**Draft General Comment No. 25 (202x)**

**Children’s rights in relation to the digital environment**

UNICEF welcomes the drafting of general comment (GC), No.25: to advance “Children’s rights in relation to the digital environment”. The draft provides a holistic approach to the topic, which we recognize is no easy task given the myriad ways that digital platforms and services impact on the lives, and evolving capacities, of children. We commend the broad consultation taken with children from around the world so that their views and experiences can be considered in the GC.

Below is UNICEF’s general and paragraph-itemized response. Red text indicates suggested edits to phrasing or additions to the GC.

**General feedback on the content, substance and format**

1. Overall, there is a good balance between child protection and respect for children's autonomy, in line with their evolving capacities. However, we recommend that the GC notes the interconnectedness of all their rights in the digital environment, e.g. privacy, freedom of expression, protection, and the challenges in sometimes reconciling tensions between them.
2. There should be a clarification up-front on who the secondary duty-bearers are in the digital environment, in addition to States. These include parents/caregivers, private welfare institutions and the business sector.
3. The GC would benefit from integrating a gender perspective and highlight the differences in the way children with different genders and gender identities access and experience digital technology and its related effect on children’s rights in a digital age. There are presently only 3 minor references: (i) non-discrimination based on sex, (ii) that the digital environment can include gender-stereotyping, and (iii) reference to gender-based violence as a form of violence. This is insufficient to acknowledge the disadvantages and vulnerabilities specific groups, such as girls, face in the digital environment – and across the areas discussed in the GC. We recommend the inclusion of a dedicated section in the GC on the existing and widening gender digital divide, especially for girls, and elaborate on aspects that disproportionally affect girls in the digital environment. The dedicated GC section needs to call on States to invest in proactive measures to close the gender digital divide for girls, with particular attention to access and digital skills, privacy and online safety, the right to be heard, the right to access information and to create and distribute their own content, etc. acknowledging the gender norms and gender inequality as root causes with disproportionate gatekeeping and lack of opportunity for girls. In addition to a dedicated gender section, we further recommend integration of the gender perspective throughout the GC. We commend the references in the draft GC to online Sexual and Reproductive Health and Rights (SRHR) and related information, which is particularly important for girls.
4. It should be stressed that the online and offline worlds are one and the same for children, and any suggested divide does not reflect children’s lived reality. The differentiation between the physical and the digital environment does not persist for young generations today; the realization of children’s rights should flow seamlessly across and throughout their lives. Further, with the digitization of so many essential services, children increasingly have no choice but to engage in the digital environment as part of their daily lives.
5. There may be opportunities throughout the GC to refer to early lessons learned from the pandemic, especially in the use of digital technology for distance learning on a scale never seen before. This has laid bare the uneven distribution of technology and digital architecture needed to facilitate learning at home.[[1]](#footnote-1) Technology, while not replacing in-class teaching, can facilitate and enable continuity of learning. Such references could be made in para 3 “If digital inclusion is not improved, already existing inequalities are likely to be exacerbated” and para 110 “States should ensure that schools have sufficient resources to provide parents with guidance on online home schooling and learning environments”, among others.
6. Section IX provides important guidance with respect to children with disabilities. We suggest integration of disability considerations throughout the GC. For example, ensuring that designers and providers of digital technologies and services ensure accessibility for children with disabilities in para 19 and that the measures referred to in para 26 to protect children include resource materials in accessible formats for girls and boys with disabilities. Overall, the specific needs of children with disabilities should be considered in relation to other articles e.g. mention in para 7.
