**COMMENT**

**ON THE DRAFT GENERAL COMMENT NO. 24 (201X),**

**REPLACING GENERAL COMMENT NO. 10 (2007)**

**ON CHILDREN’S RIGHTS IN JUVENILE JUSTICE**

**OF THE COMMITTEE ON THE RIGHTS OF THE CHILD**

**(CRC/C/GC/24)**

1. The **European Forum for Restorative Justice (EFRJ)** is the leading European network for supporting the development of restorative justice in Europe. Founded in 2000, the EFRJ is a membership organization that currently comprises around 300 members (either individual or organizational), from Europe and beyond. The EFRJ has striven to bring together researchers, practitioners and policy makers interested in restorative justice, with the aim of helping to establish and develop victim-offender mediation and other restorative justice practices. To achieve this aim, the EFRJ promotes international information exchange and mutual assistance; encourages the development of effective restorative justice policies, services and legislation; explores and develops the theoretical basis of restorative justice by stimulating research; assists in the development of principles, ethics, training and good practice. The EFRJ focuses on the application of restorative justice to criminal matters but other areas, such as family, school and community mediation, are not excluded.

2. **Every person in Europe should have the right of access to restorative justice services, at any time and in any case.** The EFRJ does not defend any one ‘best practice’ model of restorative justice, but recognises that restorative justice is an evolving approach oriented towards repairing, as far as possible, the harm caused by crime or other transgressions. Active participation by the victim, the offender and possibly other parties (the community) is a core element of restorative justice. Indeed, the 2006 UN Handbook states that restorative justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders.

3. **In the last years, new advances in restorative justice definition, concept and approaches have been developed by different international and European bodies.**

Following the adoption of the UN Basic Principles on the use of restorative justice programmes in criminal matters of 2002, a new Resolution 2016/17 was adopted by the Economic and Social Council on 26 July 2016 on ‘Restorative justice in criminal matters’, completed by Resolution 27/6 (2018) by the Commission of Crime Prevention and Criminal Justice on ‘restorative justice’. Both recent documents stress the relevance of restorative justice programmes for child justice systems and for children in contact with the law.

The new Council of Europe Recommendation (Recommendation CM/Rec (2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, adopted on 3 October 2018 at the 1326th meeting of the Ministers' Deputies) reflects new developments and a broader concept of restorative justice approaches.

The EU Victim’s Rights Directive2012/29/EUhas provided restorative justice in Europe with a more solid position and a clear victim orientation, while also in other parts of the world victim rights have increased.

4. **Restorative justice and the rights of the child fit very well together.**

Several legal instruments outline the international and European standards and safeguards for children and restorative justice[[1]](#footnote-1). As mentioned in point 12 of the draft CRC’s draft revised General Comment N. 10 (2007) “the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.”

**The EFRJ wants to promote the right for all children (as victims and as offenders) to have access to restorative justice services, at any time and in any case.** An increasing body of research, carried out by the EFRJ and other organisations and researchers, is demonstrating that both child victims and young offenders benefit from restorative justice approaches. In the framework of the EU funded project **“Implementing Restorative Justice with Child Victims”** - lead by the International Juvenile Justice Observatory (IJJO) and in which the EFRJ is involved, a **Practical Guide** has been recently published in seven languages (download [here](https://www.oijj.org/sites/default/files/implementing_practical_guide_eng.pdf)). The Guide aims to help practitioners and decision makers to implement and promote successful restorative justice systems involving children as main stakeholders, either as victims or as perpetrators of harm. The Guide highlights two main sets of rights that are particularly relevant to ensure a child-friendly justice, namely, protection rights and participation rights. Thus, any restorative justice programme must demonstrate that it is designed and delivered in the best interests of the child (art. 3 CRC), that it facilitates the right of the child to be heard (art. 12 CRC) and that it takes all necessary steps to protect the child from harm (art. 19 CRC). The Guide proposes two sets of recommendations: the first one intends to provide some practical guidance for practitioners on how to appropriately involve children in restorative justice processes. The second set of recommendations offers some practical guidance for practitioners and policy makers on how to set up and implement a pilot project on juvenile restorative justice in their countries.

