 child population are in detention and that 10,9 children per 100 000 child population are in pre-detention”. **Ireland** reports: “Data on the number of arrests was not readily available. However, there were 17,986 children referred to the Garda (Police) Diversion Programme in 2010 and 3221 child defendants before the courts in the same year.” **Ireland** also reports: “In 2010, there were 211 new admissions to the Children Detention Schools and 231 boys aged 16 or 17 committed to prison. As of the last census (2011), the population of 0-17 year olds in Ireland was 1,148,687.” The institution further notes: “All children detained in Ireland on remand or under sentence are placed in either one of the children detention schools (all girls under the age of 18; boys under the age of 16) or in St. Patrick’s Institution (a closed, medium-security prison for males between 16 and 21 years of age). The Government has committed to ending the practice of detaining children in St. Patrick’s Institution within 3 years on a phased basis.”

The information on the time spent in detention by children before sentencing, and the time spent in detention by children after sentencing was also not easy to collect for most of the institutions, since, as they stated, data was not available. On the question of child deaths in detention, only **England** reported a single death in penal custody in 2011 and already two in 2012 during a 12 month period, per 1,000 children detained. The **French office** commented on the issue that there are “no official figures on child deaths: 116 inmate suicides in 2010 regardless of age”. If the press is a source of information, they say,” it amounts to between 1 and 4 suicide per year”.

Lessons learned on the basis of this group of questions are that not all States collect data and statistics on arrest and detention on C/JDs and make them publicly available. Institutions who are involved in the protection of the rights of C/JDs obviously often have to play by feel or guess when planning actions in this area. Many institutions actually delayed filling the questionnaire because they were waiting for data and statistics on arrested and detained children, which is a fact that might inspire a joint action of several ENOC members.

Recommendations:

- *Institutions should be able to get easy access to data and statistics on arrested and detained C/JDs.*
- *Institutions should support overall international and national activities for regular collection and harmonization of data collection and statistics on arrest and detention of C/JDs.*
- *Institutions should carry out, independently or in cooperation with other actors, research on causes, preventive measures, situation for detained children and*

other relevant research in order to fully understand and thus contribute to a strategic plan on improvement of the juvenile justice system.

3. Alternative measures and non-custodial (alternative) sanctions

According to article 40 (3) of CRC, the States parties shall seek to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable. The objectives of the GC 10 are, inter alia, "...to provide States parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention to ... the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures" (Para 4). Further, the CRC Committee notes the fact that the majority of C/JD commit only minor offences, and that a "range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e. diversion) should be a well-established practice that can and should be used in most cases" (Para. 24).

ENOC members reported that most of their States have by now introduced in their legislation and in practice a variety of measures, both to divert children from criminal or related procedures and to prescribe measures alternative to custodial sanctions (even if the C/JD has gone through a court procedure). Actually **14 out of 19** reported that their legislation prescribes measures diverting children from criminal or related proceedings and that such measures are used in practice. Few answered negatively to questions related to criminal proceedings, but indicated that their legislation prescribes measures alternative to custodial sanctions and that such measures are used in practice; they reported absence of provisions on diversion in their legislation, but existence of some sort of alternatives in practice. **Malta** reports that "no diversion scheme exists in Malta yet however in the case of minors caught with alcohol (below the legal age) they are not taken to court, they are given a formal warning". In **Cyprus** "the law does not provide for diversion from criminal procedures for children. However, for children in conflict with the law of age 14 and above, a special committee consisting of Welfare Services, Police, Attorney General's Office, and Psychologists- reviews their cases in order to advice the Attorney General whether to prosecute or not. This Committee is not established by law but is operating on the basis of an administrative practice. In practice, detention is only used as a last resort and the Court may decide for alternative sanctions such as a fine, community service, monitoring of the child by the Social Welfare Services etc."

Some members provided full lists of measures contained in their legislation and some offered specific information. **Belgium's** two Commissioners' offices stated that "the public prosecutor has the possibility to propose different types of mediation for the juvenile offender. The juvenile judge can also propose different types of mediation. He is even obliged to consider this option as first, preferential option. "

Not all of those who answered positively to the above questions have information on the actual number of children who are diverted from criminal proceedings or custodial sanctions. It is interesting to note that in those States which have the lowest MACR, such as **England, Ireland, Northern Ireland**, ENOC members reported the best developed diversion and alternative sanctions systems and note that over 70%-90% of their C/JDs do not go through court proceedings. However, such high percentage is noted in **Finland** as well, although the MACR in that State is reasonably higher. In **France**, “more than 73% of the measures are ...educational sanctions and alternative sentences to imprisonment (community service)”. Several institutions reported for a lack of data and statistics as well as inaccessibility to data and statistics in this area of the rights of the child.

As with other child rights issues, there is often a wide gap between legislation and implementation. The **Serbian** institution comments on such a gap: “However, a necessary act (by-law) which should regulate diversion orders has not yet been issued. Therefore, use of these measures is limited. A suitable health institution was not established which is the duty of the Ministry of Health.”

Recommendations:

- *The NHRIs should use their influence to campaign for adoption of modern legislation providing for transparent and effective procedures under which children are diverted from the criminal justice system as well as alternative to custodial sanctions in law and in practice;*
- *It is necessary to establish data base regarding juvenile justice, including on diversion;*
- *All kind of alternative measures/sanctions are warmly welcomed in general instead of using deprivation of liberty and finding him/her guilty especially because of long-term negative consequences.*
- *More alternative measures to custodial sanctions are needed in practice. Although the alternative measures provided in most of the States are mostly of a non-institutional character, however, the reorganization of services for the implementation of existing provisions will require a considerable effort that till now is still missing. Currently some of the measures that are foreseen in law are very rarely imposed, due to the lack of responsible services to implement them and a mechanism to supervise them*
- *In most ENOC States, there is a lack of shelters with specially trained staff and program to host young offenders or juveniles at serious risk of offending and this has to change.*
- *There are delays in the C/JD system in many States, which can mean that they may have to wait a considerable period before engaging in a diversionary*

option. It is also important that the most appropriate methods of diversion are applied in each case.

4. Specialized juvenile justice system

There is no protection of the rights of C/JDs without an effective administration of juvenile justice, and a comprehensive juvenile justice system. Article 40 (3) of the CRC stipulates that: “*States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.*” In interpretation of the CRC, its Committee recommends to the States: “In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system.” (GC 10, Para 90) A comprehensive juvenile justice system normally has specialized units within relevant sectors such as the police, the judiciary, the court system, the prosecutor’s office. It most likely has specialized defenders or other representatives who provide legal or other appropriate assistance to the child. On top of that, it has specialized juvenile courts. The CRC Committee recommends that “the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice”. (Para 93)

It is not easy to adjust national juvenile justice systems to international norms and standards (quite a few of which exist apart from the ones mentioned above). Namely a juvenile justice system has to be specialized. But, the lack of established juvenile courts does not mean that there is not a juvenile justice system in the country. All States have some sort of juvenile justice systems and they respond to offences, committed by adults or by children. Therefore, we tried to find out if such systems are specialized enough, whether they exist in law or in policy and if so, whether they are weakly, moderately or well protected by law and policy. Most ENOC members responded without providing any further comments or recommendations to their States.

Four members reported that a specialized juvenile justice system does not exist in their countries. **Lithuania** reported that: “Lithuanian legal acts do not provide the specialized agencies to investigate juvenile cases. There are no pre-trial investigation officers, prosecutors, judges and lawyers specialized in juvenile cases, by provision of law. Though the prosecution and police authorities appoint prosecutors and pre-trial investigation officers that are specialized in juvenile justice cases. In the courts certain judges that are appointed deal with juvenile and family cases.”

The ENOC member from **England** reported on the complexity of their system for C/JDs: “Most children prosecuted in England appear in the youth courts, which sit in private, with magistrates or a single district judge, and only hear cases with child defendants. However, for serious crimes children can be tried in the Crown Court (public trial by judge and jury), with only limited modifications available to the adult system there. Youth community sanctions are dealt with by local authority Youth Offending Teams (separate from arrangements for adults) and children in custody are also separated from adults, although some young offenders’ institutions share sites with institutions for 18-21 year olds or, in the case of girls, for adult women. Young offenders’ institutions largely follow the model of adult imprisonment and are not good environments for the detention of vulnerable children.”

The **French Defender of Rights** reported some up and downs in the process of specialization of the system: “Reforms of the past decade tended to progressively restrict the specificity of the juvenile justice system. Announcements made by the new government since last June aimed to look back on some of these reforms to reaffirm the specificity of the juvenile justice system. In addition, certain principles such as specialization of the juvenile justice system are recognized as a constitutional value. However, they can come in competition with other of these principles and they are not superior”

Recommendations:

- *NHRIs should advocate for introduction or reform of a specialized justice system for C/JDs. They should strongly recommend setting up special courts or at least special departments at courts, where children’s rights sensible, focus-trained professionals are working.*
- *It would also be important to advocate for a multi-disciplinary approach within juvenile justice systems; children should not be dealt with by legal profession and not with other, such as psychology, sociology, and pedagogy or other.*

5. Prevention of C/JD in your country

The CRC Committee reaffirms its statement that “a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings” and recommends that the States parties fully integrate the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990 (GC 10, para17) into their comprehensive national policy for juvenile justice. For the successful implementation of the CRC, the States parties should make emphasis on prevention policies. The Committee suggests settings and methods for the States to use in order to implement a successful preventive policy: “support for particularly vulnerable families,

the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk,.....children who drop out of school or otherwise do not complete their education.”The Committee suggests the “use of peer group support while a strong involvement of parents is recommended”. More than that, the Committee recommends that “the States parties...also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families”.(GC 10, Para 18).

The ENOC members were of different opinions regarding preventive measures in the area of the rights of C/JDs in their countries. Four institutions state that there is no plan for C/JD prevention in their countries. Others acknowledge the existence of such plans and assess them as being only weakly protected by law or policy, moderately protected by law or policy or well protected by law or policy. Majority of those who submitted responses also wrote some comments. **Northern Ireland** described preventive measures that are currently in place: “Initiatives to direct young people away from coming into contact with the juvenile justice system are provided through a range of early intervention and prevention strategies across government departments, including health and education. There is also a range of community and voluntary sector organisations which undertake valuable work in seeking to support young people and direct them away from contact with the youth justice system.” **Scotland**’s office noted that: “There is no explicit ‘plan’ for ‘youth crime’ prevention that is protected by law, but there is a government strategy document. Again, the ethos and rationale behind Scotland’s children’s hearings system is relevant here. Children can be referred to the system from birth until they turn 16 if there are concerns about their welfare, on a variety of grounds relating to parental care (including neglect), children being victims of certain offences (e.g. physical or sexual abuse, etc), non-attendance at school, etc. It is recognised that these are major factors in children and young people’s offending, and meeting those welfare needs is key to preventing offending and promoting desistance.” **Denmark** does not seem to be equally satisfied, since “there are many prevention initiatives and programs but no specific plan.” **Slovakia** has tried to find information on the existence of plans and reported: “We are not aware of any special plan dealing with this issue. There is only “Strategy for prevention of Criminality”, that should be protected and realized by State bodies and that includes some prevention also in C/JD area. However we haven’t found out a lot of information about the implementation of this strategy.”

Not all institutions are satisfied with the gap between strategies and practice. Thus **Lithuania** commented: “Most of the international legislation in the sphere of prevention of juvenile delinquency is reflected in national legislation, but not all international law provisions are actually implemented in practice. “ **Serbia** stated that there is a plan for prevention of child offences and that it is weakly protected through law and policy. The plan is actually the Government’s Protocol for Protection of Children from Abuse and Neglect: “Upon this general strategic document, five ministries (of interior, health,

labour and social policy, justice and education) issued Special Protocols for Protection of Children from Abuse and Neglect in their respective fields. Ministry of Education has gone further more and issued the by-law on preventive and intervention activities in cases of violence, abuse and neglect against children. All these documents prescribe preventive and intervention measures towards the child victim of violence and child perpetrator as well.”

France raised the issue of beneficiaries of prevention: “The difficulty is that crime prevention relies primarily on maintaining public order and not in the best interests of the child. This approach to crime prevention in France is also characterized by two trends: it is often related to social housing neighbourhoods (suburbs) and involves an approach that stigmatizes youth.”

Recommendations:

- *NHRIs should use their influence to campaign for improvement of data collecting and multidisciplinary analysis of data, planning and wide implementation of preventive measures;*
- *They can support educational programs of human rights in order to create more awareness on prevention of violence and risk behavior of children;*
- *They should keep recommending to their States that they redeploy resources into child-oriented prevention.*

6. Rehabilitation and reintegration of C/JD in your country

In article 40 (Para 1) of the CRC, the States have recognized the right of every C/JD “... to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

Prevention is very much related to rehabilitation and reintegration of C/JDs. A good prevention policy is one that “facilitates the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations.” Rehabilitation and reintegration are preventive in nature and represent a logical step after a C/JD’s contact with the law. If the C/JD is not rehabilitated and reintegrated into society, he/she will most likely continue committing offences.

