**FEEDBACK ON §112 OF DRAFT GENERAL COMMENT N°24**

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The author of this note contends that certain moral, philosophical and practical issues arise in relation to the paragraph below. I offer brief responses below, but wold be very happy to expand on my ideas below in much greater details if the consultation process on GC24 allows it.

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| 112. The Committee reminds States parties that they should treat these children ***primarily as victims and refrain from charging and prosecuting them for mere association with a non-State armed group or a terrorist or violent extremist organization***. If there have to be criminal charges laid against them – by their nature very serious ones –State parties should ensure that all children charged, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the CRC, and in line with this general comment. States parties should emphasize restorative justice, diversion from judicial proceedings and non-custodial measures. They should also adopt and preventive interventions to tackle social factors and root causes as well as rehabilitation and reintegration measures, including when implementing counter-terrorism related Security Council resolutions, such as resolutions 1373 (2001), 2178 (2014), and 2396 (2017). |

**Institutionalization of immunity of children and the risk of instrumentalization by armed groups**

We believe that recognizing as a human rights principle that authors of crimes perpetrated as children, regardless of their willingness to engage or act voluntarily and based on their own decisions, would somehow institutionalize some sort of **immunity of children authors of extreme violence**.

It is well known that several armed or criminal groups in the world instrumentalize children because they are aware that they will be less severely sentenced if they are arrested. Therefore, the symbolic impact of such a statement in the GC24 should not be underestimated. Children have fundamental rights that have to be protected, especially when they are victims of instrumentalization by adults. Though, the circumstances should be the first to determine whether children should be recognized as authors or victims. As a result, the GC24 should not be blind to such situations and consider rephrasing to make a more responsible and nuanced statements.

**Make authors of crime as one of the core goal of restorative justice, and the right to be wrong**

Recognizing children as mere victims is denying them the right to be wrong[[1]](#footnote-1). It denies them their sense of agency. It denies the wrongful acts that they have done, and therefore hinders their potential to repair their actions, which is contrary to the spirit of restorative justice.

Children who have, either from their own chief or under the command of adults committed violent crimes, should be given the opportunity to be recognized for what they have done, and be given the opportunity to ask forgiveness to their victims directly or indirectly and eventually repair their wrongful actions.

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| *Proposition to rephrase:* 112. The Committee reminds States parties that regardless of the circumstances of the facts, whether children are recognized as victims, or whether their criminal responsibility is engaged, their sentence should always be decided according to educative and restorative goals, in the view of reintegrating them into the society. If there have to be criminal charges laid against them – by their nature very serious ones –State parties should ensure that all children charged, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the CRC, and in line with this general comment. States parties should emphasize restorative justice, diversion from judicial proceedings and non-custodial measures. They should also adopt and preventive interventions to tackle social factors and root causes as well as rehabilitation and reintegration measures, including when implementing counter-terrorism related Security Council resolutions, such as resolutions 1373 (2001), 2178 (2014), and 2396 (2017). |

1. See for example, Hanson, K. (2016). Children’s participation and agency when they don’t ‘do the right thing’; or Gardner, J. (2003). The mark of responsibility. *Oxford Journal of Legal Studies*, *23*(2), 157-171. [↑](#footnote-ref-1)