

SUBMISSION FOR A GENERAL COMMENT ON CHILDREN’S RIGHTS IN RELATION TO THE DIGITAL ENVIRONMENT

Contribution of the Holy See

The Holy See welcomes this opportunity to provide its submission on the Concept Note of the General Comment to assist the Committee on the Rights of the Child in its preparation of a “General Comment on Children’s Rights in relation to the Digital Environment.”

The Holy See ratified the Convention on the Rights of the Child (CRC) with three reservations and one interpretative declaration as well as the Optional Protocol for the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

Relevant Research

The Holy See continues to celebrate and reflect upon the achievements of the modern means of communication, including the risk, opportunities and challenges in its annual “Messages for World Communications Day.” For example, the Forty-third Message of Pope Benedict XVI on “New Technologies, New Relationships: Promoting a Culture of Respect, Dialogue and Friendship (24 May 2009), includes the following points:

- benefits of the new technologies should be put to the service of individuals and communities, especially those who are most disadvantaged and vulnerable;
- the desire for communication and friendship is rooted in the very nature as human beings, a reflection of our participation in the unifying love of God, who desires the unity of the human family;
- friendship, a great human good, enjoyed a renewed prominence in the vocabulary of new social digital networks and should not be at the cost of one’s availability to engage, in real time, with family, neighborhood, and places of work, education and recreation;
- those active in the production and dissemination of new media content should strive to respect the dignity and worth of the human person, and therefore avoid sharing words and images that are degrading of human beings or that promote hatred and intolerance, or that debase the goodness and intimacy of human sexuality or that exploit the weak and vulnerable;
- to open the way for dialogue between peoples, countries, cultures and religions, engagement should be rooted in a genuine and mutual searching for truth,

communicated with appropriate forms of expression coupled with attentive and respectful listening.

The then Pontifical Council for Social Communications published relevant documents for the topic under consideration, for example, “Ethics in Internet” (2002), “The Church and Internet” (2002), “Ethics in Communications”(2000), “Ethics in Advertising” (1997), and “Pornography and Violence in the Communications Media: A Pastoral Response” (1989).

The document “Ethics and the Internet,” includes the following criteria for an ethical evaluation of digital communication:

- that the internet will be used for good or harm is a matter of choice made by human persons, who are central to an ethical evaluation of the digital world;
- the good of individuals depends upon the common good of communities (the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily);
- the practice of solidarity must be at the service of the common good, within and among nations so that technology can be used as a means for communicating truth, solving human problems, promoting integral development of persons, and creating a world governed by justice, peace and love;
- freedom of expression and the free exchange of ideas should be supported, understanding that freedom to seek the truth is a fundamental human right, and freedom of expression is a cornerstone of democracy;
- honest journalism is essential to the common good of nations and the international community;
- the internet should be used for morally good purposes, understanding that many actors are responsible in ensuring this goal and that internet users have a duty to be selective and self-disciplined;
- radical libertarianism with its exaltation of freedom of expression as a policy approach to the internet, especially in the face of certain risks and challenges for children, is a mistake, which would, in turn, lead to harm, especially of children;
- regulation of the Internet is desirable taking into consideration the interests of the various stakeholders.

Finally, the Holy See participated in the 2017 Global Congress on “Child dignity in the Digital World,” hosted by the Centre for Child Protection of the Pontifical Gregorian University, in Rome, Italy. The purpose of the congress was to consider the latest scientific research by bringing together global experts. The final declaration acknowledges the benefits and opportunities of the digital world for children, but calls to action the multi-stakeholders to protect them from its deleterious effects.

Purpose and Scope of the General Comment

The Holy See appreciates the need for State parties to cooperate and collaborate with an array of stakeholders, most notably parents or legal guardians, in order to protect children from certain risks (e.g., illegal and harmful content), understanding that the internet also offers opportunities (e.g., learning, sharing, creating, socializing). The Holy See understands that additional stakeholders may include: teachers, religious groups, non-governmental organizations, governmental regulatory authorities, law enforcement and the business sector (e.g., internet service providers, public WIFI providers, device manufacturers, wholesale and retail).

Having said that, according to the CRC, article 45, the purpose of the General Comment is to direct suggestions and recommendations to “*States parties*,” not to the business sector. In addition, while pertinent non-State actors/parties to the treaties may have certain legal responsibilities in the field under consideration, these do not derive from the pertinent treaties (e.g., CRC, OPSC).

Structure of the General Comment

The topic under consideration is complex largely due to its technical nature; the vast nature of the digital industry; the speed of its growth; its global and multi-jurisdictional nature. Consequently, the Holy See suggests that the Committee consider including an introduction that gives: 1) an overview of the digital industry, including empirical data on: a) children as recipients of on-line content, contacts, and conduct, and as subjects of the same with reference to risks, opportunities, and challenges; b) education, monitoring and communication patterns of parents or legal guardians and teachers with children about the digital environment; and c) a list of good practices of States Parties in terms of laws and/or guidelines concerning internet safety (e.g., tools for protecting children from violence, sexual exploitation and harassment).

General Measures of Implementation

The Holy See understands that the Committee has isolated four basic principles which will feature prominently in the development of recommendations concerning general measures of implementation. The Holy See views these four principles - best interests of the child (article 3); the right to non-discrimination (article 2); the right of the child to be heard (article 12) and the right to life, survival and development (article 6) – within the context of the CRC and in light of its reservations and interpretative declaration.

