**Feedback on the WGAD Draft Principles and Guidelines on the**

**Right to Bring Proceedings Before Court – OSRSG Children and Armed Conflict**

The Draft Principles and Guidelines provide a very strong framework for addressing the depravation of liberty in the vast majority of circumstances. However, there should be specific provision included in the draft for children in situations of armed conflict given their *sui generis* status.

Children held in administrative detention during armed conflict are some of the most invisible children. Few are granted access to a lawyer or are given reasons why they have been detained. Many are held for long periods of time without charge and for a variety of reasons including their own security, to stop them being recruited by armed groups or for ‘rehabilitation’ once they are separated from armed groups. They are often held without any contact with their family.

In practice, children in conflict are most often deprived of their liberty by the military or security services. Children who are interned/administratively detained may be held in military facilities. Administrative detention is recognised as legitimate in certain circumstances, but only if it is “lawful” and if certain procedural guarantees for children are put in place. The depravation of liberty must not be “arbitrary”, but necessary in the circumstances of the case and proportionate to the end sought. The lack of judicial oversight to review if depravation of liberty by military or security services is “lawful” or “arbitrary” is what allows these children to become ‘invisible’.

**Suggested text for a provision on children detained during armed conflict:**

*During armed conflict, the depravation of liberty of children must only be used a measure of last resort and for the shortest appropriate period of time. Basic legal safeguards must be provided in all circumstances, including when children are deprived of their liberty for their protection or rehabilitation, particularly if they are detained by military or security services. Such safeguards must include the right to legal assistance and* *the right to periodic review of the legality of the depravation of their liberty. The child must also have the right to have the depravation of liberty acknowledged by the authorities and to communicate with relatives and friends.*

**Some specific input on other parts of the document**

**Guideline 16. Remedies and Reparations**

*97. These persons have the right to full compensation for material harm, elimination of the consequences of material harm and restoration of all rights that were either denied or infringed.*

It is unclear how this would apply to children. Perhaps thought should be given to community based reparations so as not to single out victims, particularly children. Non-monetary reparations should also be considered.

**Guideline 18. Specific measures for children**

*107. Every child deprived of his or her liberty shall be provided with a safe, child-sensitive environment and be treated with dignity and respect, and in a manner that takes into account any situation of vulnerability, in particular with regard to girls; younger children; children with disabilities; non-nationals, including migrants regardless of their migration status, refugees and asylum seeking children; children from minority, ethnic or indigenous groups; and LGBTI children.*

Perhaps some illustrative examples of a child sensitive environment should be provided.

*108. If there is uncertainty regarding the age of the person deprived of his or her liberty, effective mechanisms shall be in place to verify the age of children.*

This will be quite complicated in a number of CAAC environments. Perhaps we should aim for the long term and make a reference somewhere about universal birth registration and or record keeping.

*109 (c ) Children who are deprived of their liberty for any reason are able to contact their parents or guardians immediately and are able to consult freely and in full confidentiality with them. It is prohibited to interview a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian, when available;*

In CAAC environments there will be numerous street children or children without parents. Perhaps something should be added about the requirement for social workers in lieu of parents to be available to support this category of children.

*109 (f) The child has the right to have the matter determined in the presence of his or her parents or legal guardian, unless it is not considered to be in the best interests of the child. In cases of conflict of interest, courts and other relevant complaint mechanisms should be empowered to exclude parents and/or legal representatives from proceedings and appoint an ad hoc legal guardian to represent a child’s interest;*

Perhaps ‘by a competent judicial authority’ should be added to ‘unless it is not considered to be in the best interests of the child’ as it does not indicate who can take this decision at the moment.