

When internet access is not a given

A legal analysis of digital inclusion rights for youth in detention facilities

Introduction

In the Triangle project, we aim to achieve 'digital inclusion' for all detained children and young people. By digital inclusion, we mean ensuring that children and young people are given equal opportunities to participate in digital society. Children and young people express that 'being online' is essential for their lives and their future. They use apps, websites and games on a daily basis to effectively learn, work, plan, build a network and maintain contacts. As part of their development, access to the digital environment is therefore essential. Through building the Triangle platform, our ambition is to enhance the media literacy of children and young people in detention facilities and improve their chances of reintegration into society. This article outlines the legal framework supporting the right to digital inclusion of detained children and young people.

The United Nations Convention on the Rights of the Child

On 20 November 1989, the United Nations General Assembly adopted the United Nations Convention on the Rights of the Child (hereinafter: UNCRC).¹ The United Nations Committee on the Rights of the Child (hereinafter: CRC) is responsible for monitoring states' compliance with the UNCRC and providing recommendations. In addition, the CRC also provides further clarification regarding children's rights and their development by, notably, publishing General Comments. Several General Comments have been published in recent decades. In fact, the most recent General Comment addressing children's rights in relation to the digital environment was published in 2021 as General Comment No. 25 (2021).²

It is important to highlight that the UNCRC is built upon several core guiding principles.. These include the prohibition of discrimination against children in any form (Article 2), the obligation to prioritize the best interests of the child in all decisions (Article 3), the right to life and development (Article 6) and the right of children to be heard and to actively participate in matters that affect them (Article 12). These guiding principles, as well as all other children's rights guaranteed under the UNCRC, are equally applicable within the digital environment, as reaffirmed by the in General Comment No. 25.

The following section provides a detailed examination of General Comment No. 25 and the views of the CRC, focusing on how these guiding principles apply to the digital environment.

In paragraph 4 of General Comment No.25, the CRC asserts that *'Meaningful access to digital technologies can support children to realize the full range of their civil, political, cultural, economic*

¹ A/RES/44/25

² See [General comment No. 25 \(2021\) on children's rights in relation to the digital environment | OHCHR](#)

and social rights. However, if digital inclusion is not achieved, existing inequalities are likely to increase, and new ones may arise.³ Additionally in paragraph 50 of General Comment No.25, the CRC, referencing General Comments No. 7 and No. 20, highlights the importance of the digital environment in enabling children to exercise their right to access information, noting that *'information and communications media, including digital and online content, perform an important function.'*⁴ The CRC further emphasizes that children must be allowed to safely access a variety of content⁵ that respects their rights to information and freedom of expression, while also protecting them from harmful materials in accordance with their evolving capacities.⁶

Accordingly, the CRC clarifies that the objective of General Comment No. 25, is to assist States parties in fulfilling their obligations under the UNCRC with respect to the digital environment. To this end, the CRC examines how the guiding principles mentioned above extend to the digital environment. Several relevant key passages from General Comment No. 25 are highlighted below.

- **Non-discrimination**⁷

The right to non-discrimination obliges States parties to ensure that all children have equal and effective access to the digital world in a manner that is meaningful to them. States parties must take all measures necessary to overcome digital exclusion. The CRC calls upon States parties to take proactive measures to prevent discrimination against children deprived of their liberty.

- **The best interests of the child**⁸

The best interests of the child is *'a dynamic concept that requires an assessment appropriate to the specific context. (...) States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration.'*⁹ This should take into account all children's rights, including the right to acquire, receive and transmit information, and to be protected from harm.

- **The right to life and development**

*'Opportunities provided by the digital environment play an increasingly crucial role in children's development and can be vital for children's life and survival, especially during crises. States parties should take all appropriate measures to protect children from risks to their right to life, survival and development. (...) The use of digital devices should neither be harmful nor a substitute for personal interactions between children or between children and their parents or caregivers.'*¹⁰

- **The right to be heard and participate**¹¹

States parties must raise children's awareness of digital platforms for expressing their views, promote access to them, and provide training and support. They must also ensure that digital

³ General Comment No. 25, para. 4.

⁴ General Comment No. 25, para 50.

⁵ General Comment No. 25, paras 52 and 54.

⁶ Ibid, para 54.

⁷ General Comment No. 25, paras 9 to 11.

⁸ General Comment No. 25, paras 12 and 13.

⁹ General Comment No. 25, para 12.

¹⁰ General Comment No. 25, paras 14 and 15.

¹¹ General Comment No. 25, paras 16 to 18.

service providers actively engage with children, apply appropriate safeguards and consider children's perspectives when developing products and services. States parties are encouraged to use the digital environment to consult children on relevant legislative, administrative and other measures and to ensure that their views are given due consideration.