ENOC members assessed whether a plan for rehabilitation and reintegration of C/JD exists in their State’s law or policy. If they identified existence of such plans, institutions expressed their opinion on their quality; whether they are weakly, modestly or extremely well protected by law or policy. Four members noted that there are no specific plans for

rehabilitation and reintegration in their States. Out of the four, only **Moldova** commented: “There is penitentiary and post penitentiary probation for convicted juveniles but these mechanisms are new, weakly developed and not very efficient. There are no rehabilitation centres for minors under MACR. There was only one special institution, from Solonet, Soroca district, which was closed after the intervention of the Ombudsman, considering that the centre did not meet UN standards. Ombudsman repeatedly recommended to the Government to create alternative services for the rehabilitation of minors under the age of 14 years. At the moment such institution does not exist.”

Serbia and Greece both assessed their States’ rehabilitation and reintegration programs as weak. **Serbia** reports: “Some measures of rehabilitation and reintegration are already part of some criminal sanctions, such as measures of supervision by parents or legal guardians and supervision by social service. Apart from that, rehabilitation and reintegration measures are not planned and regularly performed; there is a lack of programs, facilities, staff and resources, especially when it comes to children who were placed in detention or correctional centres. There are examples of good practise, such as Correctional Centre in Belgrade, where several programs of prevention of reoffending and programs for rehabilitation and reintegration have been launched. But mainly it depends on personal abilities and commitment of headmasters in those institutions, as those programs are, as a rule, project based.”

Interestingly, the majority of ENOC members that responded to the questionnaire assess rehabilitation and reintegration programs in their States as moderately or extremely well protected by law and policy. **Hungary** wrote an extensive comment, assessing their rehabilitation and reintegration programs as moderately protected by law or policy: “Probation officers compile social inquiry reports also during reprieve proceedings, at the request of the penal institution on reception of the juvenile for imprisonment, or for the authorisation of the interruption of imprisonment. For the compilation of the social inquiry report, a 8-30-days-deadline is available, as determined by the requesting agency. Nearly 14,000 social inquiry reports are written by the probation officers annually.”

England reported that: “Local authority Youth Offending Teams supervise the rehabilitation of offenders given community sentences or released from most custodial sentences. Custodial institutions also have responsibility to engage other agencies to assist resettlement on release e.g. housing, education, etc.”

Ireland has a similar rehabilitation system within custody itself: “Preparing young people for integration upon release forms a part of integrated sentence management and is an aspect of the operation of the detention schools and St. Patrick’s Institution that is routinely inspected. The provision of education and vocational training in detention are also part of this process.”

Responses from the **Northern Ireland** Commissioner’s office opened a sensitive question of the preventive aim of rehabilitation and reintegration measures and point out

to a high level of recidivism in spite of the programs: “Some support is provided to young people leaving custody through statutory agencies/organisations including the Probation Board of Northern Ireland and through voluntary organisations. However more needs to be done as there are significant issues around the mental and physical health of those leaving custody and their preparation and readiness for education and training and employment. Also re-offending remains a considerable problem with approximately 63% of young offenders committing another offence within six months of leaving custody.”

2 Three members reported of extremely well protected plans and policies, but none of
0 them commented.

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Recommendations:

- *Introduction of rehabilitation and reintegration measures for children in conflict with the law;*
- *ENOC members noted that there is a need for reorganization and support of services promoting rehabilitation and reintegration and that will require a considerable effort;*
- *NHRIs suggest increasing professional staff in the sector of rehabilitation, with the involvement and support of specialised nongovernmental organisations;*
- *Allocation of adequate public funds for rehabilitation programmes is also required;*
- *NHRIs suggest using available services in local community (social, educational, measures on local level) and introducing new ones aimed on inclusion and support;*
- *More resources should be directed towards rehabilitation and reintegration and greater integration of existing provision is required. More preparative work is required with young people before they leave custody and support should be guaranteed to all who require it.*

7. Complaints mechanisms available to C/JD

Dealing with individual complaints is a matter for national and international courts or similar judiciary institutions and of bodies explicitly provided with the competence to do so, such as national ombudspersons and international human rights committees. Every person’s right to file a complaint on violations of her/his human rights is part of 1948 Universal Declaration of Human Rights (UDHR). Article 8 of this Declaration states: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.” The right to an effective remedy has been internationally recognized as an important instrument for the enforcement of human rights. The emphasis is on the use of this right at the national level. But in the course of the last decades international instruments have been developed for the exercise of this right, particularly for situations when provisions at national level in this regard are insufficient or ineffective.

In all of the ENOC members' States, some sort of complaints mechanism exists and is available to C/JDs. The difference is to know whether such system is weakly, moderately or extremely well protected by law or policy. Only three institutions found that the complaints mechanisms, at the disposal of C/JDs, are weak.

England noted that "Complaints systems exist in all secure settings and are monitored by the Youth Justice Board who is responsible for commissioning the service and by the independent inspectorate. " Not only that it is important that such a system exists but that it is truly accessible for children. This is where the Office of Children's Commissioner in England in 2012 found "...there were still issues concerning how young people perceived the systems in place with little trust in its independence and limited satisfaction in its adequacy."

Important issues are that children know of complaint mechanisms, use them and trust in them. **Serbia** insisted that "Although rules exist, children generally and especially children in conflict with the law and children at risk are not well informed about their rights and about possibility to file a complaint."

Recommendations:

- *Independent advocacy service needs to be better explained and resourced ;*
- *Complaints process needs to be more than a paper-based system and discernibly independent of those that provide the service ;*
- *Better ways of resolving issues before they get to a formal complaints system need to be adopted ;*
- *Children need to be much more informed about their right to file a complaint to internal mechanisms in the institution, to the court and to independent institutions;*
- *Internal mechanisms have to be trained in the rights of the child issues;*
- *Necessary guaranties should be established for the independence and impartiality of internal complaint mechanisms.*

8. Regular independent inspection of treatment of C/JD

It is not always easy to monitor/inspect all stages of treatment of C/JDs. However, the most sensitive events are those of deprivation of liberty, police custody, pre-trial detention and detention as a court measure. What we are looking at is whether the C/JD is well treated, in accordance with all standards, and it is very important who determines whether a C/JD is well treated. Therefore, such determination must be performed by representatives of all interested parties. Many international rules apply here and for further research, respective literature should be consulted.

Periodic review of placement surely includes regular inspections, as well as licensing of care providers. A child, who has been placed by the competent authorities for the

purposes of care, protection or treatment of his or her physical or mental health, has the right “to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.” (CRC, Art. 25)

It should be noted that this is not about any kind of inspection of treatment; inspection should be independent and should serve to identify ways and means to improve the situation of children, in particular C/JDs and speed-up the implementation of their rights by fulfilling international standards and expectations. ENOC members provided their views about systems of regular independent inspections in their respective States. Two institutions stated that a regular independent inspection system does not exist in law or in policy in their countries while the majority replied affirmatively to the question of existence of some sort of inspection system. The **Greek Ombudsman** “...is allowed to inspect institutions and services responsible for the treatment of juveniles. However there is a weak protection of such inspections in policy. “

In **Belgium**, even though inspection is guaranteed by law and practice, not all placements are accessible to independent inspectors: “Most of the institutions and alternative measures, both in Flanders and French Community, are inspected regularly by an independent public administration. The state institutions (most strict/secured institutions) are not inspected.” Actually, in some states NHRIs are mandated to inspect closed institutions. In **Moldova**, similarly, NHRIs are along with other monitoring/inspection institutions mandated to inspect closed institutions.

France commented on the inspection system in their country: “Each administration concerned (justice, prison administration, judicial protection of youth), has its own inspection service. Moreover, with regard to places of detention, two independent authorities may carry out inspection controls: the General Inspector of places of deprivation of liberty, and the Defender of Rights.

The Judicial Protection of Youth (a Directorate of the Ministry of Justice responsible for implementing the decisions of the judges regarding minor children perpetrators of crime) has developed since 2008, internal audits with the purpose of verifying compliance of the service operational activities with the Law.”

More on the monitoring role of NHRIs is provided in Chapter two and Chapter three of this report.

Recommendations:

- *Inspection should cover all institutions, including state institutions.*
- *Inspections should be conducted with participation of the juvenile offenders.*

9. Treatment of children offenders below the age of criminal responsibility

For the purposes of the CRC, one becomes an adult on his/her 18th birthday, unless, under the law applicable to the child, maturity is attained earlier (CRC, Art. 1). Rights of the CRC belong to all children below eighteen, regardless of capacities and responsibilities that may make them appear as adults. The States have set different minimum ages for criminal responsibility and introduced number of measures and safeguards that fall within their criminal law systems, namely juvenile justice. But in reality, very young children commit offences. As indicated in the GC 10 (para.31): “Children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure. Even (very) young children do have the capacity to infringe the penal law but if they commit an offence when below MACR the irrefutable assumption is that they cannot be formally charged and held responsible in a penal law procedure. For these children special protective measures can be taken if necessary in their best interests.” In practice, special protection measures fall within States’ education, social affairs and other departments and quite often, there are no safeguards equal to those applied to children that can be criminally responsible. Therefore, ENOC members were asked whether in their countries there is a law protecting the rights of children below the MACR who are delinquent and which State/Government institution/department deals with such children.

All but one state responded that there is a law containing provisions that protect rights of children below the MACR. The questions did not go deeper into finding out what that protection is like in laws and practice. The fact remains that children below the MACR who commit offences, do get deprived of liberty and sometimes detained for longer periods. Ironically, the problem seems to be bigger in States that have a high MACR, as opposed to those who have it at a very low age. It is often highly risky to place the child in a closed institution on the basis of an act issued by education or social affairs departments, since that leaves room for placements in response to “societal risk” situations, whatever those may be. As **Hungary** pointed out: “indeed – without finding him/her guilty – against a person under 14 there can be applied some criminal sanctions such as confiscation of assets.”

Serbia noted: “Available appropriate services for these children are poor and mainly within the NGO sector or under project activities”.

Lithuania provided a very extensive description of provisions for children below the MACR: “A child who, prior to the time of commission of the act provided by Criminal Code, had not attained the age of fourteen years may be subject to reformatory sanctions (a warning, compensation for or elimination of property damage, unpaid reformatory work, placement for upbringing and supervision with parents or other natural or legal persons caring for children, restriction on conduct, placement in a special reformatory facility) or other measures. According to the law, a child may be imposed to a minimum or average care measures. The minimum care measures (e.g. obligation to visit a specialist, to attend children’s day centre, to continue attending school, to be at home at a requested time, etc.) can be given to a child, who has committed a criminal offense (under the Criminal Code), or an administrative violation, if at the time of commission of

the offense/violation the child had not reached the age of possible criminal/administrative liability, also to children whose behavior is detrimental and endangers himself or others and who do not attend school. Average care measures may be imposed to a child who has committed a criminal offense (under the Criminal Code), or an administrative violation if at the time of commission of the offense/violation the child had not reached the age of possible criminal/administrative liability, as well as his/her behavior has not changed after the minimum care measures”.

Some members reported that judiciary and prosecution are also involved in cases of child offenders below the MACR. **Poland** responded that juvenile courts deal with children below the MACR. **Slovakia** reported: “This issue is protected by court as well as by prosecutor. The main institution involved in this issue (protecting rights of children below the MACR who are delinquent) is the Ministry of Labour, social affairs and family and local offices of labour, social affairs and family that perform the duties of the body, social-legal protection of children.” However, the Slovak Public Defender of Rights made a move setting up: “one out of the three main priorities for the 2012-2013 is to monitor and analyze the functions (aims, duties) assigned to the offices of labour, social affairs and family as state bodies in charge of social-legal protection of children and to prepare draft recommendations based on the findings in order to improve the protection of children rights also in C/JD area.”

The **French office** commented: “The Juvenile Court Judge monitors these children within the educational assistance procedure provided by the Civil Code. At administrative level, this task is entrusted to the President of the Departmental Council. It has its own services. He/she can directly implement these tasks and may be appointed by the judge. In addition, the administration of the judicial protection of youth may also be entrusted to him/her, with certain measures, including investigation.”

Recommendations:

- *The States should adopt legislation that clearly guarantees rights to children below the MACR who are delinquent.*
- *States should do more to introduce and carry out policies aiming at reintegration/mediation of C/JDs, which shall be a useful and more effective tool than punishing.*

10. Training and dissemination of information necessary for the rights of C/JD

A comprehensive implementation of the CRC requires training of all professionals working for and with children. It is the key condition for State parties to meet their obligations towards children and a field where much has to be done, even if it seems that training is not the most expensive or difficult obligation to fulfil. Trainings have to be comprehensive; it is not enough to provide specific training on juvenile justice. As the

CRC Committee recommends in its GC 5 (para. 53): “The purpose of training is to emphasize the status of the child as a holder of human rights, to increase knowledge and understanding of the Convention and to encourage active respect for all its provisions. The Committee expects to see the Convention reflected in professional training curricula, code of conduct and educational curricula at all levels.” The task for ENOC members in this part of the questionnaire was to provide answers on whether there is a legal obligation in their states for training in child rights/ rights of *C/JD* of the judiciary, police and staff in penitentiary and state care institutions and other places of residential care and if such training is sufficient to build the capacity to deal with *C/JD*. Further, they were asked whether their Parliaments and media are being informed of the situation of *C/JDs* and on political awareness regarding the problem of treatment of *C/JDs*. Of course, there are many other questions which would allow for the collection of more detailed answers and help create a clearer picture on what more can be done in training and dissemination of information on the rights of *C/JDs*, but the limited length of this survey allowed for just a few.

