Office of the United Nations

High Commissioner for Human Rights

Committee on the Rights of the Child
Palais des Nations
CH-1211 Geneva 10, Switzerland

November 15, 2020

 **Comments on Draft General Comment No. 25**

 **Children’s Rights in the Digital Environment**

Dear Colleagues:

 The Youth Justice and Appeals Project (YJA Project) is a new initiative of the legal clinic at the University of District of Columbia David A. Clarke School of Law (UDC Law). UDC Law, committed to public interest and social justice, provides pro bono law-related services to the Washington D.C. area and beyond through experiential learning courses, including externships, service-learning projects, and in-house legal clinic.

 Our top-10 ranked clinic program (U.S. News & World Report), allows law students to obtain hundreds of hours of legal representation and/or policy advocacy experience before graduation. In the YJA Project, law students gain this experience by working to advance the rights and interests of young people through appellate litigation and other forms of advocacy.

 As members of the UDC Law-YJA Project team, we are pleased to respond to the call of the United Nations for comments to its Draft General Comment No. 25: Children’s Rights in the Digital Environment. Collectively we bring over 35 years of youth justice experience to this task, based upon a wide range of advocacy work for children in the United States, Honduras, Afghanistan, Haiti, and other parts of the world. Together we support the Committee on the Rights of the Child’s Draft document, as follows:

**Comments of Axana Soltan[[1]](#footnote-2)**

 **Paragraph 110 in Section XI (A):** The Right to Education, provides that, “for children that are not physically present in school or living in remote areas or in disadvantaged or vulnerable situations, digital educational technologies can enable distance or mobile-learning programs.” Digital educational technologies have allowed greater access to learning opportunities for children on every continent, especially those in remote and marginalized communities. Thus, channels of communication have opened for some of the most vulnerable children around the world.

 Over the years, I have been committed to providing educational opportunities for vulnerable children in destabilized nations like Afghanistan. In my capacity as an education activist, I can attest first-hand to the incredible power of digital technology in supporting child learning around the world, especially for those in marginalized communities. With digital educational technologies, you can reach the world’s most disadvantaged children, including those in minority and rural communities. In countries like Afghanistan where women stay indoors due to social and cultural restrictions, digital technology is especially important for girls and providing equal access to learning.

 As part of my recent public-citizen lawyering work with the YJA Project, I have sought to support remote learning for a 10-year old child from Afghanistan. With the help of digital education technology, provided by the non-profit group Enhancing Children’s Lives (“ECL”), the student has been able to participate in e-learning and access a wide range of educational and learning content. The laptop that ECL provided enabled the student to access educational applications, play puzzle games, draw, and experiment with various academic programs. Digital technology has made learning more entertaining and relatable for my mentee. It also allows him to learn at his own pace and allows me, as a mentor, to provide better learning opportunities for him.

 To improve remote distance learning, we encourage the Committee on the Rights of the Child to include clear language regarding diverse digital products and services for children who speak minority languages. When providing remote learning to this Afghan student, I discovered that there are limited programs available in the child’s native language, which is Farsi. Exposure to diverse digital products will allow children from all around the world to have the opportunity to learn, grow and flourish in their potential.

 **Paragraph 113 in Section XI (A)** provides, “States should invest equitably in technological infrastructure of schools, ensuring the availability of sufficient numbers of computers, quality connectivity and electricity.” While it is critical to provide access to quality computers in schools, we recommend that the Committee also consider providing access to computers and quality connectivity outside of school. In many schools in the United States and around the world, students are expected or often required to have digital access to complete their required coursework.

 According PEW research study: “roughly one-third (35%) of households with children ages 6 to 17 and an annual income below $30,000 a year do not have a high-speed internet connection at home, compared with just 6% of such households earning $75,000 or more a year. These broadband gaps are particularly pronounced in black and Hispanic households with school-age children – especially those with low incomes.”[[2]](#footnote-3) From my own tutoring experiences at low-income schools in the United States, I learned that many students lack computer and internet access at home. While some children had access to digital technology to complete their homework assignments, most of the children did not have access to digital educational technology outside the classroom.

 **Paragraph 109 in Section XI (A)** provides that states should support educational and cultural institutions such as archives, libraries and museums to make available to children diverse digital and interactive learning resources, including indigenous resources and resources in the languages that children understand. Although it is important to provide children access to educational institutions like libraries and schools, they are not accessible to children 24/7. We encourage the Committee on the Rights of the Child to highlight the importance of offering equal access to digital technology with internet connectivity to children with extended hours, mindful of differences in time-zones, so they also have an opportunity to have digital access to complete their required coursework for school.

