



Guidance Note

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Systematic Responses to Children under the Minimum Age of Criminal Responsibility who have been (Allegedly) Involved in Offending Behaviour in Europe and Central Asia

UNICEF Regional Office for Europe and Central Asia



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Introduction to the Guidance Note

Since 2000, **UNICEF supports governments in Europe and Central Asia** to establish specialised child justice systems that enable children in conflict with the law to benefit from policies and approaches that promote diversion and alternatives to detention and use detention as a measure of last resort and for the shortest appropriate period of time. While challenges persist across many countries in the region, the combination of high-level commitments by governments and development partners, policy advocacy and technical support to governments has advanced the rights of children in contact or conflict with the law. A **relatively unaddressed child justice issue so far is the treatment of children under the minimum age of criminal responsibility (MACR)**.² The worldwide average of 11.3 years and the median of 12 years³ (see Figure 1) fall far below the minimum of 14 years recommended by the Committee on the Rights of the Child (paragraph 22 of CRC-GC24).⁴ The MACR in the region is overall 14 years, which is in line with the recommendation of the Committee on the Rights of the Child. However, addressing the needs of children under the MACR who have (allegedly) been involved in offending behaviour remains a challenge in most European and Central Asian countries. It is therefore important to understand international standards and practices on dealing with children under the MACR and to document what countries in Europe and Central Asia, including those not covered by UNICEF ECARO, and countries in other regions have already done in this respect. This guidance note informs and guides governments in the region on how to **develop a systematic response to children under the MACR**. There is a lot that countries in the region can learn from each other as well as from countries outside the region with regard to progress in child justice legislation, programmatic and advocacy initiatives and tools and resources that have been developed, including relating to children under the MACR.

1 In this Guidance Note, the European and Central Asian region consist of 22 countries. The 17 European countries are Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Greece, Kosovo, Moldova, Montenegro, North Macedonia, Romania, Serbia, Türkiye and Ukraine. The 5 Central Asian countries are Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan.

2 In 2010, UNICEF Regional Office for Europe and Central Asia (ECARO), at that time called 'UNICEF Regional Office for Central and Eastern Europe and The Commonwealth of Independent States' (CEE/CIS), developed the 'Guidance Note for CEE/CIS on responses to children who have infringed the law but are under the minimum age for prosecution as a juvenile offender'.

3 Nowak, M., United Nations Global Study on Children Deprived of Liberty, United Nations, New York, 2019. In the meantime, Uzbekistan has raised the MACR to 14 years.

4 'CRC-GC24' refers to the Committee on the Rights of the Child's General Comment No.24 on Children's Rights in the Child Justice System, 2019.



Minimum Ages of Criminal Responsibility Worldwide

Age	10	12	14	15
7	Australia Bahamas Bhutan Cameroon Côte d'Ivoire Fiji Guinea Guyana Ireland Kiribati Lesotho Malaysia Marshall Islands Nauru Nepal New Zealand Pakistan Palau Papua New Guinea Saint Kitts and Nevis Samoa South Africa Suriname Switzerland Syria Thailand Tuvalu United Kingdom*	Afghanistan Andorra Belgium Bolivia Brazil Canada Costa Rica Dominica Ecuador El Salvador Eritrea Eswatini Gambia Ghana Honduras Hungary Israel Jamaica Jordan Mexico Morocco Netherlands Panama Portugal Republic of Korea Saint Lucia San Marino Saudi Arabia Sri Lanka Turkey Uganda Venezuela	Albania Armenia Austria Azerbaijan Belarus Bosnia and Herzegovina Bulgaria Cambodia Central African Republic Chile China Colombia Croatia Cyprus Democratic People's Republic of North Korea Democratic Republic of the Congo Denmark Estonia Georgia Germany Italy Kazakhstan Kyrgyzstan Latvia Liechtenstein Lithuania Malta Moldova Mongolia Montenegro North Macedonia Paraguay Peru Romania Russian Federation Rwanda Serbia Sierra Leone Slovakia Slovenia Somalia South Sudan Spain Tajikistan Togo Turkmenistan Ukraine Vietnam	Burundi Czech Republic Finland Iceland Lao People's Democratic Republic Maldives Norway Philippines Poland Sweden
8	Antigua and Barbuda Botswana Indonesia Iran Kenya Saint Vincent and the Grenadines Solomon Islands Zambia	Algeria Benin Burkina Faso Chad Comoros Congo Djibouti Dominican Republic France Gabon Greece Guatemala Haiti Madagascar Mali Monaco Nicaragua Niger Senegal Tunisia Uruguay Uzbekistan		Angola Argentina Cabo Verde Equatorial Guinea Guinea-Bissau Luxembourg Mozambique São Tomé and Príncipe Timor-Leste
9	Bangladesh Belize Ethiopia Iraq Oman			

THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY AGE SHOULD BE AT LEAST 14 YEARS (CRC COMMITTEE, GENERAL COMMENT NO. 24).

*Scotland (12)



1. The concept of ‘minimum age of criminal responsibility’

The ‘minimum age of criminal responsibility’ is the age below which **the law determines that children do not have the capacity to infringe the criminal law** (paragraph 8 of CRC-GC24). A child under the MACR cannot be held criminally responsible for alleged offences because she/he lacks the capacity to commit an offence and, therefore, cannot be formally charged with an offence, prosecuted for the commission of an offence, subjected to any criminal law procedures or measures or detained.⁵ The significance of the MACR is that it recognizes that children have to attain **emotional, mental and intellectual maturity** to be held responsible for their actions.⁶ Children under the MACR do not have this capacity to fully understand the consequences of their actions. The MACR applies **nationwide** and refers to **the age of the child at the time of the commission of the alleged offence**. A child at or above the MACR cannot be prosecuted in any court for an offence in which she/he has been involved while under the MACR.⁷ The involvement of children under the MACR in offending behaviour is an indicator of potential vulnerability that has to be **dealt with by the social welfare system as part of its secondary prevention strategy** and not by the child justice system.⁸ Special protection measures for children under the MACR should address the root causes of their offending behaviour; support their parents/caregivers; and should never be punitive or disciplinary in nature, nor entail deprivation of liberty. In some countries, this may require organizing additional or specific capacity-building initiatives for relevant social welfare agencies.

In **Montenegro**, article 2 of the Law on Treatment of Juveniles in Criminal Proceedings (2011) says that *“A person who at the time of commission of an unlawful act which is qualified by law as a criminal offence is younger than 14 years (a child) may not be tried in criminal proceedings nor may be subject of sanctions and measures provided for by this Law.”*

5 In some reports, children under the MACR are called ‘underage minors’. It is recommended not to use this broad term as it might be unclear that it refers to children under the MACR and not, for example, to children under the minimum age of admission to employment, marriage, consent to sexual intercourse, etc.

6 In a few countries in the world, reference is made to puberty as the starting point of criminal responsibility. Under the Convention on the Rights of the Child, this is deemed unacceptable and considered an arbitrary and discriminatory practice.

7 It is not recommended to use the term ‘minimum age of prosecution’ as a synonym for ‘minimum age of criminal responsibility’, because these two ages are not necessarily the same. [Goldson, B., *Unsafe, Unjust and Harmful to Wider Society: Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales*, Youth Justice 13(2), Sage Journals, 2013.] National legislation may set a higher age as the age at which a child may be prosecuted within the child justice system than the MACR. The same applies to the age at which a child can actually be sentenced to deprivation of liberty. Also, the Committee of the Rights of the Child uses only the term ‘minimum age of criminal responsibility’ and no other terms (CRC-GC24).

8 In some cases, especially when children show signs of developmental delay or neuro-developmental disorders or disabilities, the social welfare agency involved may need to refer the child (and her/his parents/caregivers) to the mental health system (see also footnote 17).



In **Serbia**, article 2 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (2006) and article 4(3) of the Criminal Code (2005) state that neither criminal sanctions nor any other measures, such as diversion, can be imposed or applied to children under the MACR (14 years) at the time of commission of an unlawful act provided under law as a criminal offence. If a child under the MACR is apprehended by a police officer, she/he is immediately referred to the social protection system.