Only five ENOC members clearly stated that there are trainings with specific focus on *C/JDs* in their countries, but none of them is satisfied with the level of such training. One of the five is **Hungary** that commented on the issue of training in the area of rights of *C/JDs*: “Particularly because of the lack of any obligatory training on children’s rights for any kind of professionals the ombudsman launched an ex officio investigation this year to explore this field and to make recommendations. The Ministry of Justice and Public Administration announced that they would support to draw up curricula on it for judicial professionals. Obligatory training exists only for police staff members working on the field of child/juvenile protection.”

Belgium indicated that there are trainings which cover rights of the child and rights of *C/JDs* but not all those who might be involved in the procedure do get trainings: “There is a legal obligation on children’s rights training for the judiciary dealing with juvenile justice cases, not such an obligation for the public prosecutor; no legal obligation on children’s rights training for police and staff in penitentiary and state care institutions; no legal obligation on children’s rights training for lawyers dealing with juvenile justice cases (although there is some internal obligation in most of the bar associations).” It seems that children between 16-18 are at a particular disadvantage: “ Juvenile offenders between 16 and 18 who are being transferred and treated like adults are tried by the special juvenile court or by the Criminal Court (in case of very serious crimes like murder). In these tribunals the degree of specialization of judges is much less than in the ‘normal’ juvenile courts and the adult penal law is applied (except from life sentence)”.

In **Greece**, child rights training is provided occasionally, not systematically: “Training and dissemination of information among judges and probation officers takes place occasionally with the involvement of training agencies such as the General Secretariat for Adult Education.”

Northern Ireland responded negatively to the question whether there is a legal obligation for training in child rights of the C/JDs of all the professionals involved, and noted “However there is a legal obligation in the UK for all professionals working with children to comply with the principles and provisions of the UNCRC”.

Several members indicated that their Parliaments are informed on the situation of the rights of the child in general, like in **Belgium**: “There is no specific procedure (or legal requirement) for the provision of information to the Parliament on a regular basis on the situation of C/JD but in the annual report (which is presented to the parliament) of both child rights Commissioners some bottlenecks and gaps are highlighted.”

The same in **Moldova**: “Every year the Ombudsman presents a report to the Parliament regarding the situation of children’s rights, which usually treats the subject of C/JD”. In **Lithuania**, every year the Ombudsperson for Children’s Rights submits a written report to the Parliament on the situation of children’s rights where C/JD problems are also revealed. Furthermore in practise in cases where there are problems associated to juvenile offenders, the Ombudsperson for Children’s Rights may request the Parliament for assistance to find a solution that is in conformity with children’s interests.” **The French Defender** submits annual reports on the rights of the child to the Parliament.

Another question concerned the media and to what extent the media is informed about the rights of C/JDs and some ENOC members went further than that by commenting what the media is doing with such information. **Hungary’s** ombudsman highlighted their and UNICEF’s role in informing the media: In the last few years the ombudsman released a number of radio and television interviews, press releases related to his projects on the rights of the children. The UNICEF Hungarian National Committee is also very active in the media especially in relation to child and juvenile justice issues.

Both Commissioners in **Belgium** commented as follows: “Media is reporting about juvenile delinquency but studies show that there is an overrepresentation of juvenile delinquency cases in media. Children ‘at risk’ are much less reported about while this is a much bigger – if one checks the statistics- vulnerable group.”

Serbia believes that media often brings greater harm than benefit: “Children in conflict with the law are not in the focus of media, nor visible part of state agenda. Media usually inform about some cases, which can awake public interest, but the way of informing does not deal with the position of juvenile delinquent and/or causes of his/her behaviour, but rather with sensational way of media coverage which victimise those children and strongly obstruct their further rehabilitation and reintegration.”

Ireland commented on the same point: “The media are informed and comment on issues relating to youth justice up to a point. It would be fair to characterise this as inconsistent, however.”

The final question was on the level of political awareness of problems involving rights of C/JDs. This question deserves a detailed survey that would include a definition of political awareness and the introduction of a list of specific questions. Most of ENOC members believe that there is a political awareness on this issue and sometimes, the issue is also being used for politicians' own gain, like in **Belgium**: "Politics are often (only) focusing on the juvenile offender which leads to a day-to-day politics."

Ireland commented that there is awareness, but not enough consistency: "The situation of children in detention and children in conflict with the law is also a matter that does receive political attention, though not on a consistent basis. Recent commitments by the Government to proceed with building a national detention facility for young people and to expand the investigatory remit of this Office are welcome examples of this."

Recommendations:

- *Professional at judiciary, police and child protection organs should receive proper trainings on fundamental rights, children's rights, child-friendly justice as it is adequately laid down in the CoE Guidelines on Child-friendly Justice;*
- *Specialization of all the juvenile justice actors involved, media and political institutions is needed;*
- *Wider training of all professionals who work with children in conflict with the law, regardless the age of the child and the existence of criminal responsibility;*
- *Training should aim police officers who deal with juvenile delinquency, prosecutors and judges specialized for juvenile delinquency and lawyers, staff in penitentiary institutions, correctional facilities, social services, police officers (other than juvenile delinquency department), prosecutors and judges who are engaged in cases other than juvenile cases, expert services in schools should also be trained;*
- *Contents of training: Training should not only include legal aspects – as it is now the case, but also wide information about specific characteristics of children, childhood, the process of child development, the special position of children – victims and children – witnesses of crime;*
- *Regular reporting process regarding juvenile delinquency and children victims of criminal offences to the Government, Ombudsman and Parliament should be established. Some members announced that they will develop its own methodology and outcomes after 2-3 , at least 3-4 years;*
- *It would be a positive step if more professionals working in or in co-operation with justice agencies completed training in human and children's rights and if other training offered could be linked to/underpinned by the UNCRC or UNCHR.*

CHAPTER TWO – NHRI and the general measures to implement rights of C/JD

The CRC Committee in its General Comment No. 2 (2002) stated that « Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights. » Rights of C/JDs are an integral part of the CRC and thus the previous is interpreted as NHRI having an important role in all activities regarding the issue. The questions in this questionnaire were developed so as to check whether an ENOC member, in accordance with the GC No. 2 :« ...whatever its form, should be able, independently and effectively, to monitor, promote and protect children’s rights » (Para. 1). The major role such institutions should play is expressed further: «It is essential that promotion and protection of children’s rights is “mainstreamed” and that all human rights institutions existing in a country work closely together to this end «(Para. 7). The reality throughout ENOC members is somehow different; the answers to questions in Part two revealed different mandates and roles in monitoring, promoting and protecting rights of C/JDs.

The role of NHRIs in the area of C/JDs is based on Article 3 of the CRC: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” Those measures are listed in the GC No. 5 and the questions were developed so as to check the members’ capacity to deal with C/JDs against each measure. NHRIs are important institutions and the States should enable them to perform their tasks of monitoring, promoting and protecting rights of C/JDs.

There were fewer comments and even fewer proposals for improvement in Chapter two than in the previous one. As in Chapter one, some ENOC members had comments on almost all questions while others had none.

1. Legal and institutional capacities of the NHRI to deal with the issue of C/JD

NHRIs are mandated to deal with human rights and rights of the child, but due to different reasons, not all of them can handle all areas of the rights of the child. The task here was to find out to what extent ENOC members actually deal with rights of C/JDs. What does one institution need to do to be labelled as fully capable to deal with juvenile justice? First of all, a national legislation should be applicable to NHRIs and it should contain provisions setting up specific functions, powers and duties of NHRIs relating to children and linked to the CRC and the OPs (including also relevant provisions on C/JD). Further NHRIs should be equipped with such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situation falling within their

competence (including C/JD). NHRIs should, ideally, be constitutionally or legislatively explicitly mandated to deal with prevention, promotion and protection in the area of rights of the child, including C/JD. Such a task requires staff specifically trained in rights of the child and JJ - training being sufficient to empower the staff to deal with C/JD. Besides quality of training, it is also important that NHRIs have enough staff members capable of dealing with rights of the child and sufficient in number to fully respond to the issue of C/JD. Finally, a skilled staff should be able to deal with different aspects of the rights of C/JD, such as: prevention; arrests and treatment by the police or other administrative bodies; prosecution and trial; detention in correctional centers / prisons; placement in reformatory institutions (detention with day release) and implementation of other reformatory measures (such as supervision, probation, community service, participation in social programs, placement in foster care).

Most institutions answered positively to many questions in this section. Equally, most institutions highlighted technical limitations; namely that the number of staff they have is insufficient and that it is not well trained to deal with rights of C/JDs. **Catalonia** responded that the office has a full institutional and legal capacity to deal with the issue of C/JDs, but indicated that they do not have sufficient staff members, capable of dealing with and fully responding to the issue. **Hungary** reported: “There is no separate staff dealing with children’s rights in the Office of the Ombudsman, but as members of the children’s rights project, 5-6 lawyers work on the issue more intensively, but without any special training, mostly from personal commitment, interest, self-education. The ombudsman himself and the colleagues are regularly attending conferences, workshops related to different aspects of children’s rights. Some of them also teach law”. **Ireland** found a way to overcome the problem: “Although the OCO does not have any staff members that were specifically trained in the area of youth justice, the OCO has developed considerable expertise in the area, particularly with respect to the young people detained in St. Patrick’s Institution.”

Serbia said that it has competent staff, but that “there is no legal possibility for the Ombudsman to follow up courts’ and prosecutors’ proceedings, or to be engaged in them in anyway.” **Greece** also reported: “The Ombudsman has no competence to intervene in prosecution and trial procedures and decisions.”

Commenting on their mandates to deal with C/JDs, some institutions additionally explained their position. **Lithuania**’s Ombudsperson for Children “supervises and controls implementation and protection of children’s rights, in order to ensure that every child could use all the rights that are laid down in the United Nations Convention on the Rights of the Child, other international and national legislations. The ombudsperson exercises the monitoring of the children’s rights situation in Lithuania and of the legislation, which is related to child protection, also analyses and evaluates the practice, provides suggestions and comments on the measures for a better children’s rights protection and enforcement and etc.” On the issue of direct contact with children the

institution reports that it “does work directly with children when during the investigation of the case, there is a need to communicate with them. The advisers of the Ombudsperson have their respective areas of activities (including juvenile justice).”

Recommendations:

- *Broader legal powers of NHRIs are needed, so as to include specific work on rights of juvenile justice and in particular C/JDs;*
- *As mentioned before, better staffing and funding is necessary for the Ombudsman’s Office to fully implement its mandate and power in the area of promotion and protection of children’s rights.*

2. Accessibility and participation

The Committee’s GC No. 5 states that NHRIs should be geographically and physically accessible to children: “In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention...” (Para. 15). On the issue of child participation the GC No.2 is clear: “NHRIs have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention.... Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted” (Para 16).

The questions in this section were conceptualized so as to find out whether an institution is geographically and physically accessible to all children, including *C/JD*; does its legislation include the right to have access, in conditions of privacy, to children in all forms of institutions that include children; is a children’s council, or similar body, created as an advisory body for institution, in order to facilitate the participation of children in matters of concern to them, in particular vulnerable children such as *C/JD* and is an annual debate held in the State’s Parliament, so as to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children’s rights and the State’s compliance with the CRC.

Regarding accessibility, **Belgium** pointed out to a gap between proclaimed and possible: “in theory (institutions are) accessible to all children. Nevertheless extra efforts will be taken to be more proactive by approaching (groups of) children.”

Greece reported: “Our institution has offices only in Athens. As a consequence, visits have to be organised often around the country. The recent financial crisis in Greece had as a result the reduction of available funds for travelling and visiting institutions away from Athens.” **Ireland** explained its accessibility: “The OCO does not have a regional presence as such but endeavours to make the work of the Office known throughout the country and accessible, including through its participation and education work, its media work with local radio etc. Where schools or groups have not been able to come to the

OCO's premises, the OCO has facilitated this and staff members have travelled to the school/group in question."

On child participation and child advisory/participation bodies within NHRIs, **Finland** notes that they have such a forum, but not specifically for C/JDs. **Ireland** reports: "The OCO puts in place advisory panels of young people on a project-specific basis; this was the case with the work undertaken by the OCO with young people in detention". In **Scotland**, the situation has somehow gone in another direction which possibly affects the issue of C/JDs: "There used to be three such groups supported by the office, but the approach to children and young people's participation was changed as this was no longer feasible. Participation of children and young people in the office's activities is now organised in collaboration with partner organisations, including schools and children's NGOs". **France** commented on child participation stating that the consultation mechanism exists and is undergoing a reorganization so as to improve consultation via internet. At the same time, a broader discussion is underway for the purpose of developing the idea of panels spread across the country.

In **Ireland** it seems that the tradition of communicating with the Parliament is of benefit to the issue of the rights of the child, including C/JDs: "The OCO submits an annual report and other reports from time to time to Parliament. These are typically the subject of discussion and debate and the Ombudsman for Children appears regularly before Parliamentary Committees to discuss children's rights issues." **Greece** commented on the reporting to the Parliament: "Regarding Parliament, although there is no official debate held every year on children's rights, the Ombudsman is often invited to present his opinion and findings regarding several issues connected with the implementation and protection of children's rights. Also, the annual report of the Ombudsman presented to the Parliament every March contains information about the implementation of children's rights and relevant problems faced." On the question of communication of reports to Parliaments, **England** answered that "OCO's annual report is laid before Parliament each year by the Department for Education but there is no debate on this". In **Scotland**, there is no annual debate on children's rights or fixed debate on the Commissioner's annual report, but the Commissioner is normally called to give evidence on his office's work to the Education Committee each year, as well as on a range of issues relevant to children's rights.

