**Submission to the  
United Nations Committee on the Rights of the Child**

**General Comment on   
Children’s Rights in Relation to the Digital Environment**

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*Introduction:*

The Working Group on Human Rights and the Working Sub-Group on State Responsibility of the American University of Paris welcome the Committee’s Initiative to revise the Draft General Comment CRC/C/GC/25 on children’s rights in relation to the digital environment. We believe it is crucial that the revised General Comment 25 articulate States’ responsibility to comply with crucial terms as defined in the Convention on the Rights of the Child. We are honoured to be able to share our thoughts on the possible improvements to be added to the General Comment.

Indeed, while we believe that this General Comment was written with laudable intentions, we argue that the language used is not specific enough, and therefore opens the door for Member States to define terms to the advantage of industry, rather than in the best interests of children. The language used should reflect States’ responsibility to protect children and prevent them from becoming victims of violence, harassment, or exploitation. Further, the language of the General Comment should articulate which measures should be introduced to implement the General Comment’s protections and how. We wish, therefore, to direct the Committee’s attention specifically to paragraphs 21, 22, 37 and 85.

1. **Intercultural Inclusion**

The draft General Comment appears to be directed to children of the Global North who live in a democracy and have access to electricity. According to Our World, a data organization, 13% of the world does not have access to electricity and 43% of the world’s population do not live in a democracy; that means that the majority of the world’s children lack certain freedoms or access to information which may be restricted due to State interest.

We suggest that the draft General Comment take into account different cultures. We strongly recommend parental rights to be included as part of the General Principles. The impact of technology on the gender of the child, and vice versa, should also be addressed throughout this draft General Comment since the gender breach could be amplified by the possible discrimanation of genders and cultures around the world.

Studies show that artificial intelligence may use discriminatory algorithms that in the most part will be controlled by industry or repressive States. According to the Council of Europe’s Antidiscrimination Department, “The most relevant legal tools to mitigate the risks of AI-driven discrimination are nondiscrimination law and data protection law. If effectively enforced, both these legal tools could help to fight illegal discrimination”. National Human Rights Commissions should come together with legally binding standards that determine how public and private algorithms affect desicion making, discrimination and biased opinions.

1. **The General Comment should remind States Parties, where applicable, that they have a normative and legal obligation to uphold the rights enshrined in the Convention on the Rights of the Child, and that the definitions of said rights are not to be used for self-serving ends. Therefore, the language of the General Comment must be made narrower and more focused on the Convention.**

Because children may not be the best judges of how to protect themselves, they are systematically disadvantaged in enjoying their rights; protection of chldren requires the presence of a dedicated, well-qualified authority to determine the best course of action to ensure their safety and well-being. Nonetheless, the General Comment should take note that this role may be abused. Indeed, paragraph 37 mentions that it is the States Signatories who must ensure that their online services are not used with ill intentions affecting children. This allows the State to decide what constitutes a threat to childrens’ safety or well-being. In fact, the definitions for such terms already exist in international customary law; the General Comment must bring attention to this. Paragraph 37 must bear the markings of international law, which is applicable to all. Without said markings, the document allows states to conflate situations dangerous to them with situations dangerous to the underage public. Without a clear quote from the Convention, this paragraph paves the way for signatories to directly violate the rights of children, such as Article 12, the right to form one’s opinion and to be heard according to age and maturity, and Article 13, the right to freedom of expression. These two articles could be violated should a state decide that finding politically charged content online that is detrimental to the government in place threatens the safety of a child; essentially, paragraph 37 paves the way for censorship.

In addition to that, it should be noted that Articles 12 and 13 of the Convention on the Rights of the Child are consistent with, and necessary for the advancement of, the “evolving capabilities” that are mentioned in the Draft Comment, paragraph 21.

Furthermore, while seemingly protected by the most comprehensive international human rights treaty, children remain among the most marginalised and abused demographics on Earth. It is the State’s role to ensure the survival, safety, and well-being of a child. The rights that define this are divided into non-derogable and derogable rights, as are all human rights; this dichotomy must be considered in its original sense. As long as no non-derogable right such as the right to life (Article 6) is under threat, it is the State’s responsibility to uphold the derogable rights of children such as the right to freedom of expression (Article 13).