2. Children under the minimum age of criminal responsibility involved in offending behaviour, status offences and other disrupting behaviour

This Guidance Note covers children under the MACR who are (allegedly) involved in offending behaviour, i.e. “behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence” (paragraph 11 of CRC-GC24). Both the MACR and what is considered an offence slightly differ according to national law on child justice. In actual practice, children under the MACR may be involved in ‘offences’ such as shoplifting, theft, vandalism, graffiti, assault and sexual harassment, as well as other offending behaviour. It is important to distinguish this category of children from the following two categories of children who may be under MACR or at or above the MACR:

- **Children involved in status offences.**

Status offences are acts, conduct and omissions that are not considered criminal offences if committed by an adult, but are criminal offences when committed by a child. Typical status offences include vagrancy, roaming the streets, truancy, running away from home or an institution, being beyond parental control, school disobedience, drinking alcohol, and adolescents engaging with one another in consensual sexual acts. The Committee on the Rights of the Child urges States Parties “to remove status offences from their statutes” (paragraph 12 of CRC-GC24).⁹ It is in the best interests of children involved in status offences, like children under the MACR who are involved in offending behaviour, to be dealt with by the social welfare system, and not by the child justice system.

- **Children involved in other disrupting behaviour.**

Children can be involved in various other behaviours that might be considered disruptive for others but that are not considered offences (if the child would have been at or above the MACR) or status offences. For example, children can be involved in gambling, thrill seeking, rowdy behaviour, verbal aggression, impulsiveness, intimidation and bullying, and hanging around with peers in public places. In the literature, as well as in some national laws, these

⁹ See also commentary on Beijing Rule 3.1. (1985); Riyadh Guideline 56 (1990); Paragraph 29 of the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2015.



kinds of behaviours of children are also called 'anti-social behaviours' or 'deviant behaviours'. Due to the stigmatising connotation of these terms, 'disrupting behaviour' is used in this guidance note. Children involved in disrupting behaviour as described above, like children under the MACR who are involved in offending behaviour and/or children involved in status offences, should be dealt with by the social welfare system and not the child justice system.

The common characteristic of the behaviours of the three groups of children discussed in this section may be that it is about so-called

'**externalized behaviours**'. Externalized behaviour of children (under and at or above the MACR) is defined as "negative behaviour that is acted out by an individual and is directed toward the environment, other individuals or objects" or "problem behaviour directed outwardly toward others or the social environment."¹⁰ The **social welfare system** has the primary responsibility for these three groups of children and should never respond to offending behaviour, status offences and other disrupting behaviour through placement in a closed institution.

"I want to give a really strong message that never ever a child under the MACR can be transferred to a closed institution. The same goes for children above the MACR who have been involved in status offences or antisocial behaviour. They have not committed any penal offence and, therefore, cannot be deprived of their liberty. I do know that this will be difficult, especially as police and prosecution always want to have such children 'out of the way'. And parents as well sometimes." Justice Renate Winter.

Source: Roundtable on 29-11-2022.

3. International and European standards on the minimum age of criminal responsibility

The **Convention on the Rights of the Child (1989)** covers the MACR in article 40(3). It states 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, and, in particular: (a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law." The **Standard Minimum Rules for the Administration of Juvenile Justice (1985)**, also called the 'Beijing Rules', precede the Convention on the Rights of the Child (1989) and explain why the MACR should not be fixed too low. "The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially

¹⁰ <https://study.com/learn/lesson/externalizing-behaviors-overview-examples.html>; <https://www.parentingforbrain.com/externalizing-behavior>. 'Internalized behaviour' of children and adolescents, as opposed to 'externalized behaviour', is behaviour directed inwardly toward oneself, such as self-harm, anxiety, depression, suicidality, social withdrawal, etc.



antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.)” (commentary to rule 4). The Committee on the Rights of the Child elaborates in its recent **General Comment No.24 (2019)** on children’s rights in the child justice system, including the MACR (paragraphs 11 & 20-27). Paragraph 22 mentions that “Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No.20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses.” The **European Rules for Juvenile Offenders Subject to Sanctions or Measures (2008)** do not use the term ‘minimum age of criminal responsibility’, but it is mentioned that “the minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law” (rule 4). In the Commentary to the European Rules (2008), however, it is stated that rule 4 includes the determination of the age of criminal responsibility as well as the age from which more punitive penal measures can be taken. In the European context, the MACR “should be related to the age at which juveniles assume civil responsibilities in other spheres such as marriage, end of compulsory schooling and employment” (commentary to rule 4).¹¹ The **Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010)** follow the United Nations standards, i.e. “the minimum age of criminal responsibility should not be too low and should be determined by law” (guideline 23).

4. Minimum age of criminal responsibility worldwide

In 2015, the Child Rights International Network (CRIN) conducted **worldwide research on the MACR**.¹² Keeping in mind that national legislation on the MACR might have changed since this research took place, the conclusion was: “CRIN has collected worrying evidence that a number of States in all regions, far from fulfilling their legal obligations to respect the rights of all children,

11 The conclusion of a study on legal minimum ages, including the MACR, in Latin America and the Caribbean (LAC), shows that “in the overwhelming majority of the countries in LAC, the age for the end of compulsory education is higher than the age of criminal responsibility”. [UNICEF Regional Office for Latin America and the Caribbean, Legal minimum ages and the realization of adolescents’ rights; A review of the situation in Latin America and the Caribbean, Panama, 2016.]

12 <https://home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility?rq=criminal%20respons>. See also: Child Rights International Network (CRIN), Policy Paper: Stop Making Children Criminals, United Kingdom, 2015.



are moving backwards in their approach to juvenile justice and criminalising more and younger children. Some are justifying this by misusing the Committee on the Rights of the Child's unfortunate suggestion, in its 'General Comment No. 10 (2007) on the rights of the child in juvenile justice' that 12 years is an internationally acceptable minimum age of criminal responsibility". The 2 countries that lowered their MACR around 2015 were Panama and Denmark. The 13 countries with proposals to lower their MACR at that time were Argentina, Bolivia, Brazil, France, Georgia, India, Mexico, Peru, Philippines, Republic of Korea, Russian Federation, Spain and Uruguay. CRIN identified 28 countries with a MACR of seven years and 12 countries where that age was eight years. In total, **87 countries had set their MACR lower than 12 years**, which was the recommended minimum at that time (paragraph 32 of General Comment 10 of the Committee on the Rights of the Child). Globally, the MACR ranged from as low as 7 or 8 years to as high as 15 or 16 years. In the 17 European countries covered by this guidance note, the MACR is 14 years (Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kosovo¹³, Moldova, Montenegro, North Macedonia, Romania, Serbia and Ukraine), except in Türkiye that has a MACR of 12 years. In the five Central Asian countries, the MACR is also 14 years (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). According to the European Union Agency for Fundamental Rights (FRA), the MACR in EU member states varies from 10 to 16 years, and corresponds in all these countries with the age that children in conflict with the law can be subject to custodial sanctions and measures (detention/deprived of their liberty).¹⁴

5. Increase of the minimum age of criminal responsibility from 12 years to 14 years

General Comment No.24 (2019) on children's rights in the child justice system replaced General Comment No.10 (2007) on children's rights in juvenile justice and reflects the developments that have occurred since 2007, including those relevant to the MACR. General Comment No.10 stated that *"a minimum age of criminal responsibility below the age of 12 years is considered ... not to be internationally acceptable"* (paragraph 32). General Comment No.24 **raised the recommended MACR to at least 14 years**. *"States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention"*

¹³ Under United Nations Resolution 1244.

¹⁴ European Union Agency for Fundamental Rights, Children's rights and justice, Minimum age requirements in the EU, Luxembourg, 2018.



