Committee on the Rights of the Child

General Comment No. 25 on children’s rights in relation to the digital environment

**COMMENTS BY THE GOVERNMENT OF CANADA**

The Government of Canada appreciates the work of the Committee of the Rights of the Child in monitoring States Parties’ implementation of the Convention on the Rights of a Child (the “Convention”) and the work on this new General Comment. Canada wishes to thank the Committee for the opportunity to comment on Draft General Comment No. 25 on children’s rights in relation to the digital environment. Canada welcomes constructive dialogue and engagement between the United Nations treaty bodies and States Parties on issues such as the content of General Comments.

Canada recognizes the independence and impartiality of the Committee, and its ability to issue General Comments. Canada reiterates, however, that General Comments are capable only of providing guidance to States Parties in their interpretation of their obligations. The Comments do not create binding legal obligations in and of themselves, nor do they reflect an interpretation of the Covenant that is necessarily agreed upon by States Parties.

The specific comments below are not exhaustive, but rather highlight areas for potential further development and identify some areas of concern. Silence in respect of other areas does not constitute acquiescence in the Committee’s interpretation of States’ obligations.

Canada strongly believes that the same rights that people have offline must be protected online. This also includes the rights of children, particularly girls. Canada was instrumental in raising issues of sexual and gender-based violence in digital contexts in multilateral forums, including through resolution HRC 38/5. As a general comment, Canada would recommend that the Committee further consider how diverse groups of girls facing intersecting forms of discrimination experience intimidation, harassment and violence in the digital context, which prevent them from fully enjoying their human rights and fundamental freedoms, including the right to freedom of opinion and expression, which hinders their full, equal and effective participation in economic, social, cultural and political affairs and is an impediment to achieving gender equality and their empowerment.

***Comments on Specific Paragraphs***

**Paragraph 13**

The interpretation of the best interests of the child principle in relation to the digital environment may be broader than what is contemplated in article 3 of the UN CRC. For consistency with the Convention, the Committee may wish to consider the following alternative language: States shall ensure that in all (DELETE: decision-making) (ADD: actions) regarding the provision, regulation, design and management of the digital environment (DELETE: that may impact children’s rights) (ADD: concerning children), the best interests of the child shall be a primary consideration.

**Paragraph 14**

This paragraph mentions that States “shall apply the best interests of the child as **the determining** principle” which arguably goes further than Article 3, which requires only that the best interests of the child be a primary consideration in actions concerning children not that it be determinative. The last sentence says “states shall ensure transparency in assessment of the best interests of the child and demonstrate what criteria have been applied”. While this is a good practice, it seems onerous in this context given that not every action taken by a State needs to incorporate a full and formal process of assessing and determining best interests (see paragraph 20 of the UN Committee’s General Comment #14). The Committee may wish to consider alternative language such as “states (DELETE: shall ensure transparency) (ADD: are encouraged to be transparent) in (ADD: the) assessment of the best interests of the child and demonstrate…”

**Paragraph 19**

With respect to the paragraph on the right to be heard, the Committee may wish to clarify that pursuant to article 12 of the UN CRC, the views of the child are given due weight “in accordance with the age and maturity of the child”.

**Paragraph 47**

The Committee may wish to slightly adapt this paragraph given that with the nature of digital crimes, it is likely impossible for states to guarantee non-recurrence of violations, and so we have recommended softer language here. The Committee may want to consider this change: “Appropriate reparation includes restitution, compensation and satisfaction, and may require apology, correction, removal of unlawful content or other measures. […]. Reparation should be timely to limit ongoing and future damage. [DELETE: ~~States should guarantee non-recurrence of violations~~ ADD: States should undertake activities to prevent the recurrence of violations], including by reform of relevant law and policy and their effective implementation.”

**Paragraph 81**

Canada could suggest using non-gendered language where possible (for example, using the terms “they/them/their” instead of “his/her(s)” in this paragraph. Using binary gendered language excludes children who identify outside these binary distinctions.

**Paragraph 94**

In terms of support for digital access in all cases of separated families, the Committee may wish to clarify in the last sentence that it is appropriate where it is beneficial to the children, but this is not always the case. Proposed alternative language: Therefore, in the context of all separated families, States should support the digital access of children and their parents, caregivers or other relevant persons (ADD:,where appropriate, taking into consideration the best interests of the child).

**Paragraph 72**

Although protection of privacy is important, we cannot ignore the safety of children in the digital environment. Canada agrees that a child’s privacy, including personal information, needs to be protected, however encouraging adoption of end-to-end encryption for all digital services that impact children, which Canada understands as including online platforms such as social media, could have a negative impact on children’s safety and leave them vulnerable to exploitation and other types of harms. Proposed language: States shall take legislative and other measures to ensure that children’s privacy is respected and protected by all organizations and in all environments that process their data. Such legislation should include strong safeguards, independent oversight and access to remedy. States should encourage the adoption of privacy-by-design,(DELETE: such as end to end encryption), in services that impact on children. States should regularly review such legislation and ensure that procedures and practices prevent deliberate infringements or accidental breaches of children’s privacy. States should ensure that consent to process a child’s data is informed and freely given by the child or, depending on the child’s age and maturity, by the parent or caregiver, and obtained prior to the processing.

**Paragraphs 119**

The Committee may wish to consider including mentions of the risk of online child sexual exploitation during leisure time online, such as from online gaming. This section currently ignores the fact that during their leisure time, children often interact with others online which can put them at risk from a variety of ways, including grooming and luring and sexual exploitation. Proposed additional language: Leisure time spent in the digital environment may expose children to risks of harm, for example (ADD: luring and grooming, or) through surreptitious advertising or highly persuasive or even gambling-like design features. By introducing or using data protection, safety-by-design and other regulatory measures, States should ensure that businesses (ADD: protect children from online harms and) do not target children using these or other techniques designed to prioritize commercial interests over those of the child.

**Paragraph 121**

In this section, the main focus is related to harms for economic gains, including sexual exploitation, trafficking, sale of children, drugs, etc. However, we know that from an online child sexual exploitation perspective, economic gain is often not the primary driver for this type of crime. The Committee may wish to nuance language to reflect the often non-economic nature of online child sexual exploitation and abuse. Proposed revised language: Children should be protected from all forms of exploitation prejudicial to any aspects of their welfare in relation to the digital environment. This may occur in many forms, such as (ADD: sexual exploitation and abuse, as well as) economic exploitation including child labour, (DELETE: sexual exploitation and abuse), sale, trafficking and abduction of children, grooming children to participate in criminal activities including hacking, and/or financial crimes.