Therefore, States Parties must be reminded that, while it is their role to ensure the preservation of the well-being of children, it is not up to them to define the term : it is defined clearly enough by articles of the CRC such as Article 6, the right to life. Indeed, States should comply with the definitions of “well-being” that are found in international law, such as the right to life in Article 6 of the Convention, and should also attempt, wherever and whenever possible, to uphold the derogable rights of children. Finally, States cannot hinder the freedoms of children in the name of the children’s safety where it is not absolutely necessary.

A better wording of the paragraph would therefore be:

37. States should require businesses to prevent their networks or online services from being misused for purposes that **are proved to** threaten children’s safety and well-being **as defined by the non-derogable rights of the Convention, while upholding derogable rights to the furthest extent possible**. **States should also** provide parents, caregivers and children with timely safety advice and prompt and effective remedy.

1. **State responsibility is concerned with the legal consequences of an internationally wrongful act, addressing the obligations of the wrongdoer State, on the one hand, and the rights and powers of those affected by the wrongdoing, on the other.**

States are responsible for upholding the treaties and conventions they ratify; the General Comments on the Convention on the Rights of the Child must reflect that, and with the appropriate legal language. Although basic civil rights are regularly circumvented and sometimes totally ignored, even by states that otherwise have democratic processes and institutions in place, this does not mean that important international laws are irrelevant, nor does it mean that the law that is in place should be in any way lacking.

The paragraph in question—paragraph 85—wisely and correctly encompasses the possibility of both adult and child perpetrators, as the digital space is increasingly accessible to people of all ages. However, the normative part of the paragraph is too vague:

“*Where children have carried out or instigated such actions, States should pursue preventive, safeguarding and restorative justice approaches whenever possible*.”

This sentence should be changed to:

“***States should enact preventive and safeguarding regulations to combat such actions and, where children have carried out or instigated such actions, States should pursue restorative justice approaches***.”

States’ shortcomings must amount to to an outrage, to bad faith, to wilful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognise its insufficiency.

Thus, States should enact preventive regulations before “children have carried out or instigated such actions,” not after. Additionally, the risks of harm in the digital environment include cutting and suicidal behavior, which should be prevented at all costs: the right to life is enshrined in article 6(1) in the Convention on the Rights of the Child (CRC) and is categorically non-derogable; States cannot wait for actions to be “carried out or instigated” to “pursue preventive […] measures” (CRC/C/GC/25, para. 85).

Article 19 of the CRC mandates that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms” of violence, abuse, etc. Furthermore, article 34 states that “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse,” and article 36: “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.” It is extremely important to stress that it is a State’s responsibility to protect children. To do so, it is imperative that States enact legally binding regulations in the digital environment, so that the rights of children are not violated either by other children or by adult perpetrators.

Lastly, the Permanent Court of International Justice in the *Chorzow Factory (Indemnity)* Case (1928) expressed the broad consequences of international State responsibility in these terms: any breach of an international engagement involves an obligation to make reparation’– in the sense of making good the damage caused by the wrong, and not necessarily simply paying monetary compensation. Thus, not only should States protect children by preventing cyberbullying, harassment, violence, or exploitation of any sort in the digital environment, they should also put restorative justice mechanisms in place. Regarding the support and recovery of victims, these mechanisms must comply with article 39 of the CRC, which mandates that States must take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of […] exploitation or abuse.” Additionally, article 19(2) provides for the establishment of social programs as part of an effort to protect children from violence, harassment, or exploitation. These social programs must cater to victims of such actions; support is crucial for recovery. Regarding judicial consequences, when it comes to underage perpetrators, these mechanisms and processes must comply with 37 and 40 of the CRC (as mentioned in paragraph 101 of CRC/C/GC/24).