Furthermore, in paragraph 87 of the General Comment No. 25, the CRC specifically addresses children who do not reside with their parents or primary caregivers. While referring to General Comment No. 21, the CRC Child considers that:

'It is important that children separated from their families have access to digital technologies. Evidence has shown that digital technologies are beneficial in maintaining family relationships, for example, in cases of parental separation, when children are placed in alternative care (...) Therefore, in the context of separated families, States parties should support access to digital services for children and their parents, caregivers or other relevant persons, taking into consideration the safety and best interests of the child.'

Incidentally, for children in detention, General Comment No. 24 is also relevant and in particular paragraph 95. This lists the principles to be observed when children are deprived of their liberty, such as:

'every child has the right to education suited to his or her needs and abilities, aimed at preparing him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment (...)

the staff of the facility should promote and facilitate frequent contact by the child with the wider community, including communications with his or her family, friends and other persons, including representatives of reputable outside organizations, and the opportunity to visit his or her home and family.'

For the purpose of education and contact, including in a broader societal engagement, most of society outside the facility or institution uses the digital environment. In light of the principle of non-discrimination as well as the right to development, failing to pursue digital inclusion for children and young people in institutions would contravene the core principles of the UNCRC.

Achieving digital inclusion depends on adequate funding. The CRC considers that States parties must budget, allocate and use public funds to put in place legislation, policies and programmes that fully realise children's rights in the digital environment and that promotes digital inclusion. This is necessary to address the increasing impact of the digital environment on children's lives and to ensure equal access and affordability of services and connectivity.¹² The CRC also highlights the importance of collaboration with civil society and children themselves.¹³ In addition, States parties should also *'ensure that civil society organizations are able to implement their activities relating to the promotion and protection of children's rights in relation to the digital environment.'*¹⁴

¹² General Comment No. 25, para 28, General Comment No. 19 para 21.

¹³ General Comment No. 25, para 34.

¹⁴ General Comment No. 25, para 101.

According to the CRC this also means that States parties should ensure equitable investment in technological infrastructure for schools and other learning environments.

In fact, the CRC mentions that, *'digital forms of culture, recreation and play should support and benefit children and reflect and promote children's differing identities, in particular their cultural identities, languages and heritage. They can facilitate children's social skills, learning, expression, creative activities, such as music and art, and sense of belonging and a shared culture. Participation in cultural life online contributes to creativity, identity, social cohesiveness and cultural diversity. States parties should ensure that children have the opportunity to use their free time to experiment with information and communications technologies, express themselves and participate in cultural life online.'*¹⁵

It is therefore essential for detention facilities to establish a strong infrastructure that provides children and young people with access to basic digital services. This implies that electricity, connectivity, digital (vocational) educational materials and support from trained professionals are essential elements.

European Rules for juvenile offenders subject to sanctions or measures

The Committee of Ministers of the Council of Europe adopted the *European Rules for juvenile offenders subject to sanctions or measures* on 5 November 2008¹⁶ (hereinafter: European Rules). In light of this article, several passages from the European Rules are relevant.

For instance, from paragraph 50 onwards, the Committee of Ministers addresses what should be provided to children in detention. The Committee of Ministers emphasizes the importance of offering a *'variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility, and develop attitudes and skills that will prevent them from re-offending.'*

Following this, from paragraph 53 onwards, the institutional structure of a detention facility is discussed. Such establishments, or their departments, should provide a range of facilities to meet the individual needs of the children and young people staying there and to address the specific purpose of their detention. In addition, life in a detention facility for children and young people should resemble as closely as possible, the positive aspects of life in the community.

From paragraph 76 onwards specifically addresses the activities that should be offered as part of the regime within the detention facility. All interventions should aim to promote the development of children and young people. Regime activities should focus on education, personal and social

¹⁵ General Comment No. 25, para 107.

¹⁶ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for Juvenile Offenders Subject to Sanctions or Measures (Adopted on 5 November 2008 at the 1040th meeting of the Ministers' Deputies). See: [CM/Rec\(2008\)11](#)

development, vocational training, rehabilitation and preparation for release. The following examples are given:

- a. *schooling;*
- b. *vocational training;*
- c. *work and occupational therapy;*
- d. *citizenship training;*
- e. *social skills and competence training;*
- f. *aggression-management;*
- g. *addiction therapy;*
- h. *individual and group therapy;*
- i. *physical education and sports;*
- j. *tertiary or further education;*
- k. *debt regulation;*
- l. *programmes of restorative justice and making reparation for the offence;*
- m. *creative leisure time activities and hobbies;*
- n. *activities outside the institution in the community, day leave and other forms of leave; and*
- o. *preparation for release and aftercare.*

Given the purpose and activities designated for children and young people during their time in detention, access to the digital environment is essential. Digital inclusion contributes to rehabilitation and reintegration efforts, as well as the ability to pursue a suitable level of education and overall development. A closed environment without internet does not mirror life in the community or society and therefore does not increase the chances of a successful release, both in terms of preventing recidivism and addressing other potential problems.

