Call for comments on Draft General Comment No. 25 (2020) on Children’s Rights in the Digital Environment

15 November 2020

**Introduction**

[Defence for Children International](https://defenceforchildren.org/)(DCI) is an international grassroots non-governmental organisation that has been promoting and protecting children's rights since 1979, and was involved in the drafting of the UN Convention on the Rights of the Child, as well as other UN instruments and initiatives, for example in the field of justice for children, violence against children and children deprived of liberty.

DCI would like to take this opportunity to thank the Committee on the Rights of the Child for their continued work to enhance the protection and ensure the respect of the rights of children. Furthermore, we highly appreciate the opportunity given to civil society organisations to contribute their first-hand knowledge and expertise.

Should any further information be required, please do not hesitate to contact Alex Kamarotos, [alex.kamarotos@defenceforchildren.org](mailto:alex.kamarotos@defenceforchildren.org)

**Points of feedback for Draft General Comment 25**

Before elaborating its suggestions, Defence for Children International would like to acknowledge that it expects that ECPAT International will provide its expertise feedback on the combat of online sexual exploitation of children (OSEC) at large. Defence for Children International would like to stress that when combating OSEC, it is necessary to provide due attention to the *offline prevention and abuse* that comes along with OSEC, and not only the technical/technological side of this.

***Per paragraph:***

**Para. 2** contains the definition of ‘digital environment’, for the purposes of the Draft General Comment which could be improved as it is general and abstract in the Draft. As the digital environment is continuously evolving and expanding, we suggest to include examples, e.g. social media, applications, online games and Artificial Intelligence. Secondly, it should be explicitly stated in paragraph 2 that it contains this definition. It could also be considered to add a section on terminology, which gives the definitions of important terms used in the Draft General Comment. For example, General Comment No. 24 (2019) on children’s rights in the child justice system contains such a section entitled *Part III. Terminology*.

**Para. 5** The mitigation of associated harms is not strong enough. It could be considered to change the wording as follows: “Therefore, it is important to ensure that children benefit from engaging with the digital environment, and are protected from any associated harms that are prejudicial to any aspects of their welfare, including children in disadvantaged and vulnerable situations.”

**Para. 7** The scope of the Draft General Comment is large. Larger, for example, than a General Comment that only deals with one article or one right as enshrined in the UN Convention on the Rights of the Child. The UN Committee on the Rights of the Child has chosen to issue General Comments on both themes and articles of the Convention. There is a risk that thematic general comments are less useful because they are too general, and that the various general comments on (related) specific articles or rights do not give adequate attention to the themes. Defence for Children International suggests to either add a paragraph on the digital environment to other General Comments, explaining the (possible) effects on that theme and / or right to the child, even though this has never been done before. Another option is to make the link to other rights and themes more explicitly by, in *this* General Comment, providing examples on possible infringements of children’s rights, e.g. in the area of education: ’if the digital environment is being deployed for learning methods and tools in education, States must ensure to make this inclusive, for children in poverty, disabilities and children deprived of their liberty to have equal access to such methods and tools.’

**Para. 8** In the opinion of Defence for Children International, the objective can be elaborated and made more specific, as was done for instance in General Comment No. 24 (2019) on children’s rights in the child justice system, *Part II. Objectives and scope.*

**Para. 12** Furthermore, children deprived of liberty in the broad sense can be added to these categories of children, since they will face setbacks in accessing the digital environment, preventing them of creating many of the social links often associated with the digital environment.

**Paras. 16, 17 and 104** In these paragraphs, States are urged to develop adequate protective measures, to prevent that children will be harmed. Defence for Children International suggests to consider to add that children are entitled to adequate *care services* when their rights are violated, in addition to their right to remedies. Children who are victims of harmful practices need immediate support services, including psychological services.