**Comments of Mae C. Quinn[[3]](#footnote-4)**

Unfortunately, the United States as nation-state has not ratified the United Nations’ Convention on the Rights of the Child. Nevertheless, current concerns and practices in this country, particularly for court-involved children and other vulnerable youth, should inform Draft General Comment No. 25: Children’s rights in relation to the digital environment, including as follows:

 **Paragraph 94 in Section VIII** provides that even when children are separated from their families, including when placed with “foster parents” or other “alternative care” facilities, they should “have access to digital technologies including for the purpose of maintaining family relationships, when appropriate.” Drafters should make clear that “alternative care” settings include detention centers, residential treatment facilities, and other locked placements where court-involved children in the United States might be held.

 I believe we should abolish all such secure detention settings for young people. And the COVID-19 pandemic warrants immediate release of all detained youth. Yet currently thousands of youth in the United States are incarcerated in such institutions.[[4]](#footnote-5) And many such facilities in the United States routinely deny youth access to computers, tablets, or other modern means of communication and engagement.[[5]](#footnote-6) Thus, until youth are not subjected to locked institutions and incarcerative settings, children in such placements must be provided with the right to access technology and the digital environment to allow for their development consistent with modern norms – even in the most secure of settings.[[6]](#footnote-7)

 In addition, regular computer or tablet access should be ensured for youth placed by the state outside of their homes, not only to facilitate family contacts, but for purposes of accessing needed educational services, enhancing technology skills, staying up to date on news, and engaging in age-appropriate games and the like. This is not to suggest all learning in such facilities should shift to self-taught computer courses. Instead, tech-based supports and programming should work to enhance educational and other services delivered by trained professionals.[[7]](#footnote-8)

 **Paragraphs 66-68 in Section VI (D)** provides that youth should be provided with the “right to freedom of association and peaceful assembly” and to “deliberation, cultural exchange, social cohesion and diversity,” even in online spaces. It further acknowledges that youth can develop healthy identities and grow as engaged political citizens when they are permitted to access technology and the digital world for such purposes. Thus, it warns against states placing undue restrictions on the ability of youth to exercise such freedoms or visiting “negative consequences” upon youth who do so.

 This set of provisions should make clear that such freedoms of association, assembly, exchange, social cohesion, and the like should not be denied to youth simply because they are court-involved or on probation or parole. Unfortunately, in my experience, too many juvenile justice actors believe that youth under court jurisdiction or supervision lose these freedoms. In fact, juvenile courts sometimes issue orders that prevent young people from using social media platforms or otherwise limit their ability to communicate or associate virtually with persons in their community.[[8]](#footnote-9)

 **Paragraphs 69-79 in Section VI (E)** addresses the important related issue of the right to online privacy for young people. In the United States police, probation officers, and other law enforcement agents routinely monitor youth actions and activities online. Such surveillance is undertaken with a view towards arresting and prosecuting young people and then using their social media posts and other online activities against them.[[9]](#footnote-10)

 In my experience, such secret monitoring largely targets Black and Latinex youth, helping to drive their disproportionate representation in the justice system, sometimes for merely engaging in ordinary adolescent behaviors.[[10]](#footnote-11) It is also used to chill activism on the part of young protestors, particularly those involved in the #BlackLivesMatter movement, and others who dare to dissent.[[11]](#footnote-12)

 Section VI (E) correctly recognizes that surveillance of children and data collection is taking place. It further urges restrictions as well as measures to allow youth access the information gathered. However, it might more clearly address and seek to deter the problem of law enforcement monitoring of youthful online behaviors, particularly given its especially pernicious impact on youth of color in the United States and those engaged in lawful acts of activism rooted in racial justice. International norms should clearly advise against adding information about children to such gang and protest databases. *See also* Paragraph 124 of Section XII(B) (Administration of child justice [art. 40]).

 **Paragraphs 20-22 of Section IV** addresses the important subject of evolving capacities of youth. These paragraphs are consistent with my own prior scholarship calling for an end to childism and greater respect for youthful capacities, particularly in the digital domain. Indeed, as I have written previously, all sectors of society – including government – would do well “to work with all young people— not against them—through respectful civic engagement . . . to break through various historic identity binaries and cross long-held divides to arrive at more robust and shared understandings of community values and democracy in twenty-first century on- and off-line America.”[[12]](#footnote-13)

 Thus, the private sector, including technology companies, should further involve young people in product development – for instance, through internships and work-study programs. In addition, government entities should include and appoint youth to working groups and other deliberative bodies, including school boards, where their cutting-edge technological insights can help shape improved educational and other services.[[13]](#footnote-14)

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 We again thank the Committee on the Rights of the Child for the opportunity to present these comments for your consideration. If you have any questions about our submission, we would be happy to respond to your inquiries.