Juveniles deprived of their liberty under criminal legislation

In the field of youth criminal law, an additional document is relevant in addition to the *European Rules*, namely the standards established by the Committee for the Prevention of Torture (hereinafter: CPT), which was established in 1989. This independent Committee was created to ensure that the protection of Article 3 of the European Convention on Human Rights (prohibition of torture or inhuman and degrading treatment or punishment) (hereinafter: ECHR) extends beyond judicial review. The CPT serves as a preventive mechanism to monitor and address potential violations of Article 3 ECHR. The CPT is composed of independent and impartial experts who oversee the treatment of persons deprived of their liberty by the authorities. The CPT conducts visits to correctional facilities, including youth detention centers, and issues reports. In 2015, the CPT published the standards specifically addressing juveniles in detention under criminal law. The CPT emphasizes that the standards are intended to complement the provisions established in other international instruments, such as the ones discussed above.

As with other international instruments, the CPT's standards emphasize the importance of providing activities for children and young people in detention. The CPT considers that children and youth have a particular need for physical activities and intellectual stimulation. Consequently, children and youth in detention should follow a full programme of education, sports, vocational training,

recreation and other purposeful activities outside their cells throughout the day. The preparation of an individual plan aimed at skill-building and reintegration into society is recommended. In the context of pursuing (vocational) education, the CPT encourages the use of the internet in paragraph 110:

*'Given the particularly difficult background of many young people, efforts should be made to encourage and motivate them to pursue education/vocational training and participate in workshops where they can learn skills in preparation for their release'. **In a number of countries, the CPT has observed the practice of training youth in the use of computers (including the Internet) and/or allowing selected detained youth to attend schools in the outside community. These practices should be encouraged.'***

This explicit endorsement by the CPT within the context of its review of inhuman or degrading treatment highlights the critical role of digital inclusion for children and young people in detention.

Treatment of detainees

In addition to specific standards and guidelines for children and young people, broader international and European standards exist regarding the treatment of persons in detention. Expanding on such standards falls beyond the scope of this article; therefore, we provide a brief mention as a resource for those wishing to delve further into the matter.

- The [1989 recommendations](#) of the Committee of Ministers of the Council of Europe state that (all) detainees have the right to education. In a [2020 resolution](#) on access to digital technologies, the Council adds that this right includes access to and training in the use of modern digital information technologies.
- In 1955, the 'Standard Minimum Rules for the Treatment of Prisoners' (hereafter SMR) were adopted by the United Nations (hereafter UN). The SMR contain minimum standards for the treatment of detainees, addressing essential elements and principles. It also defines the minimum conditions of detention that are deemed necessary. They are 'soft law', meaning that the SMRs have no legally binding force. However, they do have a regulatory effect and are perceived as binding in practice. It constitutes the main international framework for the treatment of detainees holding substantial moral and universal influence. In December 2015, the United Nations General Assembly adopted the revised SMR as the "[United Nations Standard Minimum Rules for the Treatment of Prisoners](#)". According to the Expert Group's recommendation, the revised rules are known as 'the Nelson Mandela Rules'. For further reference, see the Penal Reform International's 2016 guide on the Nelson Mandela Rules [here](#). The SMRs have a lot of overlap with the topics covered in this article such as rehabilitation/resocialisation programmes (Articles 4, 88, 89, 91-94, 96-108), meaningful activities (Articles 4, 23, 64-66, 105) and education (Article 104).

Conclusion

Various international and European legal instruments reinforce that children and young people deprived of their liberty should be considered as particularly vulnerable. The realisation of their rights is under greater pressure in that situation because they are dependent on others. This also applies to their right to digital inclusion. At the same time, the various documents described show that access to the digital environment is fundamental to participating in the now highly developed digital society. After all, this contributes to the return to society, which will always be the short - or long-term goal for children and young people who come to stay in a detention facility. To avoid the 'pause button' in terms of development once a child or young person enters such a facility, work needs to be done on the right to digital inclusion. Not only in terms of awareness, but also in terms of realisation and implementation. We hope this legal analysis inspires everyone working with children and young people, whether in practical settings or at the policy level, to actively support this fundamental right!

Defence for Children International - Netherlands