

UN Committee on the Rights of the Child: Concept note for a General Comment on children's rights in relation to the digital environment

GLOBAL PARTNERS DIGITAL
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Global Partners Digital Submission

About Global Partners Digital

The advent of the internet – and the wider digital environment – has enabled new forms of free expression, organisation and association, provided unprecedented access to information and ideas, and catalysed rapid economic and social development. It has also facilitated new forms of repression and violation of human rights, and intensified existing inequalities. Global Partners Digital (GPD) is a social purpose company dedicated to fostering a digital environment underpinned by human rights and democratic values. We do this by making policy spaces and processes more open, inclusive and transparent, and by facilitating strategic, informed and coordinated engagement in these processes by public interest actors.

The purpose and scope of the General Comment

The purpose of the General Comment should be to articulate the particular ways in which children's rights, as set out in the Convention on the Rights of the Child (the Convention), are impacted both positively and adversely in and by the digital environment, and the consequent obligations of states and responsibilities of non-state actors, particularly businesses, in this regard.

Although the full range of children's rights can be impacted - positively or adversely - by the internet and digital technology, we welcome the suggestion in the Concept Note for the new General Comment to highlight and pay particular attention to those rights which are most impacted. We are particularly keen to see attention being paid to the rights to privacy and freedom of expression, given that there are particular benefits and risks in relation to these rights as enjoyed by children in the digital environment which are affected by the actions of states and non-state actors. Furthermore, unlike other rights under the Convention, neither of these rights has been the focus of a specific General Comment so far, meaning that elaboration of the scope of these rights in the digital environment would be particularly useful.

The structure of the General Comment

We have no particular position on the structure of the new General Comment, however we do think it would be helpful for it to look, first, at the different ways that particular children's rights are impacted - positively or adversely - by the internet and digital technology. This context will be helpful if the new General Comment then turned specifically to the obligations

of states with regard to children's rights in the digital environment and then the responsibilities of non-state actors, particularly businesses.

General measures of implementation by State parties needed to realise children's rights in relation to the digital environment

Article 4 of the Convention requires State parties to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention". While General Comment No. 5 provided a non-exhaustive set of necessary measures, it was drafted in 2003 when the internet penetration rate was around 10% and its impacts upon society relatively minimal. Since then, the rapid increase in the use of the internet and digital technology, and advancements in what it offers society, means that it can now play a critical role in the realisation of children's rights broadly.

As such, a further general measure of implementation, and a prerequisite to the realisation of children's rights in the digital environment, should be for State parties to make all efforts to ensure that their populations have access to the internet and other digital technologies. Indeed, without access to the internet and digital technology, children's rights in the digital environment cannot be realised.

Worth noting in relation to this is the fact that the rate at which access to the internet has increased in recent years has slowed, with half of the world still unconnected. Greater efforts must be made not only to bring the other half of the world online, but to do so in a way which is equitable so that the benefits of the internet and other digital technologies are felt by all, rather than only certain groups. This means, for example, investing in the infrastructural developments needed to ensure the full population has access to the internet, and avoiding regulatory measures which limit access to the internet.

Of concern in recent years is the instigation or facilitation by governments of network disruptions, which render the internet or particular platforms inaccessible, and which have increased in number from 75 in 2016 to 188 in 2018.¹ Also of concern are policies which render access to the internet and other digital technologies unaffordable, often through taxation. A new social media tax in Uganda, for example, has reduced the internet penetration rate from 47% to 35%.² The Committee should highlight these as running contrary to State parties' obligation to undertake appropriate measures for the implementation of the rights in the Convention.

Views on the issues and questions raised in the concept note

As noted above, we support the proposed approach of looking at particular rights - or groups of rights - but would caution against the wording of the final group, i.e. "protection from violence, sexual exploitation and other harm". While the Convention sets out a series of areas of life where children need particular protection in Articles 19, 34 and 36 (such as physical, mental and sexual violence and abuse, or different forms of exploitation) it does not set out a general requirement to protect children from "harm". As we point out below, we have seen vague references to "harm" as the basis for national measures which, in fact, restrict children's rights. We would therefore urge the Committee to avoid references to "harm" in the abstract, and ensure that the new General Comment instead uses the specific forms of harm identified in those articles of the Convention itself, to help mitigate the risks of misinterpretation or misuse.

¹ Access Now, "#KeepItOn", available at: <https://www.accessnow.org/keepiton>.

² Nanfuka, J., "How Social Media Taxes Can Burden News Outlets: The Case of Uganda", Center for International Media Assistance, 14 May 2019, available at: <https://www.cima.ned.org/publication/how-social-media-taxes-can-burden-news-outlets-the-case-of-uganda/>.

How can States better realise their obligations to children’s rights in relation to the digital environment?

