

Submission in Response to the United Nations Committee on the Rights of the Child's Call for Comments on the Concept Note for a General Comment on Children's Rights in Relation to the Digital Environment

Submitted via e-mail to: crc@ohchr.org

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Thank you for the opportunity to provide a submission in response to the *Concept Note for a General Comment on children's rights in relation to the digital environment*. I welcome this opportunity to draw upon ongoing research in this area and specifically on the experiences and rights of children in conflict with the law in the United Kingdom, Northern Ireland and Australia. This submission draws on my expertise of having researched, written and published in these areas for over a decade and it focuses on three main areas: 'naming and shaming' of children in the digital age, the consequences of discriminatory and negative stereotyping of children in conflict with the law and awareness-raising and training relating to the impact of negative publicity in the media in the digital age. I would welcome the opportunity to discuss any aspects of my submission, recommendations and wider research further with members of the Committee.

Yours sincerely,

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Biography

Dr. Faith Gordon is a Lecturer in Criminology at Monash University; Director of the Interdisciplinary International Youth Justice Network; a Research Associate at the Information Law & Policy Centre, Institute of Advanced Legal Studies, London and a Senior Visiting Research Fellow at the Centre for the Study of Democracy, University of Westminster. Faith previously worked as a Lecturer in Criminology (2016-2018) in the Department of History, Sociology and Criminology at the University of Westminster.

Faith's first sole-authored monograph entitled: *Children, Young People and the Press in a Transitioning Society: Representations, Reactions and Criminalisation*, was published in March 2018 as part of Palgrave Macmillan's Socio-Legal Series. This monograph built on Faith's PhD and post-doctoral research on the media representations of children and young people in Northern Ireland and other post-conflict societies and the research has been referred to by the UN Committee on the Rights of the Child and has been cited in the High Court in Northern Ireland and the UK Court of Appeal. Faith's latest international research and recent publications focus on children's rights in the digital age; journalists' use of children's social media content; 'naming and shaming' of children in conflict with the law on social media and the issue of pre-charge identification.

Response

March 2019 marked 30 years since Sir Berners-Lee's proposal for the 'world wide web' gave birth to a technological revolution which altered immeasurably most, if not every aspect of children's lives (Kidron, 2014). As a consequence, children's rights in the digital age has become one of the most rapidly evolving contemporary research areas. Significantly the majority of the 200 children involved in the author's previous research insisted that digital media and social media platforms are one of the most significant and central parts of their everyday lives (Gordon, 2018). Information available on online and social media platforms have brought about a greater understanding of the rights of children and if utilised in a positive way, can also be a tool to increase awareness when rights are being breached.

New forms and means of maintaining inequalities of children have emerged in the digital age. Digital and social media platforms have also facilitated the violation of children's rights, namely through facilitating online harassment and the violation of privacy and safety (Gordon, 2016; Gordon and Reilly, 2018). As Baroness Kidron (2014) asserted, during a debate in the House of Lords on the impact that the United Nations Convention on the Rights of the Child is having on children's online interactions: "The digital world is one of infinite possibility, but it was not designed with children in mind".

While the internet and social media platforms have provided new opportunities and spaces for positive engagement, empowerment and expression (Zhao *et al.*, 2012: 97-112), negative oppression often in the form of technologically-enabled and technologically-enhanced 'naming and shaming', has negatively impacted upon the lives of children and

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young people. This focus has been omitted from previous studies in the field of children's rights, with much of the current discussion and existing literature focusing on the risks (Livingstone *et al.*, 2012), challenges and benefits of the digital age for the rights and well-being of children and young people (Walrave, 2016). What is acutely missing is a focus on the most marginalised children, in particular those 'in conflict with the law' and how social media is utilised to 'name and shame', ostracise, punish and criminalise in the digital age (Gordon, 2019, forthcoming).

It is also inevitable that a digitally connected society brings with it many challenges for the legal system, criminal processes and for wider society (see Hart, 2014; Gordon, 2018). The courts and the media are said to be typically unaware of the effects of their actions on children and in the absence of a qualitative long-term evidence-base, the courts are currently in many ways blindly attempting to balance the principles of 'open justice' against the duty they have to protect children's welfare.

'Naming and Shaming' of Children in the Digital Age

In the digital age, mainstream media rely on social media platforms to generate the subject/content of news items, to promote news items and to provide a space for their news coverage to be shared, liked, discussed and debated. As qualitative content analysis of media coverage and interviews with professionals have confirmed, journalists regularly use imagery and comments they have accessed from children's social media accounts (Gordon, 2016). This raises several ethical questions, one being – who should have access to these images and what are the children's rights to them?

The research findings have clearly demonstrated the significance of negative media representations on targeting children and young people, and their manifestation in punishment attacks, beatings and exiling (Gordon, 2018). 'Naming and shaming' can encourage or stir up further anger, resentment and retaliation in communities. This can place children and young people, who are already vulnerable, at further risk. NGOs such as *Include Youth* describe it as positioning 'some of the most vulnerable children in our society directly in the firing line' (cited in Gordon, 2018). The ongoing debates in the UK relating to proposals for social media companies such as Facebook to have a 'duty of care' towards children and young people, makes a convincing argument and prioritises the protection of children's rights and also processes in relation to seeking redress.

Pre-Charge Identification of Children

Under the 1948 Universal Declaration of Human Rights, each individual is presumed innocent until proven guilty. A large part of protecting this principle is guaranteeing that public opinion is not biased against someone that is about to be tried in the courts. In this situation, minors are particularly vulnerable and need all the protection that can be legally offered. However, research has shone a light on the existence of a loophole in the current framework of legislation in the UK, whereby a minor can be named before being formally charged (Gordon, 2017). Online permanency is another issue the courts have to deal with. Section 44 of the Youth Justice and Criminal Evidence Act 1999 in the UK could offer pre-charge protection for them as minors, but it has never been enacted. The UK government's failure to enact this section of the law is arguably contrary to Article 8 of the European Convention on Human Rights, which is the right to respect for private and family life.

Further, the United Nations Convention on the Rights of the Child (UNCRC) (1989) states that: 'Every child alleged as or accused of having infringed the penal law has at least the following guarantee[s]: To have his or her privacy fully respected at all stages of the proceedings' (Article 16[1] and [2]; Article 40[1]). The UN Standard Minimum Rules for the Administration of Justice (the Beijing Rules) (1985) outline the need for a child's 'right to privacy' to be 'respected at all stages' of the criminal justice process, 'in order to avoid harm being caused ... by undue publicity or by the process of labelling' (section 8.1.) and 'no information that may lead to the identification of a juvenile offender shall be published' (section 8.2). In the digital age, such wording needs to be revised and developed to challenge and contest the online permanency of such imagery and publications, if they are breaching a child's right to privacy.

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