7. While defining it as part of the scope, the GC does not offer much detail on biotechnology and biometrics. Biotechnology and advances in human genomics raise ethical questions about when and by who biological data should be gathered, analyzed for diagnostics, used for human alteration or the design of personalized treatments. Such questions will only become more important in the future and equally highlight the divide between those with access to such advanced technologies and those without. Regarding biometrics, please refer to the [UNICEF guidance on the use of biometrics in children-focused services](https://data.unicef.org/resources/biometrics/) for good practice.
8. Given the unique function the business sector has in developing, operating and even ‘governing’ the digital environment (by their own initiatives, which often precede the government actions), more emphasis should be given to the role and responsibilities of businesses, including by:
   1. Referring to this sector in the scope of the GC.
   2. Making specific reference to the responsibilities of businesses in the objective (para 8, like in para 8 of GC No. 16).
   3. Expanding the sections V.- I. (the business sector).
9. There should be greater balance between the opportunities and the risks of harms, for example:
   1. Section III C: Right to life, survival and development (para 15-17): should also talk about the opportunities (possibly with reference to education, culture and play, etc.), not just protection from the risks of harm.
   2. Section V B: Comprehensive policy and strategy (para 25 – 27): the GC could add positive aspects here.
   3. Para 14: after “harms and violations” add “as well as opportunities of advancement”.
   4. Para 122: reference the potential positive impact of children becoming economic actors (e.g. children becoming online entrepreneurs) - as distinct from exploitation/harmful child labor?
10. The GC should look beyond purely legislative solutions, as development of laws takes time and tech innovation outpaces legal reform or policy development. In several places the GC mentions action required as prescribed by law, but in the absence of legislation, what is the recommended course of action?
11. The GC needs provisions on reporting, monitoring, and accountability of States for implementation of this GC. Further elaboration on who are the duty bearers going to be accountable to, and how their compliance is going to be monitored and reported, will be beneficial in the GC.
12. The tone at times may be too vague and general (e.g. para 16). "States shall take all appropriate measures..." without giving clear examples of what such appropriate measures are. Similarly, for what "particular measures" might be needed in para 12. Para 23: It is not clear what "precautionary" means in this context (does it mean "preventive"? Non-native English speakers may struggle with this word). In para 3 it is not clear what the word “cumulative” is referring to.
13. When referring to child victims, also include the word survivor, e.g. para 19: "victims/survivors of harm..."
14. Consider including a specific reference to child rights education throughout the GC, e.g.
    1. para 26: "...to develop understanding of child rights and children’s digital skills and access to opportunities."
    2. para 34: ..."pre-service and in-service training relating to child rights in the digital environment is provided for educators..."
    3. para 48: "issues related to child rights in the digital environment"
    4. para 113: "States should ensure that schools teach child rights and digital literacy..."
    5. para 114: ..."providing digital literacy education and on child rights and safeguarding as it relates to the digital environment"
15. The GC should acknowledge the potential negative impacts of digital technologies on children’s mental health and physical wellbeing (e.g. lack of exercise, device distractions when outside and in traffic, etc.), but also that this is an area of ongoing debate where more evidence is needed.
16. Overall, we recommend greater emphasis on data agency for children, transparency around how data is collected and used, explainability for children and their parents/caregivers, and protection of children’s data and their privacy. For example, there should be easy-to-use and safe channels for children and parent/caregivers to understand and control what happens to their data, to alert them of possible risks, and to challenge algorithm-based decisions. Specifically, for children, using simple language and icons, instead of long and obfuscating legal language, is essential. We suggest referencing the UNICEF and GovLab [Responsible Data for Children principles and report](https://rd4c.org/). The principles are that responsible data for children must be purpose-driven, people-centric, participatory, protective of children’s rights, proportional, professionally accountable, and based on the prevention of harms. We also recommend the papers on [Good Governance of Children’s Data](https://www.unicef.org/globalinsight/good-governance-childrens-data), which cover topics that include commercial exploitation of children’s data, surveillance and a focus on group data.
17. To emphasize inclusion of marginalized groups, we propose the use of all children throughout the GC (not just children).