Regarding the “*best interests of the child principle that shall be a primary consideration in actions concerning children*,” (article 3.1), States Parties in regard to assuring a child’s “*protection and care*” are required to “*tak[e] into consideration the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her*,” and take “*appropriate legislative and administrative measures*” (in article 3.2). In assuring “*protection and care*,” States Parties must also

ensure that the *“institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities.”*

In addition, the CRC acknowledges that *“the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”* (preamble, para. 6, CRC), and specific references to the family and/or parents are found in 18 of the 54 articles (arts. 2, 3, 5, 7, 8, 9, 10, 14, 16, 18, 19, 20-24, 27, 37 and 40).

Consequently, the Holy See urges that the role of parents or legal guardians feature prominently in any analysis and recommendations to States Parties. In terms of pertinent good practices there are, for example, those listed in Office of the Special Representative of the Secretary-General On Violence Against Children, *“Releasing Children’s Potential and Minimizing Risks: ICTs. The internet and violence against children”* (2016), at page 18.

Regarding the child’s *“right to express [his or her] views freely in all matters affecting [him or her],”* (also discussed as the “right to be heard” or the “right to participate”), the principle is embedded within article 12.1 with qualifying language (*“the child, who is capable of forming his or her own views”*) and in relation to the corollary principle concerning how these views should be treated (*“the views of the child [are to be] given due weight in accordance with the age and maturity of the child.”*). Then, the above principles are applied in the particular context of *“judicial and administrative proceedings affecting the child”* in recognizing that the child should be afforded an *“opportunity to be heard,”* either directly or indirectly through a representative, and *“in a manner consistent with the procedural rules of national law”* (article 12.2).

Consequently, the Holy See contends that decisions about whether and how children should contribute to policy development should take place at the local level, in accordance with the rule of subsidiarity, and the specific words of the CRC regarding the *“age and maturity of the child”* taking into consideration the rights and duties of parents, who are in the best position to assess the maturity of their child.

The Holy See also emphasizes the integral connection between article 12 and the child’s “freedom of expression”, in article 13.1, and the limitations provided in article 13.2. The Holy See promotes the freedom of expression and the free exchange of ideas within the larger context of the character-building of children. Parents, in the first instance, are called to educate their child to grow in human virtue. For this reason, the Holy See promotes the family as the first school of human virtues tasked with the duty to educate the inner core of the child through self-knowledge leading to self-discipline and then service of others.

To this end, the development of good practices for parental formation (e.g., public awareness campaigns, guidelines, educational opportunities) is crucial for increasing communication between parent and child, providing support and safety (e.g., filtering devices and protection tools), all with a view to giving him or her the tools to protect themselves, and engage in a responsible manner. The same knowledge

and formation would assist parents in choosing the appropriate schools for their children. It follows that good practices concerning digital education and literacy in schools would also be important.

The Holy See notes that parents or legal guardians feature prominently in article 2.1, wherein the prohibited grounds of discrimination are “*race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,*” as they relate to the “*child or his or her parents or legal guardians,*” while article 2.2 obliges States Parties to take measures to ensure that the child is protected against discrimination or “*on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*”

Lastly, while articles 6.1 and 6.2, respectively, oblige States Parties to “*recognize that every child has the inherent right to life*” and “*ensure to the maximum extent possible the survival and development of the child,*” parents in the first instance, have the inherent duty to respect and protect the right to life of their child commencing from the moment of conception, congruent with the principle in preamble paragraph 9, that the child needs protection “*before as well as after birth,*” and with health rights in article 24.2.d, that the child should be afforded “*pre-natal and post-natal health care*”.

Questions Raised in the Concept Note

- *How can children's views and experiences be expressed and taken into account when formulating policies and practices which affect their access to, and use of, digital technologies?* See the discussion above as regards Article 12 of the CRC.
- *How can States better realise their obligations to children's rights in relation to the digital environment?* States Parties need to understand: 1) the technology under consideration, the technical terminology and stakeholders involved; and 2) how this relates to the rights and duties of children, parents and the family, the key stakeholders under the CRC.
- *Is the realisation of children's rights in the digital environment necessary to realise children's rights in other environments?* The question seems overly broad in the face of the complex topic under consideration, understanding that General Comments are to assist States Parties bound by international law and specific treaties.
- *How can discrimination (originating offline or online) be effectively addressed, to ensure all children have their rights realised in a digital world?* Given the complexity of the topic under consideration, the question seems overly broad, understanding that principles of “equality and non-discrimination” raise certain difficulties (e.g., meaning, interpretation, application).
- *How should the General Comment treat the role of parents and other caregivers?* See the discussion above regarding the best interests of the child principle.

- *How should the practices of businesses operating in the digital environment support the realisation of children's rights?* Perhaps the better question is how States Parties should effectively collaborate and cooperate with all stakeholders, especially the business sector, with a view to the development of policies, standards and laws, understanding that there is an array of interests among the same, and therefore certain policy tensions.

New Issues

The Holy See appreciates the necessity to raise new issues and concepts within the rapidly developing area under consideration. Nonetheless, recommendations formulated for States Parties within General Comments do not constitute legal obligations, and new concepts and principles cannot be the subject matter of legal obligations, without amendment of the relevant treaty, nor can they be viewed as the fruit of an authentic interpretation of the treaties according to treaty law. To promote clarity, the Holy See recommends that the Committee define “new terms,” such as “internet governance”.