Defence for Children International would like to stress that such services should not only be available for children who are victims of behaviour of others. As stated in paragraph 17, there is not enough research available yet about the effects of the digital environment on the (brain) development of children. However, it is known that the digital environment can be highly addictive. Bearing in mind that parents have already an almost impossible task to strike a fair balance between intervening and respecting their children’s privacy, it is too much to ask of parents to also solve any possible problems caused by the digital environment and for which society is not yet able to provide a solution. This is all the more so if a child is demonstrating addictive behaviour. Therefore, it could be considered to add that States have to make psychosocial support available for children and caregivers to support them when the digital environment is becoming a *harmful environment* that negatively affects the development of the child.

Lastly, it could be more explicitly stated that ‘States should stimulate research into the consequences of the digital environment on the development of children’.

**Para. 18 and 19** increasingly child human rights defenders (HRDs) are creating broad platforms on social media to spread their messages and allow their voices to be heard across countries, regions and the whole world. While children should be allowed to express their opinions freely, children should be protected from harassment and reprisals which may follow. Within training programmes, due weight should be given to the specificities of child human rights defenders and strive to ensure that participation of children is meaningful, safe, and impactful. Some NGOs tend to organise more private online spaces for children to freely and safely discuss the issues they care about. For instance, the children have access to private, moderated Facebook and Instagram groups.

**Para. 24** While it should be recommended to States to update their legislation relating to the digital environment and children’s rights, States should also be urged to do so on a regular basis considering the fast evolving context of the digital environment.

**Para. 27** Mandatory child safeguarding which includes online protection should be broadened to all entities who interact somewhat with children, even if the link to the digital environment is not obvious (i.e. sports clubs and facilities, non-governmental organisations..) since the borders between what happens offline and what is brought into the realm of the digital environment is becoming increasing blurred.

**Para. 31** Data collection and research should include a gender lens. The global digital divide is not gender neutral. Digital access remains a significant issue for many girls.[[1]](#footnote-1) Recent data from the International Telecommunications Union (ITU) shows that the global gender divide is increasing for girls and women between the ages 15-64, currently at 17%. The divide is the widest in South Asia (51%) and Sub-Saharan Africa (37%).[[2]](#footnote-2) Currently, however, no data is available on how children under the age of 18 are affected by the growing digital gender gap. A recent study conducted by Plan International on girls’ and young women’s (ages 8-24) experiences with online harassment shows that girls and young women are disproportionally affected by online harassment. 58% of girls surveyed have experienced online harassment. In the Netherlands, hundreds of girls and young women are scolded, threatened and discriminated against on Telegram, a recent research demonstrates.[[3]](#footnote-3)

As a result, 13% of girls stop sharing their opinions on social media, 12% adjust the way they express themselves on social media and 8% completely stop with the social media platform where the online harassment took place.[[4]](#footnote-4)

Defence for Children International therefore proposes the following wording: *States should ensure that national data and research is available on how the digital gender divide impacts children’s rights. Such data and research should inform regulation, policy and practice to ensure that the digital gender divide among children is closed. Furthermore, States should ensure that data on gender-based violence against children in digital platforms is available to inform policies and regulations on the matter.*

**Para. 38** indicates that states should require business enterprises to undertake child-rights due diligence/child-rights impact assessments.Defence for Children International fully supports this, but wishes to see that such is not voluntary; our suggestion is to make due diligence procedures on the impact on children *mandator*y for business enterprises.[[5]](#footnote-5)

**Paras. 40 to 43** States should stay up to date on the everchanging ways in which children are being influenced towards consumerism in the digital environment (i.e. online personalities, who can even be children themselves, using their persona and platform to subtly advertise products, this type of advertising and marketing will be even more difficult for children to understand it as such). Furthermore, commercial advertising heightens children’s insecurities, accentuates inequalities and distorts their gender socialisations[[6]](#footnote-6). States should ensure that businesses rightfully label advertising as such in a clear way for children.

**Para 44.** States should also ensure that businesses in no way impede the child’s right to access justice and effective remedy and should have the obligation to work with the State justice system in providing all necessary information relating to a case involving a child.

**Para 49.** Due to the transnational nature of online abuse, cross-border cooperation between States is crucial to ensuring effective remedies as offenders may be located in different countries to the victim. There is, therefore, a greater need for collaboration between law enforcement in different countries, taking into account different jurisdictional protocols and social, cultural and political issues[[7]](#footnote-7).