(paragraph 22). The European Network of Children’s Ombudspersons (ENOC) advocates “to progressively raise the minimum age of criminal responsibility to 18 years and developing innovative systems for responding

In 2021, Uzbekistan raised the minimum age of criminal responsibility from 13 years to 14 years.

to all offenders below that age which genuinely focus on their education, reintegration and rehabilitation”.¹⁵ As mentioned above, **child development and neurological research** indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing.¹⁶ Therefore, these children are unlikely to understand the impact of their actions or to comprehend criminal proceedings.¹⁷ Since the Committee on the Rights of the Child recommended raising the MACR to at least 14 years, 6 additional countries have introduced reforms to do so. In total, **69 countries now have a MACR set at 14 years**, compared to 63 countries in 2019.

6. Only one minimum age of criminal responsibility

Various countries worldwide allow exceptions to the MACR and apply **two minimum ages of criminal responsibility**, with a presumption that a child who is at or above the lower age limit but below the higher age limit lacks criminal responsibility unless sufficient maturity is demonstrated. This practice is known as the **‘doli incapax’ rule**, meaning ‘incapable of doing harm’ or ‘incapable of crime’ in Latin, and is often part of the legal system of countries with a common-law tradition.¹⁸ The ‘doli incapax’ rule refers to the rebuttable presumption in law that a child is incapable of committing an offence and, as such, it acts as a filter to criminal prosecution by ensuring consideration of the child’s maturity and capacity to commit an offence.¹⁹ It requires the

15 European Network of Ombudspersons for Children (ENOC), Statement on Juvenile Justice: Europe’s children’s champions challenge governments to respect young offenders’ rights, Stockholm, 2003.

16 UNICEF Office of Research – Innocenti, The Adolescent Brain: A second window of opportunity; A Compendium, Florence, 2017; National Association for Youth Justice (NAYJ), Criminalising children for no good purpose: The age of criminal responsibility in England and Wales, United Kingdom, 2012; Weijers, I. & Grisso, T., Criminal responsibility of adolescents, Youth as junior citizenship, Chapter in Junger-Tas, J. & Duenkel, F. (eds.), Reforming Juvenile Justice, p.45-p.67, Netherlands, 2009.

17 In this respect, it is important to understand that children with developmental delays or neurodevelopmental disorders or disabilities, such as autism spectrum disorders, foetal alcohol spectrum disorders or acquired brain injuries, cannot be considered criminally responsible, even if they have reached the MACR. Children suffering such serious problems should not be in the child justice system at all (paragraph 28 of CRC-GC24), but require assistance of the social welfare system, educational system, social protection system and/or mental health system.

18 The ‘doli incapax’ rule evolved in English common law in the 14th century. British legal influences carried it around the world, but not as much in the European and Central Asian region as, for example, in the South Asian region and African region.

19 A rebuttable presumption is an assumption made by a court that is taken to be true unless someone comes forward to contest it and to prove otherwise. Rebuttable presumptions are part of both common law and civil law. For example, the rebuttable presumption that a child in conflict with the law is presumed innocent until proven guilty is part of both in common law and civil law. An example from civil law is the rebuttable presumption for shared parenting after divorce, where the default is that the child spends equal amounts of parenting time with her/his mother and father, with exceptions for child abuse and neglect.



prosecution to present evidence not only that the child has been involved in the alleged offence, but also that the child has the **maturity and ability to understand** that the behaviour in question was an offence, rather than just naughty or mischievous behaviour, and to fully foresee the consequences of her/his behaviour. The ‘lower doli incapax age limit’ is the MACR and no child younger than that age can be held criminally responsible. Between the MACR and the ‘higher doli incapax age limit’, children are assumed to be not criminally responsible unless and until court evidence specifically proves that a child in a given case is capable and mature enough to face criminal responsibility. If the court overturns the child’s presumed immaturity and inability to commit an offence, actual guilt for the alleged offence must, of course, still be proven. Beyond the ‘higher doli incapax age limit’, all children are potentially criminally responsible. Although the ‘doli incapax’ rule was initially developed as a protective system, the Committee on the Rights of the Child has observed that the practice leaves much to the discretion of the court and results in **discriminatory practices** (paragraph 26 of CRC-GC24). Therefore, States parties are urged to set **one appropriate minimum age** and to ensure that such legal reform does not result in a retrogressive position regarding the MACR (paragraph 27 of CRC-GC24). Worldwide, at least 39 countries set different age limits for different offences, usually allowing children to be held criminally responsible for more serious offences at a lower age.²⁰

Article 27 of the Penal Code of **Belarus** holds children from the age of 16 years criminally responsible for all offences and for a large number of specifically named offences from the age of 14 years. Offences for which the lower minimum age of criminal responsibility applies are generally violent in nature, but hooliganism and theft are also included.

7. No exceptions to the minimum age of criminal responsibility in specific cases or geographical areas

Some countries allow exceptions to the MACR, i.e. the use of a lower MACR in cases where the child has been involved or is accused of committing a serious offence. For example, **some anti-terrorism laws** do not respect the statutory MACR, while some **emergency laws** that apply to specific geographical areas or political subdivisions use a lower MACR with respect to specific crimes.²¹ The Committee on the Rights of the Child has expressed its concern about child justice systems with exceptions to the MACR. “Such practices are usually created to respond to public pressure and are not based on a rational understanding of children’s development” (paragraph 25 of CRC-GC24). The Committee “strongly recommends” that states abolish such approaches and set **one standardized age** below which children throughout the country cannot be held responsible in criminal law procedures, without exception.

20 Nowak, M., United Nations Global Study on Children Deprived of Liberty, United Nations, New York, 2019.

21 UNICEF Regional Office for South Asia (ROSA), South Asia and the Minimum Age of Criminal Responsibility: Raising the Standard of Protection for Children’s Rights, Bangkok, 2005.



8. Birth registration and age assessment as safeguards

It is well known that the **lack of birth registration** opens the door to manipulation of children's ages, including the MACR. Although this is not a widespread challenge in Europe and Central Asia, it is recommended that **provisions on age assessment** are incorporated into national child justice laws.²² In order to understand whether a child who is allegedly in conflict with the law can be held criminally responsible, the court needs to know if she/he has already reached the MACR. Age assessment, however, should be used as a **measure of last resort** where there is reason to doubt the age of the child and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the child's age. The least invasive method of age assessment must be used, and the **dignity of the child respected** at all times. It is important to recognize that the assessment of age is not an exact science. It is a process within which there will always be an inherent margin of error and a child's exact age cannot be established through medical or other physical examinations.²³ The Committee on the Rights of the Child states in this respect that *"if there is no proof of age and it cannot be established that the child is below or above the minimum age of criminal responsibility, the child is to be given the benefit of the doubt and is not to be held criminally responsible"* (paragraph 24 of CRC-GC24).

In **Belarus** when there are no documents or evidence of the child's age, the age is assessed by court-medical expertise. There are no regulations on this point in the Criminal Code, but there is a norm in the order of the Plenum of the Supreme Court #3 dd. 28.06.2002. Paragraph 14 states that *"In determining the age by the expert committee, the birthday of the accused must be the last day of the year named by the experts, and the determination of the minimum and maximum number of years should be based on the minimum age assumed by the experts for such a person"*. This order is considered as a normative act according to the Law on Normative Acts #130-3 dd. 17.07.2018.

According to article 26 of the Juvenile Justice Code of **Georgia**, if there is uncertainty about the age of the child, an investigator, a prosecutor or a judge, on the motion of the party or by their own initiative, shall immediately take a decision on age assessment based on official documents, information provided by the family, medical or social inquiry reports and/or any other available evidence. If established that the person has not attained majority without ascertaining the exact age, it shall be presumed that the person is under the age of 14 years for the purposes of criminal liability and under the age of 16 years for the purposes of administrative liability, until otherwise proven.

²² Article 11 'Age Assessment' of the Juvenile Justice Model Law, 2013.

²³ Commentary to Article 11 'Age Assessment' of the Juvenile Justice Model Law, 2013.



