



ECPAT'S SUBMISSION
CALL FOR COMMENTS ON DRAFT GENERAL COMMENT ON CHILDREN'S RIGHTS IN RELATION TO THE
DIGITAL ENVIRONMENT

Introduction

This submission by ECPAT International (EI)¹ is in response to the call for comments issued by the Committee on the Rights of the Child on the Draft General Comment on children's rights in relation to the digital environment. This submission incorporates contributions made by members of the ECPAT Network for the purpose of this call.²

Paragraph 2

The definition of 'digital environment' could be improved as it is general and abstract in the draft General Comment. As the digital environment is continuously evolving and expanding, it would be important to include specific examples e.g. social media, applications, online games. 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, based on the Luxembourg Guidelines and the Guidelines on the Implementation of the OPSC, which give the definitions of important terms used in this draft General Comment.

Paragraph 5

Suggest 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.*"

Paragraph 7

The scope of this draft General Comment is large compared to other General Comments focusing on one article/right only. 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 of the CRC do not give adequate attention to the themes. A suggestion could be 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 providing, in this General Comment, 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.*"

1 ECPAT International is a global network of civil society organisations, working to eradicate all forms of sexual exploitation of children. Over the past 30 years, ECPAT has become the forefront international NGO network dedicated to end this severe form of violence against children, advocating for State accountability and more robust measures across sectors to enhance the protection of victims. ECPAT currently has 121 member organisations operating in 103 countries around the world.

2 [CHIDDO - Child's Destiny and Development Organization](#), [Defence for Children - ECPAT Netherlands](#), [Child in Need Institute \(CINI\)](#), [ECPAT Belgium](#), [ONG Raices](#), [Tacteen Naeil/ECPAT Korea](#),



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Paragraph 8

The objective of this draft General Comment should 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*.

Paragraph 14

States shall also ensure full compliance with any prevailing national laws, framed to protect the rights of the children in the digital era following the CRC ratification, which highlights the need to promote the best interest of the child.

Paragraph 15

Access to the digital environment may indeed be vital for children's life and survival; however, it should be specified that in many cases, children at risk or in vulnerable situations hardly have access to the Internet, therefore making universal Internet access a priority.

Paragraph 16 and 17

It is suggested to consider adding 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 are in need of immediate support services, including psychological services.

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.

It could be more explicitly stated that 'States should stimulate research into the consequences of the digital environment on the development of children' as well as focusing on understanding the online behavioural pattern of children and adolescents.

Although ECPAT agrees that "the use of digital devices should not substitute for direct, responsive interactions amongst children themselves or between children and their parents and caregivers", it is important to note that the digital environment and devices have already substitute at least partially direct contact.

Paragraph 20

Independent engagement of children should be guaranteed when accompanied by a minimum supervision.



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Paragraph 21

Along with providing an appropriate digital environment for children's evolving capacities, policies must also include a minimum age for non-accompanied child users.

It is necessary for the States to understand that although the concept of evolving capacities is an important marker which balances the rights and duties of parents with the rights of children, the CRC recognises the child as a subject of rights, the child is entitled to protection and the State has the right to intervene if the best interest of the children is violated.

Paragraph 25

When ensuring the national policies and/or strategies for children's rights, States should also ensure detailed policies regarding punishments for violating children's rights in the digital environment.

Paragraph 28

Communication should also be viewed as a critical element towards respecting, protecting and implementing rights of children, besides coordination. States should promote universally agreed terminology related to online child sexual exploitation of children, to facilitate effective communication amongst all persons and entities involved, accuracy and consistency in policy making, legislations and in advocacy.

Paragraph 31

Data collection and research should include a gender lens. Digital access remains a significant issue for many girls.³ Recent data from the International Telecommunications Union shows that the global gender divide is increasing for girls and women between the ages 15-64. Currently, the global digital gender divide is at 17%. The divide is the widest in South Asia (51%) and Sub-Saharan Africa (37%).⁴ However, limited 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 disproportionately affected by online harassment. 58 percent of girls surveyed have experienced online harassment. As a result, 13 percent of girls stop sharing their opinions on social media, 12 percent adjust the way they express themselves on social media and 8 percent completely stop with the social media platform where the online harassment took place.⁵

The following wording for this paragraph is therefore proposed: *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.*

³ Plan International. (2020). [Free to be online? Girls' and young women's experiences of online harassment](#).

⁴ ITU. (2019). [Measuring digital development Facts and figures 2019](#). See also Organisation for Economic Co-operation and Development (OECD). (2018). [Bridging the digital gender divide: include, upskill, innovate](#).

⁵ Plan International. (2020). [Free to be online? Girls' and young women's experiences of online harassment](#).



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Focus should also be on strengthening data research, monitoring and evaluation activities to enhance regular and consistent data gathering and analysis in the core areas of online child sexual exploitation and its various manifestations to support evidence based policy making, awareness generation and capacity building as well as to measure progress in the context of SDG targets 16.2, 5.2, 5.3 and 8.7. This data should be disaggregated by gender, age, type of “online abuse” and allow to better document the impact of online child sexual exploitation on children.

Paragraph 33

States should also provide information on penalties in violating children’s rights and safety as this may prevent misuse or abuse of digital technologies against children.

The “educational programmes for children” should be facilitated with a participatory approach.⁶

Paragraph 36

The duties of the business sector, in particular the ICT sector, should also include pro-active detection, notice and take down of child sexual abuse material.

Paragraph 38

Due diligence procedures on the impact on children should not be voluntary but mandatory for business enterprises.