Recommendations:

- *Extra efforts should be taken to be more proactive by approaching (groups of) children;*
- *The availability of funds for travelling in order to visit institutions away from capitals is quite important;*
- *It would be interesting to establish a special annual debate on children's rights in Parliament, as well as an obligation for the Parliament to consider the opinion of the Ombudsman every time a new law is examined affecting or connected to children's rights, including rights of C/JDs.*

3. Law reform in the area of *C/JD*

Improvements of the rights of the child are not possible without an on-going reform of legislation. Different stakeholders play important roles in legislation reform and NHRIs certainly have significant roles. In some countries, NHRIs are even mandated to directly communicate legislation drafts to the Parliament. Laws relevant for the rights of *C/JDs* and accompanying by-laws are drafted or the existing ones amended. Therefore, the ENOC members were asked whether they are involved in law reform in the area of the rights of the child and *C/JD*, and whether they have advocated for specific/improved provisions within a law reform. In order to be active in the national legislative processes, NHRIs must have staff informed of relevant international human rights laws, including of international jurisprudence in the area of the rights of the child and *C/JD*. Some of the questions asked were whether institutions encourage ratification of or accession to any *C/JD* relevant international human rights instruments and whether institutions promote harmonization of national legislation, regulations and practices with the CRC on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights, specifically rights of *C/JD*, and promote their effective implementation, also via provision of advice to public and private bodies in construing and applying the CRC.

Almost all the members answered positively on all points. Few had additional comments. In **Slovakia**, the institution is “not the state body with competence of legislative initiative, but in case of infringement of fundamental rights and freedoms including rights of the child we inform the authorized state body in charge of a particular area and propose measures and also legislative changes if needed.” The two **Belgian** Commissioners are involved in law reforms: “our NHRIs give policy advice (including recommendations and suggestions)”. Regarding on-going information on international law and practices, **Finland** reported that they “especially follow the implementation of the Guidelines on child friendly justice and have translated them into Finnish language.” There were some comments regarding ratification. **England** answered “UK has ratified most relevant international human rights instruments but we would advocate ratification of others where this would improve children's rights.”

Serbia's institution got pretty involved in legislative reforms: “Ombudsman's expert group is actually drafting the Law on the Rights of the Child and the Ombudsman shall propose the adoption of the Law to the Parliament. This Law has several articles regarding specific guaranties for exercising and protection of the rights of children in conflict with the law.”

Recommendations:

- *NHRIs should be better equipped to, where applicable, propose and participate in law reform relevant for C/JDs;*

- *They should also regularly monitor relevant international standards and advocate for implementation of ratified treaties and ratification of others;*
- *NHRIs should exchange information on respective law reforms and make sure they are informed of the best practices.*

4. The NHRI and the general principles of the CRC related to C/JD

Fulfillment of the general principles of the CRC (articles 2, 3, 6 and 12) is a prerequisite for the respect of the fundamental principles of juvenile justice enshrined in that international treaty (articles 37 and 40). The GC No.10 reaffirms the importance of the general principles: non-discrimination, the best interests of the child, the right to life, survival and development and the respect for the views of the child (paragraphs 5-10).

So, ENOC members were first asked whether they could monitor and control whether those principles are implemented in all stages of the juvenile justice system or other applicable procedures. Most of the answers were positive but it seems that institutions cannot easily follow the implementation of all basic principles. **England** stated that “OCC undertakes Child Rights Impact Assessments on some proposed policies/laws and monitors their implementation but does not have capacity to do this systematically; we believe this should be a function for government.” Institutions sometimes have to use all possible tools in the country, in particular when their capacity is small and there are other institutions out there, like in **Serbia**: “Regarding this group of questions, it is important to note that Ombudsman is not entitled to control prosecutors’ offices and courts, and therefore “misses” a huge part of the system which deals with children in conflict with the law. The questions on equality and discrimination are, on the other hand, under the mandate of another independent institution in Serbia – the Commissioner for the Protection of Equality. But, having in mind the severity of the issue, the Ombudsman includes this issue into control processes against public bodies which fall under the Ombudsman’s mandate.”

Northern Ireland reported that in relation to the determination of the best interests of the child, it has “resource limitations which restrict the extent to which we can do that” With regards to respect for the views of the child: “The Office strongly and consistently advocates for this to happen, but it cannot ‘control’ it.” On the same issue, **Ireland** responds: “To the extent that the Office is independent and cannot mandate State agencies to undertake particular acts, it cannot control the level of compliance with Article 12. However, this principle is central to all the work that the office has done in the area of youth justice.”

Recommendations:

- *NHRIs should be well equipped to monitor and control whether basic principles are implemented in all stages of juvenile justice or other applicable procedures;*

- *They should in particular make sure that views of C/JDs are respected in all procedures.*

5. The role of your NHRI in State coordination in the area of C/JD - cooperation with Government

In GC No.5, the CRC Committee noted: « The purpose of coordination is to ensure respect for all of the Convention's principles and standards for all children within the State jurisdiction; to ensure that the obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children - education, health or welfare and so on - but right across Government, including for example departments concerned with finance, planning, employment and defence, and at all levels.» (para. 37) The purpose of this section of the questionnaire was to identify whether there is an effective, highly empowered, inter-ministerial coordination body for the rights of the child (including C/JD) in each ENOC member State. If there is a coordination body, the question was how the institution related to its work and has it ever participated in a coordinated action of such body with regards to prevention of C/JD and implementation of C/JD standards.

It is quite interesting to learn that after 20 years of implementation of the CRC and all associated campaigns -paying particular attention to implementation of the GMIs - most of the States still do not have effective coordination. Even in States where such coordination had been initiated with good intentions, it either is not effective or has a « ghost » life. ENOC members reported mostly on the issue of the rights of the child being « split » across Governments' departments. **France** reports that “different children's rights are managed between different ministries or concerned local authorities. There is no centralized authority despite the recommendation of the Committee on the Rights of the Child on the matter.” In **Belgium**, Flanders specifically, the situation is similar, but somewhat different in the French speaking part: “No effective, highly empowered inter-ministerial coordination body on Flemish level (do have a Flemish minister for the rights of the children). In the French Community, there is a permanent group on the CRC. The French community's ombudsman is involved in this group.” There is though an inter-ministerial coordination on federal Belgian level within the scope of the National Commission on the Rights of the Child. On the involvement of their NHRIs they stated that there is “no direct participation, but monitoring and follow up (such as policy advice).” However, “the issue of C/JD is very rarely discussed in any inter-ministerial coordination.” In **Luxembourg**, there is no inter-ministerial coordination in the area of the rights of the child but the institution said: “...we are involved directly with all the Ministries concerned by the matter of children's rights.” In **Malta** a Draft National Children's Policy is in the process of being produced and the policy envisages the establishment of such a coordinating body.

The **Serbian** institution speaks of a quasi – coordination body: “There is a governmental advisory body composed of representatives of certain ministries, NGOs and experts – Council for the Rights of the Child, but it doesn’t have any executive powers. It is not envisaged that Ombudsman as an independent institution that controls and monitors the work of public bodies, including all the ministries, has to be the part of governmental counselling body.” However, that institution adds that there might be promising developments in the future: “The Draft Law on the Rights of the Child, drafted by the Ombudsman’s Expert Group, has a provision on new executive body in the child’s rights area.”

Greece also expressed its disappointment: “The Ombudsman has stressed in many of his annual reports to the Parliament as well as in other letters and reports to governmental bodies that inter-ministerial co-ordination on children’s rights should be facilitated by one body and foreseen in a National Action Plan. However this is still under consideration. The recent concluding observations of the UNCRC pointed out that there is a need for such a body and procedure to be established in Greece.”

Northern Ireland said ‘yes’ to the question whether they have a coordinating body but explained that “there is one Government Department which provides a lead however it could not be described as highly empowered or very effective.” Like other institutions “the NICCY seeks to work closely with all government departments, including OFMDFM to promote and safeguard the rights of children and young people.”

In the absence of a general coordination body for child rights, some States have established focal points for specific issues and those that often include juvenile justice and C/JDs. **Malta** reported that “the Commissioner for Children carried out an inquiry in 2010 with regards to children in conflict with the law. As a result a Task force on the Protection of minors was set up by the Prime Minister in order for the members to provide the concerned Ministries with recommendations on the protection of minors. The Task Force consists of representatives from: The Office of the Prime Minister, the Ministry of Justice, the Ministry of Home Affairs, The Ministry of Education as well as the Ministry of Health.”

Recommendations:

- *NHRIs should use their influence to make sure that a governmental body (agency for the protection of the rights of the child), empowered with executive powers, entitled to coordinate the activities of all other public bodies, collect disaggregated data, analyze the effects of realized measures, prepare reports for the highest national/international bodies, is established;*
- *NHRIs should take active participation in such coordinating bodies;*
- *Coordinated activities on all levels of government are prerequisite for successful administration of juvenile justice and especially in dealing with rights of C/JDs.*

6. Research and data collection in *C/JD*

The CRC Committee stated that the “Collection of sufficient and reliable data on children, disaggregated to enable identification of discrimination and/or disparities in the realization of rights, is an essential part of implementation (of the CRC).” (GC 5, 48) As indicated in Chapter one of this report, collection of data and research on the rights of C/JDs is not sufficient. In GC No. 10 a general observation is expressed on data collection, evaluation and research in JJ: “The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pre-trial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them”.(GC 10, Para. 98) The States parties to the CRC are urged to systematically collect data, evaluate their practice of JJ and conduct relevant research.

Data collection is the States’ obligation but NHRIs can be important players, in particular in research and evaluation. The idea here was to find out whether NHRIs do participate in some ways in the State’s data collection and research and whether they have ever conducted evaluations of the State’s administration of juvenile justice, in particular of the effectiveness of the measures taken, including those concerning discrimination, reintegration and recidivism. Very few ENOC members reported ever being involved in data collection, research and evaluation on C/JDs. They mostly commented on the States’ data collection system, which they have already done in some way in Chapter one of this report, when they were asked about numbers of C/JDs. As a reminder: **Not all States collect data and statistics on arrest and detention of C/JDs and make them publicly available.** Institutions which are involved in the protection of the rights of C/JDs obviously often have to play by feel or guess when planning actions in this area. Many institutions actually delayed their reporting waiting for information on data and statistics on arrested and detained children, which is a fact that might inspire a joint action of some institutions. (See Chapter one of this report). However, we were interested in what was the NHRIs’ assessment of the States’ performance in data collection, evaluation and research and what they can do about improvements in this area. Some institution noted enhanced efforts of their States to collect data to this end. **Belgium** reported: “Collection of data: efforts are made by the government but it is a difficult and slow process. Only recently one began to collect data at the level of the public prosecutor. Now they are preparing data on the level of sentencing (juvenile judge). On the level of the execution of juvenile justice measures, efforts are made in Flanders to collect data on the duration of the measure.” In French community, there is, for some years now, a collection of data on the placements in public institutions for young offenders. These data concern the profile of placements, the profile of young offenders and the classification of offenses committed. This information does not allow a broader vision on the practice of the administration of juvenile justice.

Ireland noted that “The Irish Youth Justice Service, the Probation Service, An Garda Síochána (Police) and the Courts Service all gather relevant data and publish them on an annual basis.” Ireland’s Ombudsman for children office does not participate to data collection but: “The OCO has not undertaken a review of the administration of juvenile justice generally; however, it conducted a very significant project with young people detained in St. Patrick’s Institution covering a wide range of issues arising from their detention.” **Greece** noted that: “Unfortunately there is no systematic collection and dissemination of data in C/JD”.

There is almost no evidence of members’ assistance in data collection, research and evaluation activity in the area of the rights of C/JD. Only **France** reported that they are producing “a thematic report on closed educational centers” and that “work is also underway on the prison system”. Although NHRIs identify and strongly comment existing data collection on the rights of the child, including C/JDs, the questionnaire has not collected comments on the possibility of getting involved in research and evaluations.

Recommendations:

- *NHRIs should urge their States to systematically collect data, evaluate their practice of JJ and conduct relevant research;*
- *NHRIs should participate, whenever possible in improvement of the collection of data, research and evaluation in all the phases of the C/JD.*

7. Budgeting for the area of C/JD

The allocation of resources to children “to the maximum extent of their available resources” is key to efforts by States parties to ensure implementation of the CRC. In General Comment No. 5, the Committee underscored that Governments should: “... ensure that economic and social planning and decision-making and budgetary decisions are made with the best interests of children as a primary consideration and that children, including in particular marginalized and disadvantaged groups of children, are protected from the adverse effects of economic policies or financial downturns.” The issue of how state resources and budgets are used and distributed generates vigorous debates in legislatures, government ministries and among the general public. It is crucial to have independent impact assessments, and civil society organizations worldwide have been working to strengthen their ability to improve their assessment capabilities in respect to budgets for children. But less is known of what NHRIs are doing in this regard and in particular whether they are able to track budgets on C/JDs.