9. Children under the minimum age of criminal responsibility are in need of special protection

Children under the MACR, by definition, do not have the maturity and capacity to commit offences. In actual practice, however, these children may be involved in acts that would have been an offence if committed by a child at or above the MACR or an adult. Therefore, children under the MACR should **not be considered (alleged) child offenders**²⁴ but, first and foremost, children in need of special protection. Offending behaviour by children under the MACR is often the result of poverty, family violence and/or homelessness. As mentioned above, their involvement in offending behaviour is an **indicator of potential vulnerability** that has to be addressed by the social welfare system. **Special protection measures** for children under the MACR should address the root causes of their behaviour and support their parents/caregivers. The measures should be tailored to the child's needs and circumstances and based on a **comprehensive and interdisciplinary assessment** of the child's familial, educational and social circumstances; social support system; motivation for her/his offending or problematic behaviour; and particular characteristics and special needs.

Article 21 of the Law on Justice for Children of **North Macedonia** (amended version of 2020) states that "a child at risk below the age of 14 is any child who at the time of committing the action which is defined by law as a criminal offence for which a fine or imprisonment of more than three years is prescribed or an action prescribed by law as a misdemeanour has turned 5 years and is below 14 years of age."

10. Children under the minimum age of criminal responsibility exploited by criminal adults are child victims

Worldwide, there is concern that criminal adults use children under the MACR as well as children at or above the MACR to carry out crimes, especially drug trafficking. Children under the MACR may be particularly vulnerable to such exploitation and organized crime. They may be **used in criminal activities and violent acts** by adult criminals, criminal gangs, armed groups, older peers or even relatives. If the child is caught, it is unlikely that the responsible adult(s) will ever be held accountable for either the criminal activity or the exploitation of the child. From a child's rights perspective, **criminally exploited children are victims of crime** whose rights must be

²⁴ Although children under the MACR who have been (allegedly) involved in offending behaviour are not considered child offenders, the use of the term 'children in conflict with the law' may be appropriate (see section 16).



protected.²⁵ They must be assured physical safety as well as appropriate and effective care and protection from continued exploitation and should be entitled to all rights of child victims and witnesses of crime, including access to justice to seek and obtain a timely remedy for violations of their rights.²⁶ The responsible criminal adults, on the other hand, must be prosecuted. The vulnerability of children under the MACR to exploitation by adult criminals is used by some governments as **argument for not raising the MACR**, in the belief that it might increase criminal exploitation of children by adults. This is, however, an incorrect argument as both children under the MACR and children at or above the MACR should be considered child victims in need of appropriate and effective care and protection when exploited by criminal adults. If children under the MACR or children at or above the MACR are allegedly criminally exploited by adults and used for organized crime, law enforcement officials should **thoroughly investigate the case** in order to find out the exact role of the adult(s). If criminal exploitation is proved, the responsible adult(s) must be prosecuted. For some countries, this might require legal amendments.

According to article 16(3) of the Criminal Code of **Belarus**, the perpetrator is a person who directly committed a crime, who directly participated in its commission together with other persons, who committed a crime by using other persons who are not criminally liable under the law, or who committed the crime by negligence. Article 172 of the Criminal Code criminalizes the involvement of a minor in committing a crime.

Article 127 of the Criminal Code of **Uzbekistan** criminalizes involving children in the commission of crimes. The article does not refer specifically to children under the MACR, but relates to all children.

25 Article 36 of the CRC: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare." Article 39 of the CRC: "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts; Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child." The rights of child victims/witnesses of crime are listed and explained in: ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. Article 3(a) of the Palermo Convention: "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

26 ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; UNODC & UNICEF, Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime, New York, 2009.



11. Handing over children under the minimum age of criminal responsibility to the social welfare system

There are different circumstances in which children under the MACR can come into contact with police. Children who are caught in the act of an offence and apprehended are usually brought to a **child police unit**, if such facilities exist in that country or location. The police officer in charge should without delay contact the child's parents/caregivers and the competent social welfare agency. If the child is brought to a **general police station** and turns out to be under the MACR, or the child's age is unknown, the police officer in charge should contact the child police unit or the competent social welfare agency (as prescribed by the memorandum of understanding or protocol between general police and child police).²⁷ If required, the police officer should arrange the child's transportation to the child police unit or social welfare agency in a car that cannot be identified as police car. In any case, children under the MACR may never stay overnight in a general police station or child police unit and should not spend more time in the general police station or child police unit than absolutely necessary prior to the handover of the case to the social welfare agency. The social welfare agency should take responsibility for children under the MACR as soon as possible. This requires the establishment of a **referral mechanism between police and the social welfare system**. No formal records of children's (allegedly) offending behaviour are kept by the police (or other child justice professionals). However, police as well as social welfare agencies may keep **confidential records** of children under the MACR for administrative, review, statistical and research purposes. These records may never be viewed as criminal records or used in criminal proceedings when the child is at or above the MACR or a (young) adult and should be terminated after a certain period of time regulated by legislation, preferably child-specific legislation. If immediate medical attention is required, the police officer or social welfare staff should ensure that the child is brought to the hospital without delay. The social service worker assigned to the case has the following **responsibilities in cases of children under the MACR**:²⁹

- Ensuring that the child is not kept longer in the child police unit/general police station than absolutely necessary to complete initial formalities.
- Contacting the child's parents/caregivers and inviting them to come to the social welfare agency (if they are not already accompanying their child).
- Identifying other adult relatives or persons who may support the child if the parents/ caregivers are unable or unwilling to come.
- Acting as the child's case manager from the initial contact.
- Establishing a professional relationship and building rapport with the child and his/her parents/ caregivers.

²⁷ Guideline 1 of the Regional Guidelines on Collaboration in Cases of Children below the MACR (UNICEF MENARO, 2017).

²⁸ Children above the MACR have to be dealt with in a similar manner.

²⁹ Guidelines 2, 3 & 5 of the Regional Guidelines on Collaboration in Cases of Children below the MACR (UNICEF MENARO, 2017). The correct conduct and exact procedures to be followed should be stipulated in a (legally binding) memorandum of understanding/protocol between the social welfare agency and child police unit.



- Closely coordinating with the police officer/investigator of the child police unit during both the investigation of the alleged offending behaviour of the child and during the interviewing of the child, if conducted by a child police investigator or other child justice professional (see section 12).
- Contacting legal aid if the child and his/her parents/caregivers express their wish to have a lawyer or paralegal present during the investigative interview.
- Requesting the (child) court to order a medical and/or social examination to assess whether the child is below, at or above the MACR if the child's age is unknown and cannot be verified through available certificates or other documents (see section 8).³⁰
- Inviting an interpreter if the child and/or his/her parents/caregivers do not understand the local language.
- Inviting a child expert if the child has special needs and requires special assistance (e.g. a sign language expert for deaf children, a psychologist if the child seems to be upset, traumatised, vulnerable, etc.).
- Accompanying the child during the investigative interview, if conducted by a child police investigator, and during the medical and/or social examination(s), if the parents/caregivers or child expert/special support person are/is not accompanying the child.
- Providing the child and his/her parents/caregivers with the necessary information, in a child-sensitive, gender-sensitive and age-appropriate manner, including about the next steps, procedures, available support services, which professional(s) will be in touch with them (if any) and how quickly.³¹
- Inviting the child and his/her parents/caregivers to express their views and concerns, and giving their views and concerns due weight when taking decisions.
- Preparing the psychosocial report on the child's needs and circumstances as well as the needs and circumstances of the child's parents/caregivers and family.
- Developing a tailored and individualized response in collaboration with the child and her/his parents/caregivers in order to prevent future offending behaviour from happening, if necessary.
- Planning the process and taking decisions guided by the best interests of the child as a primary consideration.
- Explaining, in a child-sensitive, gender-sensitive and age-appropriate manner, why the final decision could not be in line with the child's views and concerns, if that is the case.
- Providing required support and organizing required programmes or services for the child and/or her/his parents/caregivers and family and/or referring them to programmes or services managed by other organizations (CSOs, NGOs, educational organizations, mental health organizations and organizations in charge of employment).
- Monitoring the child's participation and progress in the programmes or services and whether the parents/caregivers/family benefit from them.