Additional to the investigation of child rights violations, States should require business enterprises to take action about child rights violations, such as reporting to police and removing unlawful content.

Paragraph 41

In most cases, advertisements that contain age-inappropriate contents are presented in public websites such as news media websites and blogs accessible to all age groups. These must be regulated to protect children from harmful materials.

Paragraph 44

Children also hesitate to report victimisation due to fear of being labelled or blamed for their actions. Even though children do not hold any responsibility for such actions, they often wrongfully become a target of blame.

Paragraph 47

Removal of unlawful content or other measures should be provided with or without children or caregiver’s agreement. When victimisation occurs, receiving approval from the child or the caregiver may take a while when removal must be done quickly before any further distribution. Thus, allowing removal or deleting

⁶ See e.g. [Declic project](#).



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unwanted materials or data is critical for protecting children and their rights and allowing further re-victimisation through the amplification of its dissemination.

Paragraph 52

Age-appropriate digital content for children could be improved by introducing a gender lens. Suggestion 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.*

Moreover, this content should be available in the children's own languages or focused on pictures in case children are illiterates.

Paragraph 55

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.

Access to information is essential, but protection and prevention are also quite critical. Children do receive useful information from the digital environment, but they also meet inappropriate information such as obscene or violent materials. Therefore, strict regulation must be guaranteed before ensuring children's rights to access various digital environments.

Paragraph 56

The "educational materials for children" should be regularly updated because the online world is changing so fast.

Paragraph 61

Suggestion 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 the freedom to expression of all children in the digital spaces is protected.*

Children may express healthy opinions and identities, but they also can express themselves in an unhealthy way without fully understanding the risks and consequences. For example, they may upload obscene photos or videos or unintentionally post inappropriate materials mimicking celebrities. In order to prevent misuse, a certain level of censorship and surveillance is required.

Paragraph 67

Minimum level of monitoring should be required to ensure children's safe engagement.



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Paragraph 72

End-to-end encryption has the potential to do great good, but also to do great harm to children, particularly if it is deployed in large scale messaging environments where little or no meaningful attempt is made to verify the real world identity of users. Children's data should be stored securely and kept for the minimum time needed for the intended purpose of the original collection and processing. In general, that means data should be strongly encrypted while stored on servers or other digital media. Children's data should be secure when being transmitted across a network. Here again strong encryption can play an important part. However, current forms of end-to-end strong encryption, deployed before the message or content is transmitted or stored, can make it impossible to detect crimes that have been or are being committed against children. The distribution of child sexual abuse material can carry on under cover of manufactured darkness. Court orders and police warrants are made redundant because law enforcement agencies wouldn't know where to look to begin with. In the probably rare cases where they did know or found out where to look, the technology company would be unable to help even if it wanted to, because it would be unable to 'see' anything. Perpetrators can continue with impunity and the rule of law would be undermined. End-to-end strong encryption can also make it impossible to detect current and on-going behaviours which threaten children's well-being, for example grooming or self-harm. This means children cannot be identified and rescued or helped. Thus a key feature of privacy-by-design should incorporate an ability to inspect messages prior to going into the encrypted environment without compromising the confidentiality of the message itself. PhotoDNA is an example of a child protection tool which is 'blind' to the wider content of a message but can forensically detect already known criminal content which is then flagged for human review. At the moment PhotoDNA can work with particular forms of encryption but as yet it is not scalable. Further roll out of strong encryption on messaging services should halt and be rolled back until this problem is solved.

Paragraph 77

This is a very complicated issue. It is important to protect children's privacy, but it is also true that children can access to inappropriate and harmful content. Therefore, finding a mid-point is needed. As mentioned in paragraph 102, if child-friendly and child-safe digital environments in which children can access and receive sensitive information are provided, it would be easier to find the mid-point to ensure both children's privacy and their safety.

Paragraph 83

Beyond online child sexual exploitation, perpetrators also use the online environment to share unlawful information with other perpetrators and participate in other crimes against children, such as the sale and trafficking of children.

Paragraph 84

The difficulties in investigation and prosecution of crimes are especially true in cases in which the right to privacy/freedom of expression are in conflict with the protection of children from sexual exploitation.



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Paragraph 85

Not just sexting, children also fall into sexual exploitation risks such as grooming via various digital technologies. Usually, sexual offenders approach children using social media or random chatting, build a trusting relationship, and eventually sexually exploit children. In such cases, like grooming, children often receive blame for their active engagement rather than the perpetrator.

Paragraph 94

Although migrant and refugee children are mentioned in this paragraph as one of the most vulnerable groups, there is no specific section on them following, as it is for children with disabilities.

Paragraph 102

The “health information and services” that should be ensured by States, should also take into account children’s culture, mental/physical disabilities, etc.

Paragraph 104

See comment at paragraphs 16 and 17.

Paragraph 107

Access to education should also be ensured to children living in rural and sub-urban areas as well as children belonging to pastoralist and nomadic communities.

Paragraph 113

States should also 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’, a suggestion is to not only focus on preventing victimisation, but also that States invest in prevention strategies, focused on the prevention of offending of online abuse and harmful behaviour.

Paragraph 116

A certain level of supervision should be required to prevent misuse and ensure a healthy environment.

Paragraph 119

Children can also be exposed to violence during their leisure time spent in the digital environment, such as offline/online game and social media. Also, in games and social media contents, there are twisted representations of children, especially sexually. These representations can bring the wrong images of themselves to children and cause harm to them. Therefore, such risks must be considered, and proper legal regulation and oversight should be required.