Therefore, the questions asked were whether ENOC member can track information/events that indicate whether the State ensures that national economic policy makers take children’s rights into account in setting and evaluating national economic and development plans and whether it is possible to track such information/events with regards to C/JD children. Further, we asked NHRIs whether they can influence budget allocations for all activities necessary to address the issue of C/JD. Norway, Malta and Ireland are the States whose institutions answered positive on all of the points. Nine institutions reported negative on all three points. The others were mixed, with no answers prevailing.

Slovakia considered the issue to be outside of its mandate: “We do not track and have no role set by law in this issue.”

Some institutions, like the **Greek one**, have not “so far been involved with direct discussions or procedures regarding budget allocations.” Some institutions’ answers reflected organizational and human resources problems. **Serbia** answered that it “has legal possibility to track data and information concerning budgeting in the child’s rights area, but there is significant lack of qualified staff for this kind of research.” **Northern Ireland** reported that they can, to a certain extent, track such information/events with regards to C/JD children but said that they cannot influence the budget allocations for C/JDs in great detail, although they are very eager to do so: “Budget allocation is an area which the Northern Ireland Commissioner for Children is very interested in, and given the current economic climate, concerned about. However it is difficult to monitor such information accurately and in any detail, given the limited information made available and the challenge of tracking finance from initial allocation to service provision on the ground.”

Ireland has better news: “Issues of budget allocation and distribution of resources do arise in the course of the OCO’s complaints and investigation work. In this context, the OCO may make comments relating to how such resources are deployed; in particular, the OCO frequently makes the point that while resources matter, one must also look at whether resources are being used optimally, whether they are properly matched to need and how sound the decision-making behind their allocation actually is. However, the OCO does not systematically track or make recommendations at a national level on Government spending relating to children.” They can actually track C/JD specific spending: “The OCO does monitor aspects of Government spending on youth justice, for example the decision to build a national detention facility for children in Oberstown in Dublin.” That institution also reports that it can influence budget allocations for all activities necessary to address the issue of C/JD: “The OCO’s position in this area can influence Government priorities, which can in turn have a knock-on effect on budget allocation.” **Lithuania** answered: “Children’s Rights Ombudsman has the right to request any person (institution) to submit information, explanations, material and other documents required for the performance of its functions (including information on budget allocations, regarding implementation of C/JD children’s rights) as well to get

access to the documents comprising a state, official, commercial or bank secret” but we don’t know whether the Ombudsman actually has already made use of this function.

Recommendations:

- *ENOC members should be able to track information/events that indicate whether the State ensures that national economic policy makers take children’s rights into account;*
- *They can participate or support setting and evaluating national economic and development plans and whether it is possible to track such information/events with regards to C/JD children;*
- *NHRIs should work actively to influence budget allocations for all activities necessary to address the issue of C/JD.*

8. Monitoring and reporting on the situation of C/JD

Chapter three of this report is entirely devoted to the questions related to the monitoring role of the NHRIs in protection of C/JD and it is very detailed with regards to phases of intervention. Here, the members were asked whether they generally have a role in monitoring rights of C/JDs. This particularly applied to issues like investigations into any situation of violation of C/JD rights, on complaint or on their own initiative, within the scope of their mandate. Further questions were asked whether NHRIs conduct inquiries on matters relating to C/JD rights; whether NHRI’s prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children’s rights and rights of C/JD; keep under review the adequacy and effectiveness of law and practice relating to the protection of rights of C/JD and whether they review and report on the Government’s implementation and monitoring of the state of children’s rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize rights of C/JD. Much of the content of those questions seems to overlap with some previous ones, though, for example, research and investigation of violation of rights of C/JDs can seem the same but there is a difference. To avoid repetitions, **Ireland** commented: “Information gathering is an issue that the OCO has raised in the context of the State’s compliance with the UNCRC and with the concluding observations of the UN Committee, which has been critical of Ireland in respect of the collection of data.”

Almost all institutions answered yes on all questions. Only **Slovakia** and **Denmark** had some no answers. There were very few comments, most on the mandate to conduct investigations and publish results. **Scotland** shortly commented:”We do have a power to investigate, but this does not extend to individual cases and we have not so far explicitly invoked this power”.

Serbia reported on its intentions: “Having in mind the Ombudsman’s mandate and especially its role as NPM, this institution shall in the future conduct regular monitoring of correctional and detention facilities where children in conflict with the law are placed. Those activities will also promote the rights of the child among children in those institutions, and will be the way of informing children about their rights and about available complaints mechanisms.”

The **Greek institution** reported on its rather general mandate on the protection and promotion of children’s rights, “not including particular involvement in reviewing and reporting on the implementation and monitoring of the state of children’s rights. However, the Ombudsman has produced a Parallel Report on the implementation of CRC, which was sent to the Committee on the Rights of the Child and published at national level.”

Lithuania reported on particular investigations: “Investigation carried out in 2011, concerning implementation of C/JD children’s right to education. Findings of the investigation and problems sorted out as well as the decisions and recommendation for the improvement of situation were addressed to various ministries, committees of the Parliament and other Governmental institutions. Furthermore, the ombudsman presents an evaluation of the state of implementation of children’s rights in its annual report to the Parliament.”

Recommendations:

- *NHRIs should generally have a role in monitoring rights of C/JDs;*
- *Specific roles of NHRIs particularly apply to issues like investigations into any situation of violation of C/JD rights, on complaint or on their own initiative, within the scope of their mandate;*
- *NHRIs should be empowered to conduct inquiries on matters relating to C/JD rights; prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children’s rights and rights of C/JD; keep under review the adequacy and effectiveness of law and practice relating to the protection of rights of C/JD;*
- *They should regularly review and report on the Government’s implementation and monitoring of the state of children’s rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize rights of C/JD.*

9. Training and education

Each State has an obligation to “develop training and capacity-building for all those involved in the implementation process - government officials, parliamentarians and members of the judiciary - and for all those working with and for children.” (GC 5, Para. 53). More importantly, in the area of the rights of C/JD, states have an obligation to work

on awareness raising and training. Children who commit offences are often stigmatized and marginalized. Negative presentation or criminalization of child offenders is often based, as indicated in the GC No. 10 (Para. 96) on “misrepresentation and/or misunderstanding of the causes of juvenile delinquency, and results regularly in a call for a tougher approach.” In order to change such attitudes and consequent actions, the States should “create a positive environment for a better understanding of the root causes of juvenile delinquency and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of CRC”. NHRIs can contribute a lot.

The task under this section is to ask ENOC members what they do to promote public understanding and awareness of the importance of rights of *C/JD* and whether for this purpose they undertake or sponsor research and educational activities in the field. Further, we wanted to find out whether institutions control/assist the State, in accordance with article 42 of the CRC which requires from State parties to raise awareness among the Government, public agencies and the general public of the provisions of the CRC relevant for *C/JD* and monitor ways in which the State is meeting its obligations in this regard. Finally the members were asked whether they assist in the formulation of programs for teaching of, research into and integration of rights of *C/JD* in the curricula of schools and universities and in professional circles and also whether they undertake/participate in human rights education which specifically focuses on *C/JD*.

The answers indicate that almost all ENOC members who participated in this survey are undertaking at least some activities on awareness raising and training. Only **England** and **Slovakia** said no on all points. **England** commented: “We only undertake public education through publication and promotion of our work.” **Belgium** (it is not indicated which of the two) reported that they “assist in teaching and human rights education: Our NHRI does these activities but it is not the main task or mission”. **Malta** answered that “the Commissioner for Children is very much involved. She has been involved in the consultation of the National Minimum Curriculum. Training sessions have also been carried out with the Police as well as proactive teachers. Material in relation to children’s rights is provided upon request.”

The **Greek institution** was not specific on *C/JDs* but reported: “The Greek Ombudsman is much sensitised on the issue of promoting training of professionals and children on CRC and including human rights education in the school curriculum and has addressed relevant proposals to the government. However, this is not done at regular basis and as a task included in its mandate, but it is included in the activities of promotion of children’s rights selected by the Ombudsman.”

Ireland does have a mandate to deal with awareness raising: “The OCO has a statutory mandate to promote awareness of children’s rights, including the provisions of the

UNCRC, but does not explicitly assist the State in this regard. Although not part of any school or university curricula, the materials produced by the OCO as part of its work with young people detained in St. Patrick’s Institution were disseminated very widely, including to Youthreach centres (Ireland’s education and training programme for early school leavers) and to professionals working with children in conflict with the law. The human rights education materials for schools produced by the OCO include a section on children and the law but the materials are not focused on the issue of children in conflict with the law as such”. **Luxembourg** is not mandated to work on awareness raising but assists the State in their respective activities: “The law concerning the youth protection is a matter studied in high school in a specific session in the terminal class”.

Recommendations:

- *NHRIs should promote public understanding and awareness of the importance of rights of C/JD and undertake or sponsor research and educational activities in the field;*
- *The institutions should be able to control/assist the State to, in accordance with article 42 of the CRC which obligates State parties to sensitize the Government, public agencies and the general public to the provisions of the CRC relevant for C/JD and monitor ways in which the State is meeting its obligations in this regard;*
- *States’ legislation should include specific description of the role of NHRIs regarding their involvement in planning and addressing proposals to the government on the way that human rights education is included in school and university curricula and relevant educational activities are adopted.*

10. Participation in international cooperation

The CRC Committee noted in its GC 2 (para. 27-29) that “Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries.” So, NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions on children’s rights issues. Rights of the child do not stop at national borders and that is why it is necessary to respond to a variety of child rights issues « including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc. ». There is a strong message from the CRC Committee to international and regional mechanisms and exchanges to « provide NHRIs with an opportunity to learn from each other’s experience, collectively strengthen each other’s positions and contribute to resolving human rights problems affecting both countries and regions ».

Days of exclusive State cooperation with other counterparts internationally are long gone. Regions, cities, municipalities, NGOs and others, all take part in international cooperation and even participate in international human rights procedures as do NHRIs and ENOC is the best example. Under this section, the ENOC members were asked whether they have a particular international cooperation on the issue of C/JDs. Further questions included requests for information on: participation in a joint project in the area of C/JD with other members of ENOC; independent participation/cooperation at international events devoted to the issue of C/JD; submission of an independent report, containing also information on the C/JD, to the Committee on the Rights of the Child or any other human rights treaty body; participation in the UN Human Rights Council UPR process, submitting an independent report, containing also information on the C/JD; cooperation with a UN mandate holder, a UNSG representative or a European human rights systems' representatives (such as CoE HR Commissioner); participation in dissemination of Recommendations (including concluding observations) issued by the treaty bodies and other human rights mechanisms and on cooperation with UNICEF on the issue of C/JDs. Only **Slovakia** answered no on all points. All other ENOC members cooperate internationally at least in one segment listed in this section of the questionnaire. Most of the comments did not refer specifically to cooperation in the area of right of C/JDs but more generally – rights of the child. We can assume that rights of C/JDs are part of the cooperation activities.

Hungary regularly consults member of the CRC Committee coming from that country and adds: “Moreover the ombudsman became the CoE national focal point in 2010, so we started dialogue with the children’s rights division of the CoE, especially on child-friendly justice to promote their work and campaign to ratify different legal instruments (due to this our office attending a Conference organized by the CoE in June 2012, as CoE experts on child-friendly justice). The ombudsman have cooperated with the UNICEF Hungarian Committee”

Belgium listed their international cooperation activities: “Follow up IJJO (International Juvenile Justice Observatory), cooperation with other members of ENOC: Kinderrechten commissariaat and Délégué général de la Communauté française aux droits de l’enfant cooperate on this issue.” They also report participation in the CRC reporting procedure, through submission of independent reports and engagement in dialogue with the CRC Committee: “Submission of an independent report: Kinderrechten commissariaat en Délégué général de la Communauté française aux droits de l’enfant submit a joint report. “

Serbia participated in the reporting procedures under the CRC and the OPs. They listed their international cooperation activities: “The Ombudsman developed a close cooperation with international bodies, especially with the CoE. The Ombudsman Office was included in the process of drafting the CoE Guidelines on Child – Friendly Justice. The Department for the Rights of the Child in the Ombudsman’s Office conducted

research among children on this subject, using the CoE questionnaire; a total number of 715 children (20% of all interviewed children in Europe) were interviewed in the consultation process which was the part of the Guidelines drafting process. In direct communication with the CoE HR Commissioner, the expertise of the Draft Law on the Rights of the Child was granted, so CoE experts conducted in-depth analysis of this legal text, offering their comments and recommendations. There is also a good cooperation with the UNICEF, but currently not in the area of juvenile justice; at the moment, common project (Ombudsman and UNICEF) on the campaign for ban of corporal punishment and promotion of positive parental practises is ongoing.”

Northern Ireland added a short comment on a joint project: “NICCY is involved in a joint project with other ENOC members through ENYA. This is focused on the experiences of young people in the youth justice system and detention centres. The project has directly involved young people in Northern Ireland.”

The French institution stated that it submitted its report to the CRC Committee in 2009 and is in the process of preparing one for the 2013 reporting cycle.