³⁰ Relevant certificates and documents can be a birth certificate, school records, health records.

³¹ The social service worker/case manager may not consider providing information to the child's parents/caregivers as an alternative to communicating the information to the child her/himself.



12. Investigative interviews with children under the minimum age of criminal responsibility

The social service worker or case manager and police investigator involved in the case discuss and decide together whether it will be necessary to conduct an **investigative interview with the child** in order to establish, beyond reasonable doubt, whether the child has been allegedly involved in behaviour that would have been an offence if she/he would have been at or above the MACR and whether other persons have been harmed by the child's offending behaviour.³² For example, it might require an investigative interview to determine whether the child was used by peers and/or adult criminals. If such an interview is needed, the social service worker or case manager and police investigator decide together which **specially trained interviewer** will conduct the investigative interview, including the gender of the interviewer, and when and where the interview will take place. Potential interviewers include:

- A social service worker, psychologist or another trained professional of the social welfare organization involved in the case (preference)
- A child police investigator or another trained professional from the child police unit involved in the case
- A child prosecutor (in some jurisdictions)
- A combination of the above-mentioned professional interviewers, preferably a social service worker or psychologist and a child police investigator

The investigative interview is conducted in a **child-friendly room**, preferably in the social welfare agency, or arranged in a **private room** in the child's home, school or another place where the child feels comfortable. If national legislation requires that the child prosecutor and/or the court has to be informed about any file of an alleged child-offender under the MACR and/or any investigative interview with an alleged child-offender under the MACR, the social service worker or case manager or child police investigator involved in the case fulfils this obligation. The specially trained interviewer thoroughly prepares the interview to ensure that the child will be subjected to **only one investigative interview** and that the interview will be conducted in a **child-sensitive, gender-sensitive and age-appropriate manner**. The investigative interview is conducted in the presence of the child's parents/caregivers (if in the best interests of the child) and their lawyer or paralegal (if requested). The interviewer provides the child a **full opportunity to be heard and to contest any allegations** in regard to the child's behaviour and makes all reasonable efforts to verify the grounds for any allegations that the child denies. The **investigative interview is recorded** for investigation purposes and stored in a secure place with restricted access. If it turns out that the child has not been involved in the alleged offending behaviour³³, the social service

³² Guideline 4 of the Regional Guidelines on Collaboration in Cases of Children below the MACR (UNICEF MENARO, 2017).

³³ In actual practice, this might be children who have been accused of the 'offence' by the actual adult perpetrators or actual older peer perpetrators.



worker or case manager explains to the child and his/her parents/caregivers that there will be no more investigative or other procedures and that no information about the child and/or his/her parents/caregivers will be disclosed to anybody, including the child's school. Any professionals involved in cases of children under the MACR ensure confidentiality and are **bound not to disclose any information** that may lead to the identification of the child and her/his parents/caregivers.³⁴

13. Procedural safeguards in cases of children under the minimum age of criminal responsibility

Children under the MACR who have been (allegedly) involved in offending behaviour, like all other children, are entitled to the **rights set forth in the Convention on the Rights of the Child**.

Also, when the rights of children under the MACR are violated, they are entitled to access to justice to seek and obtain a just, equitable and timely **remedy for violations of their rights**.

The guiding principles and procedural rights listed below are of special importance in cases of children under the MACR:

Guiding principles of the CRC:

- Right to non-discrimination (Article 2(1)).
- Best interests of the child (Article 3(1)).
- Right to life, survival and development (Article 6).
- Right of the child to express her/his views (Article 12).

Procedural safeguards incorporated in the CRC:

- Right not to be separated from parents (Article 9(1)).
- Right to privacy (Article 16).
- Right to protection when without parental care (Article 20).

“I think it is really important to keep in mind that being under the MACR doesn't mean that those children should never be dealt with by the justice system and should not have access to justice to claim their rights if violations are occurring. If a child under the MACR is a victim of violence or abuse in the house, she/he still needs to have maybe a lawyer who will represent her/his interests and rights working hand in hand with the social worker and other experts to actually seek a remedy for the violation of that right in front of the court. Also, there are some administrative processes which are being applied in cases of children under the MACR that de facto deprive them of their liberty in institutions, even if it is the 'Happy Valley Institution'. But the fact that the child is not free to leave at will, means that she/he should have the means to have somebody representing her/him, including a lawyer if needed to ensure that the child can leave the institution and is not deprived of her/his liberty without due process.” Kirsten Di Martino (Senior Advisor Child Protection, UNICEF headquarters). Source: Roundtable on 29-11-2022.

³⁴ Children at/above the MACR have to be dealt with in a similar manner.



- Right to periodic review of placement (Article 25).

In addition, **children under the MACR who are involved in child justice proceedings** (see sections 10, 11 & 12) are entitled to the rights listed in Articles 37 & 40 of the CRC, including the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; the right to be informed; the right to have legal or other appropriate assistance; the right to interpretation, the right not to be compelled to give testimony or to confess guilt; the right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his/her behalf under conditions of equality.

14. Family-based and community-based interventions for children under the minimum age of criminal responsibility

The Committee on the Rights of the Child promotes **evidence-based interventions**, including early interventions, for children under the MACR. It states that *“early intervention for children who are below the minimum age of criminal responsibility requires **child-friendly and multidisciplinary responses to the first signs of behaviour** that would, if the child were above the minimum age of criminal responsibility, be considered an offence”* (paragraph 11 of CRC-GC24). Where evidence-based intervention programmes do not yet exist, they should be developed and reflect not only the multiple psychosocial causes of children’s behaviour but also the protective factors that may strengthen resilience. Interventions must be **tailored to the child’s needs and circumstances** and, therefore, based on a comprehensive and interdisciplinary psychosocial assessment. Such an assessment is of particular importance and in the child’s best interests where the family situation of the child is unknown or gives cause for concern, for example parents and/or siblings in conflict with the law, or the nature and circumstances of the child’s offending behaviour suggest that special measures may be required, for example in case of serious and repeated offending behaviour.³⁵ As an absolute priority, children should be **supported within their families and communities**. Such family-based and community-based

“I think a critical group of stakeholders are those who are not part of the child justice system or the child protection system. Those are parents, caregivers, family members, and community members. They have to have the right mindset too. We all know the examples of parents who simply don’t want to see their children anymore. We all know the situations where the community doesn’t accept a child who has been involved in a criminal ‘offence’ and is excused and set free. We have to tackle these audiences and we can only do that with the right framework. I think it is absolutely critical that we use the child rights-based frame, because if we use that frame, it is very likely that we will serve the interest of society better and I think that is really a claim that we have to make.” Prof. Ton Liefwaard. Source: Roundtable on 29-11-2022.