5. **The EFRJ would like to contribute to the CRC** **by sending in these comments in order to reflect current developments and definitions of restorative justice that contribute to child justice to the maximum extent.**

6. **Restorative Justice is the only approach that guarantees that children’s views are considered and their voices are heard in identifying needs and making decisions, therefore ensuring the child participation principle as specified in art. 12 of the CRC.** Thus, the EFRJ would like to propose a new paragraph to be included in the GC concerning the right of every child involved in child justice to have access to restorative justice. Specifically, to include a definition of restorative justice approaches, as is also suggested by the children’s rights colleagues coordinated by the Howard League for Penal Reform, Defence for Children International and Terre des Hommes. We adapted it slightly and suggest the following:

***Restorative approaches involve, to the extent possible, those who have a stake in a specific offence coming/working together to collectively identify and address harms, needs and obligations, in order to repair the harm, meet the needs and put things right (inspired by Howard Zehr, 2002).  This can include appropriate justice processes. Examples of restorative approaches include mediation, restorative conferences and peacemaking circles.***

***Every child that comes into conflict with the law, or is a victim of crime or harm, should have access to restorative justice.***

7. The EFRJ would like to present its comments on the following paragraphs of the draft General Comment No.24.

Concerning paragraph 1 of the draft GC No.24, in order to highlight the increasing role of restorative justice provisions in the juvenile justice systems, we would like to propose the adding in the text of the following terms (in ***bold italic*** in the text):

1. This general comment is a revision of general comment No. 10, which was adopted in 2007. It reflects the developments that have occurred during the intervening decade through the promulgation of various resolutions and other guiding documents on violence against children in child justice, the knowledge about child and adolescent development, ***the continuing implementation of restorative justice practices within child justice systems worldwide****,* the Committee’s own jurisprudence and various concerns, including negative trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty, and emerging issues, such as children recruited and used by non-State armed groups, or terrorist or violent extremist groups, and children in customary justice systems.

8. Concerning paragraph 25 of the draft GC No. 24, in order to reflect current practice worldwide we would like to propose the adding in the text of the following terms (in bold in the text):

25. It is left to the discretion of States parties to decide on the exact nature and content of the measures of diversion, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of ***restorative justice and*** community-based programmes have been developed, such as community service, supervision and guidance by social workers or probation officers, family conferencing, ***mediation*** and other forms of restorative justice including restitution to and compensation of victims.

9. Concerning paragraph 19 of the draft GC No.24, in order to reflect current practice worldwide we would like to propose the adding in the text of the following terms (in bold in the text):

19. A juvenile justice policy without a set of measures aimed at preventing child offending suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for juvenile justice the Riyadh Guidelines (1990), which emphasise prevention policies that facilitate 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. Prevention programmes should focus on support for families in particular those in vulnerable situations, the involvement of schools in teaching basic values, 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. ***The use of restorative justice approaches such as mediation, conferences and circles, teen courts in schools,*** peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.

We also agree with the document that was sent by the coalition of children’s rights organizations including the Howard League for Penal Reform, Defence for Children International and Terre des Hommes that the following should be added:

***Restorative approaches that are consistent with the best interests and rights of the child should be considered in every case and at every stage. This does not apply solely to first time offences.***

Thank you for considering these reflections and suggestions.

Sincerely,

Annemieke Wolthuis, Vice Chair EFRJ

Edit Törzs, Director EFRJ

1. The “Practical Guide Implementing Restorative Justice with Children” gives a detailed overview of the main instruments concerning children’s rights and restorative justice, from the United Nations, the Council of Europe and the European Union: [↑](#footnote-ref-1)