Recommendations:

- *NHRIs should have a particular international cooperation on the issue of C/JDs;*
- *They should encourage and participate in a joint project in the area of C/JD with other members of ENOC;*
- *NHRIs are expected to independently participate/cooperate at international events devoted to the issue of C/JD; submit independent reports, containing also information on the C/JD, to the Committee on the Rights of the Child or any other human rights treaty body and participate in the UN Human Rights Council UPR process, submitting an independent report, containing also information on the C/JD; cooperate with a UN mandate holder, a UNSG representative or a European human rights systems’ representatives(such as CoE HR Commissioner);*
- *NHRIs should have an active role in dissemination of Recommendations (including concluding observations) issued by the treaty bodies and other human rights mechanisms and on cooperation with UNICEF on the issue of C/JDs.*

11-13. Cooperation with other stake holders: independent institutions (if any), civil society, media, religious groups and organizations, foundations, private sector

Partnerships are of key importance, as is cooperation with a wide range of actors at national, regional and international levels. This is why NHRIs cooperate with other stakeholders such as other independent institutions (if there are several in the State), civil

society organizations, media, religious groups and organizations, private sector and others. In General Comment No. 2, the Committee devoted a paragraph to NHRIs and NGOs and called for NHRIs to work closely with NGOs: “Non-governmental organizations play a vital role in promoting human rights and children’s rights. The role of NHRIs, with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.” (Para. 26) Many NHRIs have developed close links with NGOs working with and for children. Such institutions may benefit from NGOs’ wealth of expertise and experience, including in providing services. Collaboration with NGOs helps NHRIs grasp the scope of work, capitalize on shared knowledge and experience, and avoid duplication of work. In many countries and regions, NGOs have been instrumental in efforts to establish human rights institutions. NGOs may also help to ensure that children actually make use of an ombudsman or commissioner. The relationship between NHRIs and civil society remains complex. While they cooperate with each other in promoting implementation of the CRC, including rights of C/JDs, they also have very different functions and often assess each other’s work. For example, NHRIs for children sometimes monitor all actors’ practices, including those of NGOs. Similarly, NGOs may be critical of actions and approaches of the national institutions.⁶

Questions under this section were on ENOC members’ cooperation (in implementation of programs relevant for the rights of C/JDs) with other independent institutions in their country (such as commissioner for equality, human rights ombudsman or similar); with NGOs (in particular children’s organizations); media and others actors, such as religious groups and organizations, foundations or private sector. ENOC members, who filled the questionnaire, did not comment much on the questions under this section, so it is difficult to draw conclusions. However, more members said that they cooperate with those stakeholders than not. Regarding cooperation with other NHRIs, the cooperation seems easy as long as there are other institutions in the country. Members mostly confirmed cooperation with NGOs and children’s organizations.

Hungary seems to have good links with NGOs: “Since 2008 the ombudsman organizes at least two workshops per year on his annual children’s rights project topics to which he invites every relevant actor from the civil society too. In April 2012, ‘Justice with human face’ conference was organized with 80 participants in the Event Hall of the Ombudsman about the first results of his investigations related to child-friendly justice.” That institution is also supportive of the child-friendly justice using media and social networking on the internet/in respect to online media and social networking: “We have launched our special children’s rights website in 2008, and started to be active on Facebook in 2011. During this year due to the cooperation with the Ministry of Justice,

⁶ For more on civil society in relation to General measures of implementation of the CRC, see: Vučković Šahović Nevena (2010), „The Role of Civil Society in Implementing the General Measures of the Convention on the Rights of the Child“, *Innocenti Working Paper* No.2010-18. Florence: UNICEF Innocenti Research Centre.

the experts of the Office have regularly participated in television/radio on the topics related to child-friendly justice.”

England commented on NGOs and cooperation with them: “NGOs are important stakeholders and sources of information useful to us in our work and we have commissioned research from them/contracted other services from them on occasion but we do not undertake joint projects with NGOs. We commission research from other stakeholders e.g. universities but do not jointly implement programmes with them”

Belgium listed organizations they cooperate with: “Union of Youth Lawyers, Kinderrechten commissariaat and Délégué général de la Communauté française aux droits de l’enfant cooperate on this issue at the federal level.”

On cooperation with other NHRI institutions, if any, several ENOC members commented. **Moldova** simply stated: “There are no other independent institutions”. France explained its creation, which was a multi-institution initiative: “The Defender of Rights was created from the merger of four NHRIs, including the Children’s Ombudsman. The Defender collaborates also with other independent authorities such as the controller of places of deprivation of liberty.”

Scotland listed other independent institutions it cooperates with: Scottish Human Rights Commission; Equality and Human Rights Commission (Scotland).

Northern Ireland commented: “NICCY co-operates where appropriate and possible with such bodies on a broad range of rights-related issues. It does not focus exclusively or specially on children and the justice system. These activities are promoted where capacity permits. NICCY addresses a wide range of rights-related issues so it is not exclusively focused on children and young people in contact with the youth justice system.”

Ireland commented on cooperation with other independent institutions as well as with NGOs- and with media: “The OCO has a good working relationship with other human rights institutions in Ireland. We liaise as appropriate with them to ensure there is no unnecessary duplication or overlap in work, though we have not to date carried out joint work with them.”... “The OCO engages with the media around particular issues/projects. For example, when the OCO completed its work with young people in detention in St. Patrick’s Institution, there was a strong engagement with (and response from) the media in relation to the concerns raised by this Office.”

Greece has only one NHRI, so it is explained, and further, the relationship with NGOs is described as follows: “The Children’s Ombudsman is part of the General Ombudsman in Greece, which has also a Department of Human Rights and a Department of Gender Equality. The Greek Ombudsman has contributed to the creation of a National Network of NGOs observing the implementation of CRC. The Network of NGOs consists of nearly 50 NGOs, including also the Greek National Committee of UNICEF. There is intensive co-operation with various stakeholders, depending on the subject and the issue.

For example the Network for Prevention and Combating of Corporal Punishment to Children, which was created at the initiative of the Ombudsman, included public organisations, NGOs, religious groups etc.”

Lithuania indicated in the questionnaire that it cooperates with other independent institutions (e.g. the Commissioner for Equality, the Human Rights Ombudsman, the Inspector of Journalist Ethics etc.) Furthermore, the Ombudsperson for Children’s Rights closely communicates and cooperates with several NGOs and IOs (e.g. UNCIEF, Save the Children, Parent’s Forum etc.) A special attention is also paid to participation by children’s rights NGOs (Lithuanian Schoolchildren’s Parliament and Lithuanian Schoolchildren’s Union). Cooperation is developed when tackling juvenile justice (delinquency) problems as well. The institution explained in its comments how it sees their cooperation with media: “One of the principles that activities of the Ombudsman are based is publicity. The Ombudsman makes public information to the society (as well as to media) about its activities and the protection of the rights of children. This helps to raise public awareness of the rights of the child.” The described cooperation is on the general topic of the rights of the child and there was no information on C/JD specific cooperation.

Serbia reported it cooperates with all stakeholders: “We cooperate with the Commissioner for equality, established in 2010 and Provincial Ombudsman of Vojvodina, established in 2005.” The Serbian institution reported that it cooperates with NGOs and with children’s groups on NGO coop. child participation: “One of the channels for cooperation is in the frame of NPM, where several NGOs participated in the monitoring process.”

Recommendations:

- *ENOC members’ cooperation in implementation of programs relevant for the rights of C/JDs with other independent institutions in their country (such as commissioner for equality, human rights ombudsman or similar) is very important and whenever possible, opportunities should be used to work together;*
- *NGOs (in particular children’s organizations) should be perceived as natural allies of NHRIs and cooperation among the two should be strengthened, taking into account independent nature of both sectors;*
- *NHRIs should make sure to inform and cooperate with media and others actors, such as religious groups and organizations, foundations or private sector.*

CHAPTER THREE – NHRI monitoring role in prevention and intervention⁷⁸

Monitoring rights of the child as used in the questionnaire, is based on the definitions in international documents. The basic definition is in the GC 5 of the CRC Committee: “**Monitoring** of children’s rights can be defined as: **all activities** for the purpose of *assessing and measuring the compliance of national laws and practice with the provisions of the CRC and other international instruments* (such as resolutions, standards and guidelines or similar) relevant to the implementation of the CRC provisions. In its General Comment No. 5 on the Article 4 of the CRC (General Measures of Implementation), the monitoring body of the CRC – the Committee on the Rights of the Child (the Committee) recognized the importance of monitoring.” In order to provide a better understanding on the roles in monitoring, the Committee further stated: “Self-monitoring and evaluation is an obligation for Governments. But the Committee also regards as **essential the independent monitoring** of progress towards implementation **by**, for example, parliamentary committees, NGOs, academic institutions, professional associations, youth groups and **independent human rights institutions.**”

The questionnaire, in particular in Chapter three, is based on this broad concept of monitoring of the rights of the child and in particular rights of C/JDs. Such an approach is based on the idea proclaimed in international law, that monitoring includes all activities. Some ENOC members commented that they understand monitoring

⁷ **Ireland’s Ombudsman for Children Office** made a general comment on monitoring:

“The Ombudsman for Children’s Office can receive and investigate complaints from children in detention and can also initiate investigations on its own motion. In addition, the Ombudsman for Children Act 2002 empowers this Office to advise Government and Parliament on the operation of legislation affecting children (both existing and proposed), to advise on the development and coordination of policy relating to children, and to highlight issues that are of concern to children and young people themselves. As noted above, the OCO has used these powers in relation to the issue of children in conflict with the law and children in detention.

However, the OCO does not have an inspection mandate as such. There are a number of other statutory bodies that carry out this function in relation to different areas of youth justice, including the Social Services Inspectorate (part of Ireland’s Health Information and Quality Authority) and the Inspector of Prisons.

For the purposes of the answers in this section, the term “monitor” has been taken to mean an ongoing inspection or evaluation role, as distinct from an investigatory function that is used in response to individual complaints or in systemic, own volition investigations. Although the OCO does not monitor the aspects of youth justice listed in this section, they could well be the subject either of an investigation by the Office or of the OCO’s advisory functions.”

⁸ **The Slovak ENOC member** also made a comment applying to all questions in Chapter three:

“For our institution it is not possible to answer questions in this part three as we do not have any role dealing with monitoring at all. We do not monitor or collect data. We mostly solve cases following a complaint or at our own initiative. We do monitor and analyze only specific cases. According to Act on Public defender of rights, the public defender of rights is an independent and constitutional body that shall participate in the protection of the fundamental rights and freedoms of natural persons and legal entities with respect to the activities, decision-making or inactivity of public administration bodies, if such activities, decision-making or inactivity is in conflict with the legal order or the principles of the democratic state and the rule of law.”

differently. It is for ENOC and its members to reach a consensus on how they will interpret international documents and understand contents of child rights monitoring. The broad concept of monitoring probably exceeds mandates of many NHRIs within ENOC. However, some members have a mandate to monitor all areas and activities, but have difficulties due to budget, human resources or organizational constraints.

1. Monitoring prevention of delinquency

As indicated previously, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings. The CRC Committee recommends in GC 10 (Para 18) that “prevention programs should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education.” It is the responsibility of the State to introduce, carry out and evaluate preventive measures, but all actors should do their part in prevention as well as make sure the State is doing its job.

The ENOC members were asked whether they monitor State’s responses to deviant behavior at schools (such as reparatory and reconciliation measures, peer mediation, collaboration for conflict resolution, etc); implemented programs targeting children at risk of offending (such as school drop outs, children whose parents have been repeatedly convicted, children living in extremely disaffected areas, children already involved in groups with anti-social, violent and/or offensive behavior, etc); projects for children who have already been convicted (children at risk of re-offending) and projects for children offenders under age of criminal responsibility. Almost all institutions monitor or participate in activities aimed at prevention of the causes of asocial and delinquent behavior of children, but either not directly or with limited capacity. Some, like **France**, do it only in the case of an individual complaint which involves the child. **Poland** also monitors prevention if needed in an individual case, but not in general. **England** explained that their “monitoring is not systematic and dependent upon capacity and work.”

Wales reported that “while the Children’s Commissioner for Wales does not directly monitor these issues he ensures that he is aware of the evidence available in relation to the policy responses and implementation of these responses in relation to youth justice.” **Scotland** does not have the capacity to monitor prevention of C/JD directly but “undertakes such activities through scrutiny of reports etc.” **Northern Ireland** also does not monitor prevention directly: “It is more accurate to say that the institution collects information on such matters and reviews planned or current policies and provision rather than saying that it monitors these programmes/projects.”

Lithuania does not monitor all preventive and interventional programs though it: “starts investigation and requests any person (institution) to submit information, explanations,

material and other documents on the implementation of the programme when alleged facts of violation of child's rights arise." **Serbia** does monitor some prevention programs, but does not monitor projects for children who are at risk of re-offending. Though it is not outside of the institution's mandate, it is not done probably due to lack of budget and trained staff.

The **Greek** institution does not have a specific mandate to monitor state programs regarding juvenile justice prevention. However, "the institution has followed up various projects and in collaboration with the Ministry of Education has invited schools that have implemented 'good practices' in preventing and combating school violence, to provide specific information on their activities and their results. Based on the information collected from various schools around Greece and followed by discussions with students from the selected schools, the Ombudsman has sent a relevant report with proposals to the Ministry, which responded by issuing a circular to all secondary schools of Greece stressing on the important variables and tasks to better preventive strategies. Among others, the Ombudsman has suggested various measures, including better supervision of schools, the appropriate training and support of educators by specialised professionals, the assignment of consultative and mediator roles to teachers, the operation of student groups as peer mediators after proper training, the improvement of the disciplinary educational law by introducing new measures, particularly as regards reconciliation and the restoration of damage. The Ombudsman also has visited and been informed about projects and initiatives of various NGOs in the area of prevention support of school drop outs, intervention in the streets to combat child labour, etc. As a result, the Ombudsman has addressed to the government his concern to increase funds in the area of prevention and establish a better mechanism of monitoring and supporting such initiatives. "

Malta does some monitoring of prevention, and has the following to say on the issue of prevention of offences among children below the MACR: "As yet there are no projects for child offenders under the age of criminal responsibility since the age of criminal responsibility is 9. However such projects are being proposed once the age of criminal responsibility is raised to 14."

