

**Comments on the Draft General Comment No. 25 (202x) on**

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

**by the Committee on the Rights of the Child**

Legal Aid of Cambodia

4 November 2020[[1]](#footnote-1)

The Legal Aid of Cambodia (LAC) welcomes the development of a general comment addressing an important contemporary issue with widespread impact on children. The LAC submits the following comments on specific paragraphs of the draft general comment in order to build in additional safeguards for children. The proposed revisions have been italicized, and although the word “should” was used for these revisions, they should be replaced with the word “shall” whenever deemed appropriate.

**Paragraphs 45-46**

Among the numerous barriers preventing children from seeking justice, a major problem is the possibility of retaliation and intimidation, whether by state or non-state actors. To mitigate these concerns, the Committee should consider inserting the following statement either within paragraphs 45-46 or in a new paragraph: “*States should ensure that children seeking justice are protected from retaliation or intimidation, whether by the alleged offenders, State actors, private sector actors, civil society or family members. Where appropriate, the State should also establish a child-friendly mechanism for receiving anonymous requests to commence an inquiry based on pre-established and validated procedures*.”

**Paragraph 59 (new)**

On top of widespread censorship, certain state and/or non-state actors have used the manipulation of the supply of electricity or internet connectivity as a weapon to hinder communications and access to information, especially in geographical areas that already face particular vulnerabilities and discrimination. These practices have a profound impact on children and families, and thus should be prohibited. In this regard, after paragraph 58, the Committee should consider inserting a new paragraph as follows: “*States should not intentionally obstruct or enable other actors to obstruct the supply of electricity, cellular networks or internet networks in any geographical area, whether in part or as a whole, which can have the impact of hindering a child’s access to information and communication.*”

**Paragraph 61**

Even when states may avoid the strict prosecution of children for expressing their opinions in the digital space, those statements are often utilized maliciously in legal proceedings to the disadvantage of children. Further safeguards are necessary for children in contact with the law, including child victims and witnesses. In this regard, the Committee should consider revising the last sentence of the paragraph as follows: “. . . Children should not be prosecuted for expressing their opinions in the digital environment*, and introduction of such information in court or in other dispute resolution mechanisms, such as for character evidence or for prior inconsistent statements, should be pursued only when appropriate and factually validated, with utmost precaution and without manipulation or malicious intent. In this process, the statements made in the digital environment should never be taken out of context*.”

**Paragraph 67**

Discrimination and consequences as a result of child participation and affiliation can take numerous forms. To provide further specifications, the Committee should consider revising the last sentence of the paragraph as follows: “. . . States should ensure that children’s participation in *legitimate* associations or assemblies in the digital environment does not result in negative consequences to those children, such as exclusion from a school, deprivation of a scholarship, police profiling*, impeded access to public benefits or unjustified repercussions on employment*.”

The proposed revision specifies that associations or assemblies should be “legitimate”, in line with the paragraph’s intent to not necessarily protect affiliation with entities like criminal syndicates in the digital environment, which could inevitably lead to negative consequences. However, it should also be noted that the definition or interpretation of the word “legitimate” or any of its synonyms would be a matter of contention, especially when considering that associations or assemblies may unjustifiably be pinned as illegitimate for their political dissent, activism, or topic of interest. Thus, a discussion should be held as to the preferred approach in the phrasing of the sentence.

**Paragraph 80**

Online birth registration platforms can facilitate the registration process especially for those in rural areas and for marginalized groups such as refugees, but they also need to be used with precaution to ensure security and efficacy. In addition, these systems often unnecessarily impose time restrictions that make it difficult for those who intentionally or inadvertently choose to register the birth of the child at a later time for complex reasons. In this regard, the Committee should consider revising the third sentence of the paragraph as follows: “. . . States should use modern technology to ensure access to online birth registration*through secure and tested digital platforms, with appropriate maintenance over time. Though immediate registration at the time of birth is ideal, the online system should not limit registration to only newborns or impose a tight timeframe restriction following birth*. This should be made available also to children born prior to the introduction of online registration. . .”