³⁵ Guideline 6 of the Regional Guidelines on Collaboration in Cases of Children below the MACR (UNICEF MENARO, 2017).



programmes or services are organized by social welfare agencies, possibly in collaboration with local CSOs or NGOs and/or the educational sector, and enable the child to remain at home and in his/her normal school setting and support the child's parents/caregivers, siblings and family. The Committee on the Rights of the Child states that "*children below the minimum age of criminal responsibility are to be provided with **assistance and services according to their needs**, by the appropriate authorities, and should not be viewed as children who have committed criminal offences*" (paragraph 23 of CRC-GC24), but does not provide concrete examples of programmes or services that may prevent children, to the extent possible, from future offending behaviour. Internationally, the following **family-based and community-based programmes or services** are promoted as evidence-based secondary prevention strategies, which means that they can also be used for children under the MACR:³⁶

- Supplementary educational tutoring (e.g. study skills, homework support, support with specific subjects (writing, mathematics, reading, etc.), preparation for tests or exams, one-on-one support for specific learning problems)
- Structured recreational and leisure activities and programmes (e.g. sports, culture, music, arts, religion)
- Participation in activities and programmes of a day centre (e.g. education, vocational training, recreation, individual or group counselling, life skills)
- Participation in life skills and competency development programmes (e.g. resisting peer pressure, anger management, dealing with emotions and stress, problem solving, health and hygiene skills)
- Individual or group counselling (e.g. focussing on traumatic events, problems at home or school or with friends, better understanding of thoughts, feelings and emotions, dealing with concerns around relationships and sexuality)
- Mentoring by peers or (young) adult volunteers, also called 'buddy' or 'big brother/sister programmes', (e.g. focussing on self-esteem and confidence, friendship and relationships, communication, trust and resilience, goal setting and decision making, school attendance)
- Treatment for behavioural problems or disorders (e.g. sexual harassment, bullying (online or in person), aggression, disruptive behaviour, attention-deficit/hyperactivity disorder (ADHD), autism spectrum disorder, eating disorders)³⁷
- Treatment for abuse and addiction problems (e.g. drugs, alcohol, smoking, gambling, excessive gaming, thrill seeking behaviour)³⁸
- Participation in restorative programmes (e.g. verbal apology, apology letter, peer mediation, victim empathy courses). See also section 19

³⁶ Guideline 7 of the Regional Guidelines on Collaboration in Cases of Children below the MACR (UNICEF MENARO, 2017); United Nations, Outcome of the expert group meeting on integrating sport into youth crime prevention and criminal justice strategies, 10 February 2020.

³⁷ Such treatment can be provided by social welfare agencies and/or mental health agencies/organizations.

³⁸ See previous footnote.



UNICEF **North Macedonia** has developed a pool of 19 prevention and reintegration programmes for children in conflict with the law or at risk of becoming so. Eleven of these programmes are appropriate for children at risk of coming into conflict with the law, including children under the MACR. These prevention programmes are:

- Five life-skills programmes: ‘communication & friendship’, ‘employment’, ‘comprehensive sexual skills’, ‘emotions & self-respect’ and ‘relationships’ [only for institutionalized children]
 - Two peer mentoring programmes: ‘mentoring of leisure activities’ & ‘mentoring of educational activities’
 - Three abuse and addiction programmes: ‘resistance of peer-pressure and psychosocial substances’, ‘awareness on psychoactive substances’ and ‘motivational interview & positive behaviour’
 - One parental skills programme: ‘constructive parent-child relationship’
-

15. Interventions in cases of children under the minimum age of criminal responsibility on a voluntary basis

The case manager of the social welfare agency explains to the child and her/his parents/caregivers whether special measures are required in the best interests of the child and to prevent future offending behaviour, and if so, which programmes or services are available in the local community and are most appropriate. The **child’s views and concerns are taken into account** in accordance with his/her age and evolving capacities and given due weight in the decision-making process. If the child is considered a danger to her/himself and/or others, it might be necessary to put in place an appropriate interim support measure, pending the outcome of the psychosocial assessment of the child. In cases where the psychosocial assessment shows that it is not in the child’s best interests and therefore **not necessary to take any special measures**, the case manager explains this to the child and his/her parents/caregiver and closes the case. Participation in secondary prevention programmes or services requires the **informed consent** of both the child, if she/he is mature enough, and her/his parents/caregivers. If national legislation requires that the social welfare agency informs the police, prosecution office and/or court about the special measures that will be taken in cases of children under the MACR, the case manager fulfils this obligation.

In some countries in the region, secondary prevention measures in cases of children under the MACR who have been involved in offending behaviour are not on a voluntary basis and are not taken by social welfare agencies, but are **mandatory measures and/or taken by police**. The children are registered and supervised by agencies of the Ministry of Internal Affairs and, in addition, their parents may be fined for not taking appropriate measures for the education and upbringing of their children. Internationally, these practices are not promoted. Secondary prevention measures, whether applied by police bodies or social welfare agencies, should never be punitive or disciplinary in nature, but should address the root causes of the child’s offending behaviour (see sections 16, 17 & 18). Moreover, **mandatory measures** should only be considered



when voluntary and appropriately supervised measures have proved to be insufficient or ineffective or when the child and/or her/his parents/ caregivers refuse to cooperate or to give their informed consent to duly decided special measures. If mandatory measures can be taken in a particularly country, it is considered good practice to stipulate the **collaboration between police and social welfare agencies** as well as the application of the **continuum of voluntary, appropriately supervised and mandatory measures** in cases of children under the MACR in the form of regulations or guidelines. Capacity building for such regulations or guidelines will be required for the relevant police bodies and social welfare agencies.

16. Appropriate programmes and services for children under the minimum age of criminal responsibility

The design and implementation of programmes and services for children under the MACR and/ or their parents/caregivers or families should incorporate the following **characteristics**:

- Organized by social welfare agencies, not by child justice agencies, and in collaboration, when appropriate, with local CSOs or NGOs, educational organizations, social protection organizations, mental health organizations and/or organizations in charge of employment
- Tailored to the individual needs and circumstances of the child
- Addressing the root causes of the child's offending behaviour, such as poverty, family violence or homelessness
- Focus on protective factors that may strengthen resilience
- Constructive in nature
- Restorative in nature, if appropriate (see section 19)
- An opportunity to assist the child to understand the consequences of her/his offending behaviour
- Proportionate to the severity and circumstances of the offending behaviour
- Not punitive or disciplinary and not restrictive in nature
- No deprivation of liberty
- No joint participation with children in conflict with the law at or above the MACR
- Possible participation alongside children in need of special protection who have not been involved in offending behaviour
- Involvement of parents/caregivers and/or support programmes or services for parents/ caregivers in parallel

“Finding ways to deal with children under the MACR who commit grave ‘crimes’ is still an agenda for Europe and Central Asia. It is a complex challenge, because it requires an approach that preserves the spirit of ending detention for all children, but recognizes at the same time that there are children coming from very difficult backgrounds and marginalized families who do ‘offend’ and require attention.” Quote – Aaron Greenberg (Regional Advisor Child Protection, UNICEF ECARO). Source: Roundtable on 29-11-2022.



In the north of **Tajikistan**, five Juvenile Support Centres have been established for children at or above the MACR who are diverted from judicial proceedings. The government intends to expand these centres to the south of the country. The Juvenile Support Centres are also used for children under the MACR (14 years) who have been involved in offending behaviour. The centres provide psycho-social services and training, job and skills building opportunities (depending on the age of the child) to children, as well as support to parents/caregivers and local communities to prevent stigmatisation and to overcome offending behaviour.

In **Türkiye**, the Penal Code stipulates that children who do not have criminal responsibility shall be subject to '*child-specific security measures*'. The country's Child Protection Law defines child-specific security measures as equivalent to '*protective and supportive measures for children in need of protection*', which include counselling, education, alternative care, healthcare and shelter. Along with the Ministry of Justice, the Ministries of Health, Labour, National Education, Family & Social Services as well as various municipalities were mandated to implement those measures to protect and support children.

17. Exceptional out-of-home placement of children under the minimum age of criminal responsibility

The Committee on the Rights of the Child promotes family-based and community-based measures for children under the MACR as an absolute priority. Out-of-home placement (also called 'family-child separation') should be organized by the social welfare system and used only as a **measure of last resort as well as for the shortest appropriate period of time**. Placement might be necessary, for example, when the child and/or his/her parents/ caregivers refuse to cooperate or to give consent to duly decided family or community-based measures. "*In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting ...*" (paragraph 11 of CRC-GC24). Decisions on out-of-home placement of children under the MACR, for example in kinship care, foster care or a family-like facility, are taken only on a **case-by-case basis** and only after all available family or community-based options have been seriously and exhaustively considered. In most cases, kinship/foster care families will have to be prepared thoroughly to receive and take care of children under the MACR who have been involved in offending behaviour. If the child is placed in a family or residential setting organized by the social welfare system, the placement should be **regularly reviewed by the court** with regard to its continuing necessity and suitability. Residential settings should respect minimum standards, including access to education, medical care, and recreation and contacts with the family and wider community. In various countries, including in European and Central Asian countries, **local administrative bodies** may apply disciplinary measures to children under the MACR. For example, Commissions of Minors might place children under the MACR in special educational institutions, which means in practice that they are deprived of their liberty for a period of time.³⁹ Such punitive measures should be **strongly discouraged**.