Recommendations:

- *NHRIs to monitor State's responses to deviant behavior at school (such as reparatory and reconciliation measures, peer mediation, collaboration for conflict resolution, etc);*
- *It is also important to monitor implemented programs targeting children at risk of offending (such as school drop outs, children whose parents have been repeatedly convicted, children living in extremely disaffected areas, children already involved in groups with anti-social, violent and/or offensive behavior, etc);*
- *NHRIs should identify and try and get engaged in projects for children who have already been convicted (children at risk of re-offending) and projects for children offenders under age of criminal responsibility.*

2. Your role in (strategic) litigation and respective legal procedures

Normally, NHRIs cannot interfere in judicial proceedings, but it is possible for them to observe court proceedings and sometimes even represent the child before authorities, including courts. The GC 2 explains: “NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children’s issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case. ...Where appropriate, NHRIs should undertake mediation and conciliation of complaints.”¹ Therefore, we asked institutions whether they take legal proceedings to vindicate children’s rights or provide legal assistance to children; do they engage in mediation or conciliation processes before taking cases to court, where appropriate and whether they are legally empowered and technically capable of providing expertise on children’s rights to the courts, in suitable cases as *amicus curiae* or intervener.

Most of the institutions answered negatively to the questions, yet there were some positive answers and few comments. Namely, most of the members participating in this survey do not have a mandate to engage in court proceedings, but some do take part in mediation or conciliation prior to such cases. Some institutions do have more capacity. **Cyprus** explained: “The Law provides for the competence of the Commissioner to act as a representative of children and their interests in any judicial procedure when the Court deems this necessary. The law also provides that the Commissioner may represent children and their interests in any procedure, not only judicial, as foreseen by law. “

Northern Ireland has a Legal and Casework team in NICCY and the team: “can investigate complaints against public bodies on behalf of children and young people; help a child or young person bring their complaint to a public body; bring legal proceedings about the rights and welfare of children and young people (subject to certain restrictions set out in the legislation); help children and young people in legal proceedings against public bodies; intervene as *amicus curiae*”

Poland shortly noted on the questions on engagement in mediation or conciliation processes that they do get engaged, but only by providing legal advice. **Belgian** institutions do get engaged in mediation or conciliation processes and their teams try to reconcile parties but they do not take cases to court themselves”.

The **Greek** Ombudsman reported on their role: “...mostly mediates in cases of divorced parents who do not implement court decisions or private agreements regarding contact of the child with the parent who does not reside with him/her. “

Recommendations:

- ***Whenever possible, NHRIs should either take legal proceedings to vindicate children’s rights in the State or provide legal assistance to children;***

- *NHRIs should develop skills and capacities to engage in mediation or conciliation processes, where appropriate;*
- *Institutions should use whatever legal power they have to provide expertise in children's rights to the courts, in suitable cases as amicus curiae or intervener.*

3. Monitoring police conduct

The police have lots of responsibilities when dealing with C/JDs. It is usually the police that have the first contact with the child who may have committed an offence or who may have just happened to be in what looks like a risk situation (walking alone around the streets in the middle of the night). A large number of violations of rights happen due to police conduct at the moment of the first contact/apprehension. Such contacts with the police can last anything between moments and hours/days. These are the moments the child is particularly vulnerable. This is why police conduct has to be subject to independent monitoring. ENOC members were asked whether they monitor specialization of police officers dealing with young offenders; treatment of arrested young offenders by the police; police detention of juveniles (provisions and conditions) and whether they submit reports on such monitoring and make recommendations for improvement. Not all institutions have mandate to do so and some do not have the capacity.

England stated: "We would like to undertake such monitoring but current capacity makes this difficult due to the number of police stations in England"

Scotland reports on their monitoring of police conduct and provides examples: "We do have a power to do this, under our general power to review law, policy and practice as it pertains to children's rights and to investigate service providers, but we have not done so as yet. That said, we have done work on particular aspect of policing, including the use of force by police officers, specifically the use of taser 'stun guns' and CS incapacitant spray ('tear gas')."

Institutions normally work on a case-to case basis and will intervene only if there is a complaint. **Greece** "has made a few interventions to the police regarding treatment, conditions of detention and other rights of arrested juveniles. It is unfortunate that usually young offenders fear to report violations of their rights by police officers, and documentation provided to the Ombudsman is often weak." **Lithuania** also works on the basis of individual complaints: "The Ombudsman starts investigation when alleged facts of any violation of child's rights arise. The Ombudsman has the right to investigate complaints concerning the acts (omissions) of prosecutors or pre-trial investigation officers that violate the rights or legitimate interests of children but does not investigate complaints concerning legality and validity of decisions of such officers." **Northern Ireland** has a more strategic role: "NICCY focuses on a broad range of children's rights issues so the experiences of the children and young people in the youth justice system constitute just one area of its responsibilities. While it does not strategically monitor each of these issues, it does review these issues as part of a broader watching brief on

youth justice issues”. Similar to Scotland, it does have powers under its legislation to review law, policy and practice, and in certain circumstances, to conduct investigations.

In **Serbia**, the institution has the authority through different roles they assume, such as being an NPM under the CPT: “Ombudsman has the power to monitor every institution where persons deprived of liberty – including children - are placed. NPM visits those institutions, including facilities for children. Apart from authorities of the National Preventive Mechanism, the Ombudsman itself has the power to control authorities, regarding the respect of rights of children deprived of liberty or placed into institutions, through inquiry proceedings, including announced or unannounced visits to facilities where children are placed.”

Another important role NHRIs can play involves assessing capacities of the members of the police. In **Malta** “The Commissioner for children carries out sessions with Police trainees with regards to children’s rights including Juvenile justice”.

Recommendations:

- *NHRIs should monitor specialization of police officers dealing with young offenders;*
- *Institutions should find ways to get information on treatment of arrested young offenders by the police and police detention of juveniles (provisions and conditions);*
- *For this and other issues requiring monitoring, it is important that NHRIs publish reports on such monitoring and make recommendations for improvement;*
- *NHRIs should seek increased funding and staffing, which would allow them to undertake such monitoring to a greater extent.*

4. Monitoring deprivation of liberty (including pre-trial and post trial detention)

It is the State’s obligation to regularly monitor the situation of children deprived of liberty, regardless of whether they are placed in pre-trial or post-trial detention. Such monitoring should be organized so as to include independent monitors (such as independent experts, civil society representatives, NHRIs or others). NHRIs should all be able to participate in such monitoring or to do it independently, even if it is just upon individual complaints. Such an approach is based on the accessibility principle of the GC 2 (15): “NHRIs should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention”.

For the purpose of this survey, the ENOC members were asked whether they monitor rights of *C/JD* placed in various detention or therapeutic centers. They were also asked whether they monitor conditions of detention, in particular health, safety, suitability of the staff and educational and vocational programs. Finally, the NHRIs were asked whether they submit reports on such monitoring and make recommendations for improvement. Some institutions strategically monitor placed *C/JDs* and some do it on the basis on individual complaints. **France** reported: “Control is mainly through individual or collective complaints (control setting is usually done by the Controller General of places of deprivation of liberty).” Some institutions, like the **Finnish** one, do not monitor child detentions at all, since “that is the task of the parliamentary Ombudsman in Finland “.

Wales explained their answers: “The Children’s Commissioner for Wales is not responsible for the monitoring and inspection of youth justice regimes. However the Children’s Commissioner actively seeks evidence in relation to the provision of services and support to children and young people within the youth justice system and although this is a non-devolved matter he is able to consider any matter that impact on the wellbeing of children and young people in Wales.” The **Lithuanian** institution “carries out investigations at its own initiative or investigates the circumstances specified in a complaint when alleged facts of any violation of child’s rights arise. In 2011 a special attention was given to ensure implementation of *C/JD* rights.”

England answered yes on all points and added: “We are not currently monitoring children in therapeutic centres but hope to begin this work this year.” **Scotland** commented that: “there is no ongoing monitoring function in respect of these aspects of custody conditions, but there have been projects that touched on those matters. Again this involved scrutiny of law, guidance and reports, rather than monitoring of individual cases or carrying out some kind of inspections.”

On the issue of overall monitoring, **Northern Ireland** answers that it is not responsible for this monitoring and commented: “The institution does not closely or strategically monitor these issues however it has provided responses to government consultations on a number of these issues and raised them in other fora. The institution also submitted a substantial response to the recent review of the Youth Justice System in Northern Ireland which addressed many of these issues. In Northern Ireland, the Criminal Justice Inspectorate is the lead monitoring and inspection agency for the youth justice system.”

Ireland made a point on the question of regular monitoring: “This Office published a significant project on the situation of young people detained in St. Patrick’s Institution that addressed many of the issues highlighted above. I have answered “no” to the questions relating to monitoring as they are not issues that the OCO is mandated to monitor on an ongoing basis.”

The **Hungarian** institution reports: “the ombudsman’s colleagues visited and investigated all the prisons where juveniles can be placed in the first semester of 2012

(Tököl, Szirmabesenyő, Pécs, Kecskemét); and published reports. It is planned to visit reformatory institutions during autumn 2012. In July 2012, there was also an investigation on the spot at the Justice Psychiatry Centre. During these investigations all the above mentioned fields are under scope, with additional interviews made with people under arrest, members of the staff and the management of the institutions.”

Some institutions compile and submit reports on their findings regarding conditions children deprived of liberty live in. **Northern Ireland** reported: “It does generally do this through reports. The institution will submit its findings/views through consultation responses to government, written evidence to Northern Ireland Assembly Committees and through oral briefings and other written communications.”

Recommendations:

- *NHRIs should monitor rights of C/JD placed in various detention or therapeutic centres, in particular conditions of detention, such as health, safety, suitability of the staff and educational and vocational programs.*

5. Monitoring juvenile delinquents in the court proceedings

Monitoring rights of C/JDs in relation to court proceedings can be mistaken with interfering into independence of judiciary. However, there are sets of rules which apply to procedures which are listed in the article 40 of the CRC and additionally explained in the CG 10 (paragraphs 40-67). These are called guarantees for fair trial. The questions institutions were asked under this section are whether institutions monitor and report on the list of issues, including: the time when the trial takes place – possible positive or negative consequences of delays on the rights of young persons; role of probation officers before, during and after trial; existing provisions for free legal aid to juveniles and free interpretation; children’s rights before the court (such as: freedom of expression of the opinion of the child, safeguarding the best interests of the child in existing legislative provisions); specialization of judges and prosecutors; possible obstacles (such as: unfair treatment of foreigners, illegal immigrants, minorities, etc;) and use of custodial measures.

Again, some members, such as **France**, commented that they react (monitor) only if there is an actual complaint (individual or collective). That institution even announced a draft thematic report to be published in the first part of 2013. The **Polish** NHRI also stated that they monitor proceedings “especially in individual cases.”

Serbia responded negatively under all points and commented: “Control of trials and other prosecutors’ and courts’ proceedings is out of the Ombudsman’s mandate, having in mind that Ombudsman is not entitled to monitor or control courts’ and prosecutors’ offices, and court or prosecution proceedings. Some issues (like use of custodial

measures or existing provisions in juvenile justice), however, could be monitored, through following and analysing legal framework; cooperation proceedings with justice system (requests for data and/or information) and requests and/or control proceedings against Ministry of Justice.” The **Greek Ombudsman** does not have mandate to monitor any aspect of court proceedings but has found other ways to monitor rights of juveniles: “Although the Greek Ombudsman often collaborates with juveniles’ prosecutors and probation services operating at the juvenile courts around Greece, in fact he has no power to investigate or monitor any activity taking at the level under the responsibilities of the judiciary (such as the trial procedures and content and decisions taken). An issue that has really concerned the Ombudsman is the lack of provision of free legal aid to many juveniles and has therefore informed the Ministry of Justice about his proposals. Also, the Ombudsman has included some observations regarding problems met at court level in his parallel report to CRC and in letters to the Ministry of Justice.”

Lithuania informed on the report they produced, which covers some aspects of the questions asked in this section: “Having the right to monitor how laws and other legal acts, regulating protection of the rights and legitimate interests of children, are implemented in Lithuania, the Ombudsman (in 2008) analysed the current situation and problems that arise when state-guaranteed legal aid is to be ensured for children. Conclusions and recommendations for improvement were addressed to the Ministry of Justice and the Ministry of Social Affairs and Labour.”

Wales works on this issue on a more strategic level: “...although the Children’s commissioner for Wales does not monitor at the operational level he gathers evidence on and seeks to influence policy in relation to these matters in order to promote the rights of children and young people within the youth offending system”. The **Scottish** institution provided a similar comment: “...these are high-level policy work rather than ‘monitoring’ of circumstances experienced by individuals on the ground, although we do receive enquiries relating to individual cases through our Enquiries Service.”