**Paras. 44 to 50** The data of children within the justice system is particularly sensitive and requires additional safeguards and protections. The records of children in contact with the criminal justice system should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of the case. Where States use private companies to carry out functions within the justice system, they must ensure that these companies are bound by the same duties with regard to children to respect, protect and fulfil children’s rights with regard to their role in the justice system.

**Para 52**:onchild-friendly, age-appropriate digital content for children in accordance with their evolving capacities, could be improved by introducing a gender lens (see also our feedback with regards to paragraph 31). Defence for Children International would like to suggest to include the following in this paragraph: ‘*States should work to close the digital gender divide between children and ensure equal access to digital content for boys and girls.’*

**Para. 54** Considering that children generally deem information that is accessible online to be truthful, turning to *Google* for true and accurate information[[8]](#footnote-8), children should be taught that misinformation in the digital environment is rife. As well as being informed on good quality information online, children should be made aware on the best practices to distinguishing misinformation[[9]](#footnote-9).

**Para. 55** on the diversity of content and protection from harmful materials, is too voluntarily while businesses have a duty of care. Businesses that provide online services or supplying devices which can connect to the internet have a duty of care. Among other things, the duty of care must establish a positive obligation to use available technical tools proactively to promote and protect children’s rights and best interests. Safety by design and by default must be embedded in law. In order to preserve legal immunity from civil or criminal liability, being mindful of proportionality, an entity must be able to show they have discharged their duty of care in a timely way.

**Para. 61** on criticism, hostility, threats or punishment towards children who express their opinions, could be improved by explicitly acknowledging the digital divide and violations girls that express their opinions, experience. Defence for Children International proposes to add: ‘*In protecting children against online harassment and threats, censorship, data breaches and digital surveillance, States should take a gender-sensitive approach to ensure that girls’ freedom to expression in digital spaces is protected.’*

**Para. 66** The digital environment provides valued opportunities to children HRDs increasingly mobilising online, but they also face harassment and violence too. Girls are 27 times more likely than boys to be harassed online[[10]](#footnote-10) and almost three quarters of girls have experienced some form of online violence[[11]](#footnote-11). As a result, girls self-censor and withdraw from online spaces, preventing them from assembling and becoming effective drivers of social and political change. Online GBV should be urgently addressed, as it presents a barrier to exercising the right of peaceful assembly.

**Para. 67** States should respect the rights of children to organise and advocate online, freely and safely within their communities, schools, and public spaces. Those participating in online activism, including girl HRDs, should enjoy at least the same level of protection against threats, intimidation, and violence as their adult counterparts.

**Para. 68** Despite public visibility and networking opportunities available in the digital environment, girls often have less access to technology and the internet than boys. The gendered digital divide remains largest in the world’s least developed countries at an estimated 33%[[12]](#footnote-12). States should support girls but also give them the means to have access to technology.

**Para. 86** States should not convict or detain children accused of terrorism-related offences solely for posting content on Facebook, Twitter, or other online platforms that is perceived as supporting a certain group or ideology[[13]](#footnote-13).

**Para. 94** *Add children deprived of liberty*. Such requirement gains more weight in the current COVID-19 context considering the measures adopted in youth detention centres to avoid spreading the virus; limiting or refusing visitors (including lawyers), physical family visitations and other appointments that provide the children with regular support (i.e., social workers and health staff, including mental health specialists) [[14]](#footnote-14). Therefore, there is an urgent need to provide detained and incarcerated children as well as their families and any other support persons with access to digital technologies in order to reduce the children’s feelings of powerlessness and isolation.

**Para. 110** However, the increasing use and reliance on digital educational technologies, particularly now that COVID19 has led to temporary school closures and distance learning, has the risk to further exacerbate the pre-existing social divide, affecting children of lower income families and those living in rural and remote areas. Therefore, States should not only ensure the availability of free and open digital tools but also that schools provide further help and follow-up to those children whose parents cannot provide homework assistance or have limited resources to support the digital learning process.