³⁹ Penal Reform International, Justice for Children Briefing No.4; Minimum age of criminal responsibility, United Kingdom, 2013; Neal, K.L., The Treatment of Offending Children below the Age of Criminal Responsibility in Georgia, Report for UNICEF Georgia, Tbilisi, 2010.



18. Support programmes for parents/caregivers of children under the minimum age of criminal responsibility

If the psychosocial assessment of the child's needs and circumstances shows that her/his parents/caregivers may benefit from any kind of assistance, the child's case manager informs them about the available **family support programmes and services** organized by local social welfare agencies, and which programmes or services may be most appropriate to them. Participation of parents/caregivers, siblings and/or other family members in programmes and services is in most cases on a voluntary basis and requires their **informed consent** (see also section 15). Secondary prevention programmes and services for parents/caregivers and families that have proved to be effective include:⁴⁰

- Family support and counselling (e.g. focussing on communication in the family, support to go through divorce or separation, reduction of conflicts, support when a parent/family member is in prison, mental health problems)
- Positive parenting or behavioural parenting programmes (e.g. focussing on relationship between parents and their children; non-physical discipline strategies; parental depression, mental well-being and stress)
- Treatment for substance abuse or addiction in the family (e.g. cannabis, drugs, alcohol, non-medical use of prescription drugs)

19. Victims, including child victims, of offending behaviour of children under the minimum age of criminal responsibility

Children under the MACR can and do **harm other people** through their offending behaviour.⁴¹ Their victims are often other children, but can be adults as well. Both child and adult victims have the **right to remedy** of some form, irrespective of whether the offending behaviour or offence was committed by a child under, at or above the MACR or by an adult offender. Victims who are harmed by a child under the MACR may need legal, physical, psychological or social support. Child victims are entitled to all rights of child victims and witnesses of crime.⁴² They have the right to be informed about the progress of the case, without compromising its confidentiality, and they may want to know that attempts are being made to reduce the risk that the child will get involved

40 UNODC, *Compilation of Evidence-Based Family Skills Training Programs*, Vienna, 2010; UNICEF Office of Research – Innocenti, *Innocenti Research Brief, Parenting Interventions: How well do they transport from one country to another?*, Florence, 2017; Jones, H., *A Review of Best Practice in Meeting the Needs of Children and Young People with Antisocial and Other Risks (Annex 1)*, UNICEF Georgia, 2022.

41 MSP Briefing, *International standard for the minimum age of criminal responsibility*, Scotland, 2020.

42 ECOSOC Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*; UNODC & UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime*, New York, 2009.



in offending behaviour or cause harm to people again. Victims might need acknowledgment that **the harm caused is taken seriously and will be repaired** by the child and/or her/his parents/ caregivers. In these kinds of cases, a restorative approach may be considered. The term 'restorative justice' refers to *"any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party"* (paragraph 8 of CRC-GC24). **Restorative justice approaches** are not, or at least not in the first place, designed to deal with cases of children under the MACR. However, there are some restorative practices that handle conflicts and offending behaviour in which children under the MACR are involved, especially bullying, interpersonal conflicts and other forms of victimization in primary and secondary schools.⁴³ In particular, when both the 'offender' and the victim are children, a restorative approach might be an **appropriate and effective manner** of dealing with the conflict or offending behaviour. Human rights and legal safeguards have to be fully respected when applying a restorative justice approach, as they would have to be in cases of children at or above the MACR.⁴⁴

According to article 30(1) of the Law on Justice for Children (2013) of **North Macedonia**, in cases in which children under the MACR (called 'children at risk') have committed an act envisaged by law as a crime or misdemeanour and acquired material gains or caused harm to another person, the Centre for Social Work shall mediate between the child at risk and the parent/s or guardian/s and the injured party in order to mutually reconcile and pledge not to repeat the offence and recover the proceeds or compensate the damages caused.

43 Lodi, E., Perrella, L., Luigi Lepri, G., Luisa Scarpa, M. → and Patrizi, P., Use of Restorative Justice and Restorative Practices at School: A Systematic Literature Review, *International Journal of Environmental Research and Public Health*, Volume 19(1), University of Sassari, Italy, January 2022; *Conflict Resolution Quarterly*, Special Issue: Colloquy on Restorative Justice Part 2: School-Based Applications, Volume 36, Issue 3, Spring 2019, USA, pages 177-271; New South Wales (NSW) Education and Communities Department, Peer mediation for primary and secondary schools, Helping students to resolve conflict in peaceful ways, Australia, May 2022.

44 Lima Declaration on Restorative Juvenile Justice (2009); Basic Principles on the Use of Restorative Justice Programs in Criminal Matters, 2002. The main human rights and legal safeguards to take into account when a child under the MACR (or at/above the MACR) is involved are: sufficient evidence; free and voluntary consent of the victim and offender; agreements to be arrived at voluntarily and containing only reasonable and proportionate obligations; not coerced or induced by unfair means to participate in the restorative process or to accept the restorative outcomes; disparities leading to power imbalances and cultural differences among the parties taken into consideration; safety of the parties to be considered; right to legal counselling; right to the assistance of a parent/guardian for the child victim and child offender; and fully informed of their rights, the nature of the restorative process and the possible consequences of their decision (principles 7 to 10).



20. Observations of the Committee of the Rights on the Child regarding the minimum age of criminal responsibility in Europe and Central Asia

The overview on the next pages shows the concluding observations and recommendations of the Committee of the Rights on the Child that specifically address the MACR.⁴⁵ In the majority of the Committee's reports, there are **no specific comments relating to the MACR** in that country (14 of the 21 reports).⁴⁶ In the seven reports that incorporate an observation and/or recommendation on the MACR, the Committee of the Rights on the Child expresses concern about the lack of programmes for children (Albania & Uzbekistan); the deprivation of liberty of children (Bulgaria, Belarus & Ukraine); the punitive approach to children younger than the MACR (North Macedonia); the lowering of the MACR (Belarus); the MACR remaining too low (Türkiye); and having more than one MACR (Belarus & Ukraine).

Observations and recommendations of the Committee of the Rights on the Child specifically addressing children under the minimum age of criminal responsibility (MACR) in Europe and Central Asia	
ECA-countries: [N=22]	Observations (& year)
European countries: [N=17]	
Albania	<i>"The Committee expresses particular concern about ... the absence of any educational programme for child offenders under the age of criminal responsibility, even in cases of the commission of crimes."</i> (Observation 84(f), December 2012)
Armenia	No specific observations (July 2013)
Azerbaijan	No specific observations (March 2012)
Belarus	<i>"The Committee ... is seriously concerned about ... the lowering, from 16 to 14, of the age of criminal responsibility for drug-related offences, allowing for the detention of very young children."</i> (Observation 42(c), February 2020) <i>"The Committee ... urges the State party to ... maintain the single minimum age of criminal responsibility for all offences and ensure that children below that age are not treated as offenders and are never placed in closed institutions."</i> Recommendation 43(c), February 2020).
Bosnia & Herzegovina	No specific observations (December 2019)
Bulgaria	<i>"The Committee ... is particularly concerned that ... children as young as 8 years of age continue to be deprived of their liberty in correctional facilities under the Juvenile Delinquency Act."</i> (Observation 58(a), November 2016)

continued →

⁴⁵ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx.

⁴⁶ The Republic of Kosovo is not a signatory to the CRC and, therefore, there is no report of the Committee of the Rights on the Child on Kosovo.