**Paragraph 81**

Protection for refugee children, stateless children, and children on the move is a responsibility for both states of origin and host states. To make this clear, the Committee should consider inserting a new sentence after the first sentence of the paragraph as follows: “States shall respect the right of every child to preserve his or her identity, in particular, refugee children and children in situations of migration, and act to prevent or resolve statelessness. *This applies equally to both States of origin and host States*. . .”

**Paragraph 83**

One of the common methods of digital sexual violence committed against children is the hacking of computers or mobile devices to access cameras, microphones, and files unbeknownst to the owner. In this regard, the Committee should consider revising the paragraph as follows: “The digital environment opens up new ways for sexual offenders to solicit children for sexual purposes, participate in online child sexual abuse via live video streaming, distribute child sexual abuse material, and commit sexual extortion of children*, including by illegally and secretly accessing cameras, microphones or personal files on computers or mobile devices*.”

**Paragraph 85**

Laws in many countries enable the criminal prosecution of children for taking and sharing images of themselves, often as a result of oversight in the legislative drafting process. To ensure that these children are not penalized for these actions, the Committee should consider inserting the following sentence at the end of the paragraph: “. . . *Self-generated images taken by children of themselves and shared to others should not be considered and criminalized as the production, possession or distribution of child sexual abuse material, both in law and in practice*.”

**Paragraph 87**

Serious illicit activities are more often conducted in the dark web. Despite the difficulties in policing the dark web and the concerns that productive political dissent and activism may be wrongly targeted as a result, the international community has found methods of specifically disrupting criminal activity in the dark web, including child trafficking and sexual exploitation. To highlight this space, the Committee should consider revising the last sentence in the paragraph as follows: “. . . States should develop regulatory approaches to encourage and enforce the ways businesses meet these responsibilities, taking all reasonable and proportionate technical and procedural steps to combat criminal and harmful behaviour directed at children in relation to the digital environment*, including in the dark web*.”

**Paragraph 110**

While the use of technology should be encouraged to enable distance learning, there needs to be sufficient physical infrastructure in place for children to access that form of learning. Though it would not be feasible to provide computers or other mobile devices to each household, the state can at least invest in basic infrastructure. In this regard, the Committee should consider inserting the following as the penultimate sentence of the paragraph: “. . . For children not physically present in school or living in remote areas or in disadvantage or vulnerable situations, digital educational technologies can enable distance or mobile learning programmes. *States should ensure that there is proper infrastructure in place to enable children in all geographical areas to have access to the basic utilities necessary for distance learning, including infrastructure for electricity, cellular networks and internet networks*. . .”

**Paragraph 122**

An increasing number of children have been creating creative content online over the past two decades, but not all of them are being properly credited or provided with intellectual property rights where appropriate. To address this issue, the Committee should consider revising the third sentence in the paragraph as follows: “States should review relevant laws and policies to ensure that children are protected against economic and other forms of exploitation and that their rights with regard to work in the digital environment and related opportunities for remuneration*, proper credit and intellectual property* are protected.”

**Paragraph 125 (new)**

There are businesses that profit from selling digitized information about prior criminal records received as a child, even when these records have been sealed or expunged. This type of information can have a lasting impact throughout childhood and adulthood, and thus should not be accessible to third parties, especially when used as a basis for lucrative transactions. In this regard, after paragraph 124, the Committee should consider inserting a new paragraph as follows: “*States should ensure that public authorities, businesses or other private individuals or entities do not store and profit from digitized criminal records received as a child, especially when the records have been sealed or expunged. States should also ensure that their digital data are hosted on a secure platform with periodic security inspections and updates*.” Alternatively, this statement can be combined with paragraph 73.

1. This submission was prepared by Mr. Ha Ryong JUNG, Legal Officer and Attorney (haryong.jung@gmail.com). [↑](#footnote-ref-1)