The Committee has recognised the important role that the internet and digital technology can play when it comes to realisation of children’s rights, as well as the role of States in this regard. In General Comment No. 20 on the implementation of the rights of the child during adolescence, for example, the Committee stated:

“As they move through their second decade, children begin to explore and forge their own individual and community identities on the basis of a complex interaction with their own family and cultural history, and experience the creation of an emergent sense of self, often expressed through language, arts and culture, both as individuals and through association with their peers. For many, that process takes place around and is significantly informed and influenced by their engagement with the digital environment. The process of construction and expression of identity is particularly complex for adolescents as they create a pathway between minority and mainstream cultures.”

Later, the Committee noted that:

“Adolescents use the online environment, inter alia, to explore their identity, learn, participate, express opinions, play, socialize, engage politically and discover employment opportunities. In addition, the Internet provides opportunities for gaining access to online health information, protective support and sources of advice and counselling and can be utilized by States as a means of communicating and engaging with adolescents. The ability to access relevant information can have a significant positive impact on equality.”

Given this, we are particularly concerned by an increasing trend of governments in all regions placing greater restrictions on what forms of expression can be imparted and received online, often on the basis of protecting children.³ The forms of expression which are being restricted are often vague, and regulatory models skewed heavily toward the removal of online content. While there are, of course, permissible restrictions on the right to freedom of expression, many have been highlighted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression as risking unjustified restrictions. As noted above, there is no General Comment which focuses on children’s right to freedom of expression as set out in Article 13 of the Convention. Article 13 is, however, almost identical to its counterpart in the International Covenant on Civil and Political Rights (ICCPR) (Article 19), including in permissible restrictions.

Children are as, if not more so, reliant on the internet as a source of information and a means by which to express themselves as adults. On many issues, children may not feel comfortable or able to turn to their families, peers or schools as a source of information, or to express themselves. When it comes to sensitive issues such as sexuality and gender identity, or physical and mental health, for example, the internet may be the only means for many children to access critically important information and to enable them fully to explore and realise their identity. However it is information and expression relating to these issues which are at particular risk of being censored as a result of the restrictions stemming from government regulatory action and proposals, as it can often be caught up under broad headings of potentially “harmful” content such as nudity, sexual content, violence or self-harm.

³ In this regard, we would highlight the report of the Child Rights International Network on children’s right to access information: Child Rights International Network, *Access Denied: Protect rights - unblock children's access to information*, 2014, available at: https://archive.crin.org/sites/default/files/access_to_information_final_layout.pdf.

It is therefore particularly important, when it comes to children's rights in the digital environment, that measures taken to restrict online content are fully consistent with the right to freedom of expression as set out both in the ICCPR and the Convention on the Rights of the Child. Particularly care should be taken by governments not to incentivise the removal of legitimate forms of information and expression.

We would therefore urge the Committee to make clear that the Human Rights Committee's General Comment No. 34 on Article 19 of the ICCPR) should be considered to apply *mutatis mutandis* to Article 13 of the Convention on the Rights of the Child. In particular, the new General Comment should recognise make clear that:

- When a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself; (see Para 21 of General Comment No. 34)
- Restrictions must be provided by law and formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. It cannot confer unfettered discretion for the restriction of freedom of expression on those charged with its execution; (Paras 24-25);
- Laws restricting the rights enumerated in Article 13, must not only comply with the strict requirements of Article 13(2) of the Convention, but must also themselves be compatible with the provisions, aims and objectives of the Convention, e.g. they must not violate the non-discrimination provisions of the Convention; (Para 26)
- Restrictions must be "necessary" for a legitimate purpose; (Para 33)
- Restrictions must not be overbroad, but instead conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected; the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law; (Para 35)

How should the practices of businesses operating in the digital environment support the realisation of children's rights

Given the significant benefits stemming from the internet and other digital technologies to the realisation of children's rights, and the potential adverse impacts, it is essential that businesses operating in the digital environment act in compliance with the responsibility to respect human rights as is set out in the UN Guiding Principles on Business and Human Rights. Tech companies should be particularly conscious of the potential adverse impacts to the rights to privacy and freedom of expression that can be caused by their products, services, policies and actions.

Tech companies can look to existing initiatives which focus on respecting the rights to privacy and freedom of expression, such as the Global Network Initiative (GNI). The GNI, a multistakeholder body of tech companies, investors, civil society and academia, has developed a set of Principles and Implementation Guidelines to help tech companies better understand and fulfil their responsibility to respect these human rights.

As is suggested in General Comment No. 16, State parties should be encouraged to require businesses to undertake children's rights impact assessments and other forms of due diligence with a view to identifying, preventing and mitigating the impact of risks on children's rights, including their right to freedom of expression, when using their platforms, products and services.