Observations and recommendations of the Committee of the Rights on the Child specifically addressing children under the minimum age of criminal responsibility (MACR) in Europe and Central Asia	
ECA-countries: [N=22]	Observations (& year)
European countries: [N=17]	
Croatia	No specific observations (June 2022)
Georgia	No specific observations (March 2017)
Greece	No specific observations (June 2022)
Kosovo	--
Moldova	No specific observations (October 2017)
Montenegro	No specific observations (June 2018)
North Macedonia	"The Committee ... recommends that the State party ... ensure that children under the age of criminal responsibility (14 years) are not punished in any manner for criminal actions." (Observation 80(a), June 2010)
Romania	No specific observations (July 2017)
Serbia	No specific observations (March 2017)
Türkiye	<p><i>"The Committee commends the State party for its extensive reforms in the area of juvenile justice, including new legislative changes resulting in the increase of the age of criminal liability from 11 to 12 years."</i> (Observation 66, July 2012)</p> <p><i>"The Committee urges the State party to ... consider further raising the minimum age of criminal responsibility, taking into account the Committee's general comment No. 10 (2007) on children's rights in juvenile justice."</i> (Recommendation 67(g), July 2012)</p>
Ukraine	<p><i>"The Committee is seriously concerned that despite the fact that the minimum age of criminal responsibility is set at 14 years, the State party operates schools for social rehabilitation for children aged 11 to 14 years who have committed 'socially dangerous actions'. The Committee further notes with utmost concern that the Parliamentary Commissioner for Human Rights refers to these schools as 'special juvenile remand institutions' and that more than 1,000 children were sent to such institutions in 2009."</i> (Observation 85, April 2011)</p> <p><i>"The Committee recommends that the State party ... establish by law and in practice one minimum age of criminal responsibility in line with the Committee's general comment No. 10 (2007) on children's rights in juvenile justice."</i> (Recommendation 86(b), April 2011)</p>

continued →



Observations and recommendations of the Committee of the Rights on the Child specifically addressing children under the minimum age of criminal responsibility (MACR) in Europe and Central Asia	
ECA-countries: [N=22]	Observations (& year)
Central Asia countries: [N=5]	
Kazakhstan	No specific observations (October 2015)
Kyrgyzstan	No specific observations (July 2014)
Uzbekistan	<i>"The Committee ... urges the State party to ... develop community-based rehabilitation and reintegration services, including psychological support, to prevent reoffending."</i> (Recommendation 48(g), September 2022)
Tajikistan	No specific observations (September 2017 – advanced version)
Turkmenistan	No specific observations (March 2015)





Recommendations on responses to children under the minimum age of criminal responsibility in Europe and Central Asia

Although the MACR in almost all countries in the region is at least 14 years, the needs of children under the MACR who are (allegedly) involved in offending behaviour are not systematically addressed and **most countries have not developed systematic responses to children under the MACR** and their parents/caregivers and families that are in line with international standards and principles. UNICEF Regional Office for Europe and Central Asia and the UNICEF Country Offices in the region recommend the following in this respect:

Legislation and policies:

- Increasing the MACR to at least 14 years, if not yet done, and preferably to as close to 18 years as possible; and ensuring that the law stipulates that children's ages are considered at the time of their alleged commission of the offence and the MACR applies throughout the country without exception.
- Removing the 'doli incapax' rule, if existing, setting a single appropriate MACR and ensuring that such legal reform does not result in a retrogressive position regarding the MACR.
- Never using the severity of offences as justification to decrease the MACR, including when the offences are linked to national security.
- Strengthening the birth registration system, if required.
- Legislating so that children under the MACR cannot be formally charged with an offence, prosecuted for the commission of an offence, subjected to any criminal law procedures or measures, nor be deprived of their liberty.
- Regulating, through law or guidelines, that children under the MACR (and their parents/caregivers) fall within the mandate of the social welfare system and that children (and their parents/caregivers) coming into contact with the child justice system should immediately be referred to the social welfare system.
- Considering children under the MACR (as well as those at or above the MACR) who are used by adults for criminal activities, violent acts or organized crime to be child victims of crime. Taking all steps necessary, including legislative measures, to prevent the use of children for criminal purposes, ensuring appropriate responses and support services are available to exploited children, and guaranteeing that they are entitled to all rights of child victims or witnesses, including access to justice to seek and obtain a timely remedy for violations of their rights.
- Regulating that investigative interviews with children under the MACR are conducted by specially trained interviewers, preferably social service workers or psychologists involved in the case, and always in a child-sensitive and gender-sensitive manner and in a child-friendly environment.



- Ensuring that children under the MACR are never deprived of their liberty, including through administrative or other processes whereby they are placed in residential care facilities or correctional centres where they are not free to leave at will.
- Prioritising family-based alternative care organized by the social welfare system if necessary for children under the MACR, ensuring regular reviews of alternative care by the court, and supporting families and parents/caregivers to prevent family-child separation.
- Regulating by law that out-of-home placement of children under the MACR ('family-child separation') and placing them in residential facilities is a measure of last resort, and should be for the shortest appropriate period of time, well-justified if applied in exceptional cases, preferably in a family setting, and regularly reviewed by the court.
- Developing regulations, guidelines and/or standard operating procedures for police investigators, social service workers and other professionals handling cases of children under the MACR concerning, among other things: intersectoral collaboration, investigative interviews, access to justice, legal and other appropriate assistance, protection of privacy, restorative justice approaches, and the continuum of voluntary, appropriately supervised and mandatory measures for children and their parents/families.
- Seeing reform initiatives to harmonize the MACR with international standards as part of a broader reform of the child justice system.

Procedural safeguards:

- Proving that a child is at or above the MACR if there is any doubt, and when this cannot be proven, giving the child the benefit of the doubt and considering her/him under the MACR and not criminally responsible.
- Ensuring that children under the MACR who have been (allegedly) involved in offending behaviour are entitled to the rights set forth in the Convention on the Rights of the Child (1989) and to access to justice to seek and obtain a just, equitable and timely remedy for violations of their rights.
- Ensuring that children under the MACR who are subjected to administrative proceedings or civil proceedings as a result of their involvement in offending behaviour are granted the full process guarantees contained in the Convention on the Rights of the Child (1989) and have access to justice to seek and obtain a just, equitable and timely remedy for violations of their rights.
- Ensuring that the police and other child justice professionals consider records of children under the MACR as confidential records and never as criminal records, and that such records are never used in criminal proceedings when the child is at or above the MACR or an adult.

**Programmes and services:**

- Developing and implementing family-based and community-based programmes and services for children under the MACR and their parents/caregivers and/or families, organized and monitored by the social welfare system, and, when appropriate, in collaboration with local CSOs or NGOs, educational organizations, social protection organizations, mental health organizations and/or organizations in charge of employment.
- Developing and implementing family-based and community-based programmes and services that are not punitive, disciplinary or restrictive in nature and never entail deprivation of liberty, but rather are constructive in nature and focus on protective factors that may strengthen resilience.
- Developing and implementing family-based and community-based programmes and services for children under the MACR which prioritize prevention of coming in conflict with the law and early intervention, address the root causes of children's offending behaviour and can be tailored to the needs and circumstances of children under the MACR.
- Developing and implementing family support programmes and services for parents/caregivers and/or families of children under the MACR which prevent out-of-home placement and family-child separation, and can be tailored to the needs and circumstances of the parents/caregivers and/or families.

Capacity building:

- Empowering children under the MACR (and their parents/caregivers) to know and claim their rights, including legal empowerment, and enabling them to express their views freely in all matters affecting them.
- Assessing whether existing capacity building initiatives for relevant professionals incorporate the handling of cases of children under the MACR and their parents/families in an appropriate and sufficient manner, including for police officers, prosecutors, lawyers, social service workers, CSOs and NGOs, staff of educational agencies, social protection staff, health professionals, and staff of residential institutions where children under the MACR are placed.
- Ensuring that relevant professionals are trained on existing regulations, guidelines and standard operating procedures for the handling of cases of children under the MACR and their parents/families.



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