Recommendations:

- *NHRIs are recommended to monitor and report on the: time when the trial takes place – possible positive or negative consequences of delays on the rights of young persons; role of probation officers before, during and after trial; existing provisions for free legal aid to juveniles and free interpretation; children’s rights before the court (such are: freedom of expression of the opinion of the child, safeguarding the best interest of the child in existing legislative provisions); specialization of judges and prosecutors; possible obstacles (such as: unfair treatment of foreigners, illegal immigrants, minorities, etc; and use of custodial measures.*

6. Monitoring diversion and non custodial sanctions

In Chapter one, section 3 of this report, (on the States' measures to protect rights of C/JDs) CRC provisions on diversion and alternative measures as well as provisions of the GC 10 were mentioned. In this section, questions were on NHRIs monitoring of such measures. The ENOC members were asked whether they monitor diversion from criminal justice system, as provided by the law, issues such as: who decides: police or prosecutor / judicial authorities and who is responsible for implementation of diversion. Further, the NHRIs were asked whether they observe recorded level of implementation and of success of diversion measures; the use of non custodial and measures which are alternative to sentences/punishment (warnings, orders, treatments, corrective labor, etc); child rights' protection during implementation of diversion measures; level of implementation and success of such measures, with particular reference to the existing in every country provisions in the law and the problems faced in practice (such as: supervision and probation orders, participation in social or educational programs, placement in care institutions or shelters, reconciliation measures and specialized foster care). Finally, we also asked the members whether their institutions submit reports on such monitoring and make recommendations for improvement.

In most States judiciary imposes diversion measures, so members commented similarly like in the section on monitoring court proceedings. However, there are States in which the police can divert the case and hence, NHRIs should be able to do the work. Diversion can be and in many countries is used in various stages of the juvenile justice process. The police can divert a case, usually under directions/guidelines of the prosecutor's office. This may be the truest form of diversion. But the prosecutor should also be allowed to divert a case and not submit it to the court. Although it may not be seen as a true form of diversion, some national laws allow the juvenile court/judge to use one or the other alternative measure taking into account the conditions mentioned before. But with reference to the full respect of human rights and legal safeguards, it is imperative that the law contains specific provisions concerning the possible use of diversion, specifying the nature, duration and consequences of (non) completion of a diversion measure, the authorities such as the police, the prosecutor, the court or other agencies who have the power to decide in favour of diversion and for what kind of offences and/or offenders. Respect for human rights goes along with independent monitoring and this is where some ENOC members see a window of opportunity.

The **Hungarian** institution reported: The ombudsman has no competence to supervise or reconsider the judgements on measures/penalties; or any kind of judicial procedures by the court. The probation supervision service is investigated by the ombudsman this year, because they are part of the Ministry of Justice. Similarly, and as previously mentioned, the **Polish** institution also commented on their mandate and stated that they do not monitor diversion measures directly and that the "body responsible is Ministry of Justice." The **Greek Ombudsman** "has no specific task in monitoring diversion and non custodial sentences. In fact he has no right to investigate specific cases that are under the responsibility of the judiciary. However, as a matter included in monitoring the

implementation of children's rights, the Ombudsman has made many efforts to collect information on relevant issues, to discuss with the Ministry of Justice officials the proper implementation of the provisions of the Law and as a consequence has made specific proposals to the government, based on the information selected via reports produced by and discussions organised with probation officers and juveniles prosecutors." **Finland** reported: "we do not investigate or do legal supervising - this is the task of the Parliamentary Ombudsman. We co-operate with them. This area has not been in our focus." **Serbia** commented: "Monitoring could be possible only by collecting information from courts and prosecutors' offices and by control or cooperation procedures targeting Ministry of Justice. On the other hand, diversion programmes are not developed yet, as by-laws which should in-depth develop the provisions of the Law concerning diversion measures have not been issued yet."

Other institutions, such as the **French one**, link monitoring diversion measures to their work with complaints, whether individual or collective. **Lithuania** commented: The Ombudsman carries out an investigation at her own initiative or investigates the circumstances specified in a complaint when alleged facts of any violation of child's rights arise. Though diversion measures are applied to juveniles, the monitoring of their implementation often meets obstacles.

Some institutions report on respective monitoring as being part of broader monitoring programs. Those are the four institutions from the UK: **Wales**: "The Children's Commissioner for Wales does not have a programme of monitoring in relation to the matters set out above however he actively seeks evidence and expert opinion in relation to these matters and reports on progress in the area of youth justice within his annual report." **Scotland**: "There has been a lot of work related to improving legislation in this area throughout 2009-2011, which we were closely involved with to advance the realisation of children's rights in this area." **Northern Ireland**: "these are issues of interest and concern to NICCY and the institution has provided advice and highlighted areas which require review and change to government departments and agencies, however it does not strategically monitor each of these issues." and **England**: "This is not a systematic programme of work but we would make recommendations on this when new proposals are made in this area or when we become aware of children's rights concerns."

Recommendations:

- *NHRIs should monitor diversion from criminal justice system, as provided by the law, issues such as: who decides: police or prosecutor / judicial authorities and who is responsible for implementation of diversion;*
- *They should observe recorded level of implementation and of success of diversion measures; the use of non custodial and (other) measures which are alternative to sentences/punishment (warnings, orders, treatments, corrective labor, etc); child rights' protection during implementation of diversion*

measures; level of implementation and success of such measures, with particular reference to the existing in every country provisions in the law and the problems faced in practice (such as: supervision and probation orders, participation in social or educational programs, placement in care institutions or shelters, reconciliation measures and specialized foster care).

7. Rehabilitation and reintegration after completion of measures

In article 3 of the CRC, the States parties are obliged to “take all appropriate measures to promote physical and psychological recovery and social reintegration...” Too often, delinquent children are labelled for long periods and their recovery and reintegration into society is hampered. It is often the case when children who completed a measure (closed or open), do not have societal support. This is why it is important to check what States are doing to protect such children from being exposed to further violence and from being at risk of going back into delinquency. The ENOC members were asked whether they monitor existing shelters for checking on wellbeing of children coming out of completion of measures and whether they can identify relevant public support programs.

Some members, like the one from **Serbia**, simply stated that “such services do not yet exist in law and in practise.” **Lithuania** commented: “There are no shelters for children coming out of detention centres and that is why the Ombudsman does not monitor them (under the 2009-2013 Juvenile Justice Programme, shelters should start working by 2013). The Ombudsman carries out an investigation at its own initiative or investigates the circumstances specified in a complaint when alleged facts of any violation of child’s rights arise.” Non-existence of such shelters speaks in itself, so **Greek** NHRI comments: “Existing shelters and public support programmes are extremely weak and the Ombudsman has pointed this out in various reports to the government and to the parliament.”

Some members, such as the **French institution**, commented once more that, should a complaint arise, they would react.

Malta replied that: “Children in Malta are not kept in detention centres. However if the question is referring to correctional facilities, then yes to both questions above.”

Wales put the issue in a broader perspective yet again: “As above, this is reviewed at a strategic level. However the Children’s Commissioner for Wales has an Investigations and Advice team which provides information, advice and support to children and young people, including those in the youth justice system. The Investigation and Advise team are actively involved in cases where young people are left without adequate support following release from custody.”

Recommendations:

- *NHRIs should check what States are doing to protect children after they have completed measures, from being exposed to further violence and being at risk of going back into delinquency.*

8. Complaints procedure

The ENOC members were already asked in Chapter one of this report whether some sort of complaint mechanisms are available to C/JDs in their States. The role of NHRIs can be very important here, but only if they are empowered to consider individual and/or collective complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children (GC 2, Para. 13). The questions in this section were aimed at identifying whether a NHRI is legally empowered to receive complaints, including on the issues of C/JD; can children, including C/JD personally submit complaints; can that institution influence the establishment/improvement of complaints and are their decisions in the complaints procedure of a binding character.

All participants in this survey reported having some sort of mechanism to deal with complaints. In many cases, the NHRIs are mandated to deal with complaints, including the ones in the area of C/JDs. Others do not have such mandate, but make it possible for children to approach the institution nevertheless. Most of the decisions based upon complaints are not of a binding character, but their strength is related to the prestige and influence of the institution. **Lithuania** reported: “Every child may apply to the Ombudsman on his/her own and where a child applies, special requirements for the complaint are not required. Decisions of the Ombudsman are recommendatory. The Ombudsman uses persuasion, publicity, criticism and moral authority to ensure their implementation. Over 90 percent of the decisions in the complaints procedure are implemented.” It is similar in **Ireland**: “Although this Office’s recommendations are not binding, the findings of investigations and other work do have an influence on the situation on young people in detention. There was a significant and positive reaction to the work undertaken by the OCO with young people detained in St. Patrick’s Institution, for example.”

Northern Ireland’s office is empowered to receive complaints however depending on the nature of the complaint, it may be referred to other agencies, which are more appropriately placed to respond. Similar to Ireland, it noted that decisions are not binding thus commenting: “The institution can only strongly recommend/advise”. **Wales**: “Youth justice is a non-devolved matter and as such the Children’s Commissioner for Wales decisions are not of a binding character. However the Children’s Commissioner for Wales can provide information, advice and support for young people wishing to make a complaint, this involves referring them to and supporting them through complaints procedures and raising concerns on behalf of a child or young person where complaints procedures are not followed or are inadequate.”

Some institutions do not have complaints mechanisms in their mandate, but that does not prevent them to use their position to influence the issue. **Scotland**: “We have no power to take individual complaints at present. However, we do signpost enquirers on to appropriate mechanisms and support structures.”

In **France**, the institution does not seem to get many complaints regarding violations of rights of C/JDs: “To date, the institution is rarely considering claims in this specific field.”

Finland is not legally empowered to receive complaints but: “We co-operate with the bodies and institutions that do receive complaints and try to help them to work more child friendly.”

Serbia does have a mandate to receive complaints, but the decisions are not of a binding character: “According to the Law on the Ombudsman, this institution is entitled to investigate the proceedings before public authorities and to find whether there has been a violation of the rights of the child, or not. If it finds that child’s rights have been breached, the Ombudsman issues recommendations. Recommendations are not enforceable as legal acts are. Their strength lays in arguments and pressure of the widest public, including especially NGOs and media”.

England announced: “We will shortly publish a report on children’s experience of making complaints in the youth justice system/secure estate”.

Recommendations:

- *NHRIs should be legally empowered to receive complaints, including on the issues of C/JD;*
- *Children, including C/JD have to have opportunities to personally submit complaints;*
- *NHRIs should use their influence for establishment/improvement of complaint procedures*
- *NHRIs should make sure that all children arrested or placed in reformatories and detention centres are informed that they have a right to submit a complaint to the Ombudsman.*

9. Monitoring children offenders below the MACR

In Chapter one, section 9 of the questionnaire, ENOC members were asked whether there is a law in their State protecting rights of children below the MACR who are delinquent, and which State/Government institution/department deals with such children. In this section, the questions were on the NHRIs monitoring legal provisions/reforms to enable broader protection of children in conflict with the law (so as to include children below the MACR). We specifically wished to find out whether institutions monitor measures

taken by the respective State/Government departments to protect rights of child delinquents and placement of such children in any type of state care institution or program. As with other monitoring related questions, the last one was whether their institution submits reports on such monitoring and makes recommendations for improvement.

Most of NHRIs responded that they monitor situations of child offenders below the MACR in some way. As earlier, some do it on a systematic basis, some only if there are particular complaints, like in France, and others monitor the issue within the broader scope of their mandates. Such is the case in **England**: “This is not a systematic programme of work but we would make recommendations on this when new proposals are made in this area or when we become aware of children’s rights concerns.”

Two institutions, from **Ireland** and **Northern Ireland** responded negatively on all points. However, **Northern Ireland** in a similar to England position pointed out that: “While NICCY does not closely monitor this particular group, it does take cognisance of relevant issues as they arise and has highlighted these in its advice and concerns to relevant government departments and agencies.”

The **Greek** institution replied in similar terms: “Children below the MACR are normally treated either by probation services or by welfare services and they are occasionally placed in care institutions. The Ombudsman has focused its attention many times on the operation of these services and institutions.”

Lithuania responded yes on all points and commented: “The Ombudsman carries out an investigation at its own initiative or investigates the circumstances specified in a complaint when alleged facts of any violation of child’s rights arise. Having the right and duty to monitor implementation of laws and other legal acts related to the child’s rights field, the Ombudsman attends the sittings and meetings and takes part in the activities of various commissions and working groups when the issues related to the protection of any right of a child are considered and expresses its opinion. Recommendations for improvement are also given in writing for the adequate institutions.”

Malta commented: “Services for deviant behaviour are generally provided for through the social welfare agency and the education division. The Office of the Commissioner for Children in Malta is in constant contact with both entities.”

Wales commented on the issue of reporting on the results of this particular monitoring: “The Children’s Commissioner for Wales submits an annual report which includes a review of progress in the area of youth justice. The Children’s Commissioner for Wales is actively engaged with the Youth Justice division within Welsh Government and with the Youth Justice Board in Wales.”

Recommendations:

- ***NHRIs should make sure that law and practice enable broader protection of children in conflict with the law (so as to include children below the MACR***



ENYA WARSAW meeting, August 2012 & ENOC Bureau