Sincerely,

Mae C. Quinn Axana Soltan

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Professor & Director, YJA Project Student Advocate, YJA Project

UDC David A. Clarke School of Law UDC David A. Clarke School of Law

1. Axana Soltan is a third-year law student at UDC Law who, at age 15, founded Enhancing Children’s Lives (ECL). ECL is a 501(c) 3 non-profit philanthropic organization based in Richmond, Virginia. Established in 2013, the society is organized to be a humanitarian unit that ignites the lives of children on a global level. The organization provides access to meal nourishment, education, advocacy, and medical care to children in need. [↑](#footnote-ref-2)
2. Monica Anderson & Andrew Perrin, *Nearly one-in-five teens can’t always finish their homework because of the digital divide,* Pew Research Center, October 26, 2018, available at: <https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>. [↑](#footnote-ref-3)
3. Mae C. Quinn, Professor of Law and Director of the Juvenile Law Clinic: Youth Justice and Appeals Project at UDC School of Law, has spent nearly 25 years working to advance the rights of court-involved youth. Her child advocacy, juvenile defense, and civil rights work, often undertaken in collaboration with law students, have involved best practices trainings domestically and in Honduras, informed two United States Department of Justice investigations, and resulted in reforms to prison, parole, and juvenile court systems in the state of Missouri. [↑](#footnote-ref-4)
4. Wendy Sawyer, *Youth Confinement: The Whole Pie 2019,* Prison Policy Initiative, Dec. 19, 2019 (“On any given day, over 48,000 youth in the United States are confined in facilities away from home as a result of juvenile justice or criminal justice involvement), available at: https://www.prisonpolicy.org/reports/youth2019.html; *see also* Eli Hager, *Solitary, Brawls, No Teachers: Coronavirus Makes Juvenile Jails Look* *like Adult Prisons*, The Marshall Project, May 12, 2020, available at: https://www.themarshallproject.org/2020/05/12/solitary-brawls-no-teachers-coronavirus-makes-juvenile-jails-look-like-adult-prisons. [↑](#footnote-ref-5)
5. One Juvenile Detention Center I visited in Florida keeps its computer room entirely locked and inaccessible, claiming youth just break the devices. [↑](#footnote-ref-6)
6. One recent matter handled by the YJA Project involved a young person who was routinely placed in solitary confinement by Texas youth justice officials, depriving the youth of access to nearly all educational, recreational, and other supports. *See Juvenile Clinic and Fears Nachawati Law Firm Advocate for Youthful Offender on Texas Death Row,* UDC Law Webpage, Oct. 20, 2020, available at: <https://www.law.udc.edu/news/531461/Juvenile-Clinic-and-Fears-Nachawati-Law-Firm-Advocate-for-Youthful-Offender-on-Texas-Death-Row.htm>. Tragically, extreme isolation practices for incarcerated youth remains relatively wide-spread in the United States and may be increasing as a means of dealing with COVID-19 health concerns. *See* Hager, *supra*. [↑](#footnote-ref-7)
7. *See, e.g., Transforming Education in the Juvenile Justice System with Technology*, UMass Amhurst, available at: https://www.umass.edu/education/values/transforming-education-juvenile-justice-system-technology. [↑](#footnote-ref-8)
8. *See* Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex-Positivity*, 38 N.Y.U. Rev. of L. & Social Change 51, 85-86 (2014). [↑](#footnote-ref-9)
9. *See* Max Rivlin-Nadler, *How Philadelphia’s Social Media-Driven Gang Policing is Stealing Years from Young People*, The Appeal, Jan. 19, 2018 (reporting on false accusations against young people found in Philadelphia’s gang database), available here: <https://theappeal.org/how-philadelphias-social-media-driven-gang-policing-is-stealing-years-from-young-people-fa6a8dacead9/>; Rachel Levinson-Waldman & Sahil Singhvi, *Law Enforcement Social Media Monitoring is Invasive and Opaque*, Brennan Center for Justice, Nov. 6, 2019 (describing the case of one Black teenager who was falsely accused of murder in New York based, in part, on police-monitored social media activity and associations), available here: https://www.brennancenter.org/our-work/analysis-opinion/law-enforcement-social-media-monitoring-invasive-and-opaque . [↑](#footnote-ref-10)
10. *See generally,* Candace Johnson & Mae C. Quinn, *Chaining Kids to the Ever-Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement*, 73 Washington & Lee L. Rev. Online 159 (2016). [↑](#footnote-ref-11)
11. *See* Levinson-Waldman & Singhvi, *supra* (reporting on surveillance of Black Lives Matter protesters by law enforcement). [↑](#footnote-ref-12)
12. *See* Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex-Positivity*, 38 N.Y.U. Rev. of L. & Social Change at 55. [↑](#footnote-ref-13)
13. *See id.*; *see also* Mae C. Quinn, Caridad Dominguez, Chelsey Omega, Abrafi Osei-Kofi, and Carlye Owens, *Youth Suffrage: In Support of the Second Wave*, 53 Akron L. Rev. 445 (2019). [↑](#footnote-ref-14)