**Para. 113** requires States to ensure that schools teach digital literacy as part of basic education curricula.Defence for Children International fully support this point, but would add that States should invest to make sure that teachers are equipped to teach these subjects.As to the sentence ‘It should promote awareness of risks […] and build on children’s resilience’, Defence for Children International wishes to see not *only a* focus on preventing victimisation, but also that States invest in prevention strategies, focussed on the prevention of offending of online abuse and harmful behaviour.

1. Plan International. “Free to be online? Girls’ and young women's experiences of online harassment.” (2020): <https://www.planinternational.nl/uploaded/2020/09/SOTWGR2020-CommsReport-EN.pdf?x10967> and Plan International. “Setting the agenda: the girls platform for action” [↑](#footnote-ref-1)
2. Union, I. T. "Measuring digital development Facts and figures 2019." *International Telecommunication Union, Geneva* (2019): <https://www.itu.int/en/mediacentre/Documents/MediaRelations/ITU%20Facts%20and%20Figures%202019%20-%20Embargoed%205%20November%201200%20CET.pdf> see also Organisation for Economic Co-operation and Development (OECD). "Bridging the digital gender divide: include, upskill, innovate." (2018): <http://www.oecd.org/internet/bridging-the-digital-gender-divide.pdf> [↑](#footnote-ref-2)
3. Especially young women of colour and with a migration background are experiencing this in the Netherlands, NOS (2020), *Jonge vrouwen aan de online schandpaal door gemengde relatie,* <https://nos.nl/artikel/2351679-jonge-vrouwen-aan-de-online-schandpaal-door-gemengde-relatie.html>. [↑](#footnote-ref-3)
4. Plan International. “ Free to be online? Girls’ and young women's experiences of online harassment.” (2020): <https://www.planinternational.nl/uploaded/2020/09/SOTWGR2020-CommsReport-EN.pdf?x10967> [↑](#footnote-ref-4)
5. For example, the Netherlands adopted a Child Labour Due Diligence Law on 14th of May 2019, see <https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/>. It did not yet enter into force though and needs to be further detailed in subsequent legislation. [↑](#footnote-ref-5)
6. UN Special Rapporteur in the field of cultural rights, Report on on the impact of commercial advertising and marketing practices on cultural rights, A/69/286 [↑](#footnote-ref-6)
7. **Keeping Children Safe Online**Guide, <https://www.keepingchildrensafe.global/wp-content/uploads/2020/05/KCS_Online_Guidance_2014-lo.pdf> [↑](#footnote-ref-7)
8. United Nations Children’s Fund (UNICEF), Children and Digital Marketing: Rights, risks and responsibilities, <https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities.pdf> [↑](#footnote-ref-8)
9. For example, recent UN campaign *Take Care Before You Share*, encouraging social media users to identify and think about to spread of misinformation online: <https://news.un.org/en/story/2020/06/1067422> [↑](#footnote-ref-9)
10. #DigitalRespect4Her Factsheet, European Commission, 2019: <https://ec.europa.eu/digital-single-market/en/news/digitalrespect4her-factsheet> [↑](#footnote-ref-10)
11. UN broadband Commission for digital development, 2015 <https://www.unwomen.org/en/news/stories/2015/9/cyber-violence-report-press-release> [↑](#footnote-ref-11)
12. ICT Facts and Figures 2017, International Telecommunication Union, 2017: https://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2017.pdf [↑](#footnote-ref-12)
13. UN Global Study on Children Deprived of Liberty (2019), p660 <https://childrendeprivedofliberty.info/wp-content/uploads/2020/09/Full-Global-Study_Revised-Version.pdf> [↑](#footnote-ref-13)
14. Terre des Hommes (TdH). “Accelerate Release of Children from Detention; Protect Children from COVID-19.” (June, 2020): <https://www.tdh.ch/en/media-library/documents/accelerate-release-children-detention-protect-children-covid-19> [↑](#footnote-ref-14)