**Itemized comments**

1. Para 4: Suggest adding examples at the end, e.g. such as the use of surveillance technologies and of AI-driven automated decision-making systems that determine children’s welfare subsidies, or the quality of their health care and education access.
2. Para 10: Elaborate on meaningful access, not only connectivity. Meaningful access includes being connected at a fast speed, at an affordable rate, with useful content in local languages, and having the skills to be safe, critical and empowered online.
3. Para 16: The “content, contact and conduct” risk framework increasingly includes the risks associated with “contract”.[[2]](#footnote-2) This could be useful to include.
4. Para 17: Suggest an explicit mention of "screen time", given the attention being paid to this in relation to parenting/caregiving advice, etc. Even by adding the phrase "insufficient research at this time but..."
5. Para 17: Replace the term “digital addiction” with “excessive use” in the following sentence “Moreover, although there is insufficient evidence that early use of digital devices may increase the risk of later digital addiction, a precautionary approach should be taken also in this respect.” Please refer to [UNICEF's State of the World's Children report in 2017](https://www.unicef.org/sowc2017/), p. 115, for the many risks around employing addiction terminology.
6. Para 19: In a data-driven society, as in any society, children should not only be seen as customers or users of pre-defined services and applications. They should be considered free and autonomous agents, capable of setting and pursuing their own goals, in accordance with their evolving capacities. These are the preconditions for fair and beneficial data-based relationships. Even while they have agency, children should be protected.
7. Para 24: Suggest adding “mandate the use of child rights and ethical impact assessments”.
8. Para 25: In the case of children’s protection online, this dimension should be integrated within national child protection policies/strategies or national policies/strategies to end violence against children. This should be governed by a national level coordination mechanism that also brings in the information communication and technology sector.
9. Para 27 refers to the importance of ensuring safeguarding policies are in place in settings where children access the digital environment. However, we suggest broadening this as it is not only the physical location of services that needs safeguarding policies, but also any services/ organisations that children interact with. This would include services they may access wholly online, such as tele-health or remote education services. Add ‘libraries’ in the list of settings in which children access the internet.
10. Para 28: Include “academia” in the list of organizations to cooperate with.
11. Para 31 Add “ethical” to the first sentence, i.e. “Data collection and ethical research…”. Given all the issues around digital data collection, it may be good to explain further what “data that is adequately resourced” means.
12. Para 37: Perhaps add: “… from being misused or to misuse their own platforms …”.
13. Para 39: Ensure that the statement “States should require businesses that impact on children’s rights in relation to the digital environment to…” is understood as not only including those companies targeting children but all companies that may have child users or who’s digital platforms impact on children.
14. Para 39: The reference to “establish and implement regulatory frameworks, industry codes and terms of services that adhere to the highest standards of ethics, privacy and safety into the design, engineering, development, operation, distribution and marketing of their technological products and services” needs clarification about who sets the standards and benchmarks. The principle of evolving capacities could be reiterated at the end of this paragraph, i.e. businesses needing to create environments/tools (including for remedy) that are accessible and age appropriate. Also, emphasize the importance of sharing of good practices and joint efforts on innovations.
15. Para 40: Suggest these additions: “… for example by collecting, storing and analyzing data that is unnecessary for the service, sharing or selling children’s data to third parties, including in the methods …”
16. Para 42: We recommend including that it is not only for commercial purposes but also for political purposes, or any purposes that aim to unethically influence children.
17. Para 44: The first sentence would benefit from more specificity given that not all forms of violations would have the same challenges. Challenges around evidence collection and identification of perpetrators is a hindrance for children’s access to justice with respect to certain violations. However, in many countries, the main problem is the lack of cyber- and child-specific legislation which sanctions children’s rights violations in the digital realm, especially with respect to sex offences with a digital/online dimension. Without the law criminalizing such conduct, law enforcement cannot even act on such violations. We suggest the lack of cyber- and child-specific legislation should be explicitly mentioned at the outset, as it pre-empts the challenges encountered at the investigation stage.