1. **To reinforce all forms of implementation, we suggest that the General Comment alter its language in paragraph 21 and 22 to render the recommendations of Article 5 more legally binding for Member States**. **We recommend the use of more calculated language to strengthen the responsibility of the States Parties to fulfill the promises of Article 5 of the General Comment.**

21. The policies adopted to implement children’s rights in the digital environment need to vary according to children’s evolving capacities in order to reflect an appropriate balance between protection and emerging autonomy. In designing these policies, and the frameworks within which children engage with the digital environment from early childhood to adolescence, States shall consider: the changing position of children and their agency in the modern world; children’s competence and understanding that develop unevenly across areas of skill and activity; the nature of the risks involved in balance with the importance of taking risks in supported environments in order to develop resilience; and individual experience, capacity and circumstances. ***States should*** require digital providers to offer or make available services to children appropriate for their evolving capacities.

22. In accordance with the States’ duty to render appropriate assistance to parents and caregivers in the performance of their child rearing responsibilities, ***States should*** promote the awareness of parents and caregivers to respect children’s evolving autonomy and capacities and need for privacy. They should inform and support parents and caregivers in acquiring digital technology skills to help them to assist children in relation to the digital environment.

We suggest that precision of language in Paragraph 21 and Paragraph 22 of the General Comment would reinforce the implementation of Article 5 of the General Comment. Language should be as precise as possible to prevent loopholes and misinterpretations. We believe this precision is necessary because scientists and critical lawyers have recognised the subjectivity inherent in human judgement. The less room the General Comment leaves for interpretation, the less likely Member States are to sidestep essential legislation that will properly implement Article 5 of the General Comment. Understanding that language must be as precise as possible to ensure the compliance of all States Parties with the aim of the General Comment, we recommend a change of language in Paragraph 21 and 22, to make the recommendations set forth in Article 5 of the General Comment legally binding.

In Paragraph 21 of the General Comment we recommend changing the words “States should” to ***“States shall implement regulations and”*** in the sentence: “***States should*** require digital providers to offer or make available services to children appropriate for their evolving capacities.” Shifting this language would require the state to put forth a system of regulations by which such services could be made available. Without this adjustment the examination of the evolving capacities of children would fall to the digital providers themselves. The relationship between businesses and children in the digital space is still evolving and developing. As it is still an incomplete process, this responsibility should fall on States before businesses. Afterall for business and children to maximise the benefit from that relationship in the long term will require business to acknowledge those adverse impacts on children’s rights, and commit to contributing to protecting and advancing the full suite of children’s rights. Bearing this in mind, for the intent of Article 5 of the General Comment to be realized, the responsibility of gathering data for this analysis must be placed on the States Parties. The language should be strengthened to reinforce the accountability on Member States to follow-through on the implementation of these systems.

In paragraph 22 of the General Comment, we recommend making the change of “States should” to ***“States shall commit resources to”*** in the sentence: “***States should*** promote the awareness of parents and caregivers to respect children’s evolving autonomy and capacities and need for privacy.” The language of this article must be strengthened to reinforce state responsibility in promoting the awareness of parents and caregivers. It is not initially clear how the General Comment expects States to engage in this promotion. We believe that stipulating that resources must be committed to this goal will strengthen the intent of Article 5 of the General Comment. We believe this language is useful to ensure cooperation with Article 4 of the Convention on the Rights of the Child which requires that “States Parties shall undertake ***all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.***” The goal of paragraph 22 of the General Comment is to ensure that States make available the resources to parents and caregivers which allow them to understand the development of a child’s Evolving capabilities. We believe this goal is furthered by the inclusion of commitment and the demand for resources to accomplish that goal.

This change in language would render the concepts of this article more legally binding on States Parties. Therefore, we believe Paragraph 21 and Paragraph 22 of the General Comment would prove more effective if they were to read as follows:

“21. [...] ***States shall implement regulations and*** require digital providers to offer or make available services to children appropriate for their evolving capacities.

22. In accordance with the States’ duty to render appropriate assistance to parents and caregivers in the performance of their child rearing responsibilities, ***States shall commit resources to*** promote the awareness of parents and caregivers to respect children’s evolving autonomy and capacities and need for privacy. [...]”