18. Para 45 onwards: When mentioning access to justice, the GC should also show how technology can contribute towards *improving* children’s access to justice, both for offline and for online offences. In the context of COVID-19 related containment measures, for example, online reporting and counselling offered by service providers such as Child Helplines were often the only channels available for children. Another example of positive use of technology for access to justice is the use of CCTV networks in court rooms with a separate child witness room. Technologies (such as Microsoft Photo DNA) have supported children’s access to justice, in identifying child sexual abuse materials.
19. Para 54: In addition to providing access to a diversity of content, mechanisms to verify content, such as fact checking, flagging false information, etc. are necessary. Further, it is not clear how States can ensure balanced search results as it contradicts the business model and operational approach of today’s search engines.
20. Para 57: "Such controls should balance the right to protection against other children’s rights, notably their rights to freedom of expression and privacy." (protection is a right in itself).
21. Para 58: It is not clear what "proportionate" means here.
22. Para 61: Suggest adding “unless contrary to the restrictions set in art. 13.2 CRC” at the very end of the para.
23. Para 61: Suggest adding: “… data breaches and digital surveillance, including by domestic and foreign States.”
24. Para 63: Suggest adding more to highlight the risk from AI-based predictive analytics and profiling to limit children’s opportunities and development. Please see the [UNICEF Policy Guidance on AI for Children](https://www.unicef.org/globalinsight/reports/policy-guidance-ai-children), page 19, for an elaboration of these risks, including for girls and LGBT children.
25. Para 66: Check use of the term "sexual...identities": The preferred term may be "sexual orientation and gender identity".
26. Para 67: Suggest adding: “… or policy profiling, by ensuring that such participation is private and free from surveillance.
27. Para 72: Regarding “States should regularly review such legislation …”, there is almost no legislation on children’s data protection. What are the measures to implement in the interim? Perhaps add that as States are developing data protection regulation, to make sure that children’s needs are distinctly and explicitly addressed in the interim.
28. Para 73: Consider adding that children should be empowered to effectively port their personal data, both by downloading it to their personal devices, and by transmitting it to other services. Consider removing the restriction to unlawfully or unnecessarily stored data, allowing children to have any of their self-generated content removed too.
29. Para 85: Recommend defining the term ‘digitally mediated violence’.
30. Para 86:
    1. Add “friendly” to the last sentence, i.e. “in accordance with child-friendly justice systems.”
    2. Para 86: Add ‘in accordance with child justice international standards and norms’?
    3. Propose a new para after 86 that would address child trafficking for the purpose of criminal exploitation of children, for example: “The digital environment opens up new ways for criminal groups, including gangs, to solicit and traffic children for criminal purposes, including to distribute drugs. States should ensure that anti-trafficking legislation prohibits the recruitment of children by criminal groups, and that child offenders are treated as victims or, if tried, in accordance with child friendly justice systems. States are encouraged to fully incorporate the non-punishment principle, as elaborated by the UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT), to ensure a more consistent, human rights-based application of the principle, which provides that trafficked persons should not be subject to arrest, charge, detention, prosecution, or be penalized or otherwise punished for illegal conduct that they committed as a direct consequence of being trafficked.”
31. Para 87: States should also monitor the ways businesses meet their responsibilities. Suggest doublechecking that the words ‘reasonable’ and ‘proportionate’ are correctly used in this context (i.e. in a context of ‘criminal and harmful behavior towards children’).
32. Para 88: States should also raise awareness amongst children and parents/caregivers about children’s rights so that they make full use of the reporting mechanisms.
33. Para 104: Persuasive design, excessive gaming or age-inappropriate features are not “services”. Persuasive design and age-inappropriate features are “designs”, and excessive gaming is a behaviour. As such, the following edits are suggested: “States should regulate against known harms and proactively consider emerging research and public health evidence to prevent the spread of misinformation that may harm children, materials damaging to children’s mental or physical health, unhealthy engagement in digital games or social media, or design that undermines children’s development and rights, for example through persuasive design or age-inappropriate features."
34. Para 122: The last sentence on age verification systems may need reconsideration. Introducing age verification to access services that may be illegal for children to use would apply to pornography, alcohol, and adult-rate publications. It would be a privacy rights issue to require adults to prove their identity to access such services, which would be the inevitable consequence of using an age verification system. The second sentence may not be enough to address these concerns.

1. <https://www.unicef.org/press-releases/covid-19-least-third-worlds-schoolchildren-unable-access-remote-learning-during> [↑](#footnote-ref-1)
2. Refer 2019 Broadband Commission report: <https://www.broadbandcommission.org/Documents/working-groups/ChildOnlineSafety_report.pdf> [↑](#footnote-ref-2)