

**Submission to the
United Nations Committee on the Rights of the Child**

**General Comment on the
Rights of the Child and the Business Sector**

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Introduction:

The interdisciplinary Working Group on Human Rights and Digital Technology at The American University of Paris welcomes the Committee's initiative to prepare a General Comment on the Rights of the Child and the Business Sector. We are honoured to have the opportunity to share our research concerning the impact of digital technology on the child's right to the highest attainable standard of health. As scholars in the relatively new field of human rights and digital technology, we believe it is critical that the General Comment articulate the responsibilities of States Parties to create a robust legal framework to protect children from harm that may result from the rapid advances of the digital technology business sector.

Much has been made of the universal right to access technology, particularly in developing countries where access to computers and the Internet is often limited. Nonetheless, the quintessential tool of the digital revolution – the mobile telephone – is ubiquitous; 86.7% of the world's population uses a mobile phone (ITU, 2011), with irregular access to the device likely to be even higher. While digital technology is a force for good in the dissemination and monitoring of human rights, both the hardware and software necessary for its use may pose a threat to the health and wellbeing of children under articles 3, 6, and 24 of the Convention on the Rights of the Child (CRC).

Recommendations:

We respectfully submit the following recommendations to the Committee:

1. Where appropriate, a forward-looking General Comment should declare ***environmental pollution a critical threat to the “highest attainable standard of health” for children*** in the 21st century, on a par with trafficking and forced labour violations.
2. The General Comment should acknowledge in that ***children’s physical morphology places them at greater risk to environmental pollution***, including electromagnetic wave emissions from mobile phones and Base Transceiver Stations (mobile phone towers), a factor that requires stricter legal thresholds and precautions under articles 2 and 3 of the Convention.
3. The General Comment should include language stipulating ***regular testing for environmental impacts by an independent body of experts, with appropriate sanctions for widespread or systematic violations***, under articles 2, 3 and 32 of the Convention.
4. To reinforce all forms of implementation, we suggest that the General Comment mention the need for States Parties to ***monitor both voluntary and legally binding compliance on the part of the business sector***. The General Comment should also encourage States Parties to render voluntary compliance with human rights norms binding wherever possible.

<p>1. Where appropriate, a forward-looking General Comment should declare <i>environmental pollution a critical threat to the “highest attainable standard of health” for children</i> in the 21st century, on a par with trafficking and forced labour violations.</p>

The draft General Comment fully recognizes that business enterprises responsible for negative externalities in their pursuit of profit are to be condemned and sanctioned for human rights violations against children. We welcome the drafting of the General Comment as an opportunity to reinforce and extend the human rights framework for business by placing widespread or systematic environmental pollution as it impacts children on a par with trafficking and forced labour violations.

A broad range of international treaty and customary law on environmental protection, beginning with the United Nations Conference on the Human Environment and the Stockholm Declaration in 1972, squarely addresses the impact of pollutants on human health. More recently, regional mechanisms, such as the 2008 *Directive on ambient air quality and cleaner air for Europe*, have specifically addressed the heightened vulnerability of children to environmental pollution. We therefore encourage the Committee to create an

enabling framework in the General Comment obliging States Parties to be proactive in their efforts to “protect, respect and remedy” environmental violations by corporate entities as they affect children. Whether pollution threatens a small number of children with extreme, short-term contamination or a large group of children with low-grade, long-term toxicity, States Parties should be strongly encouraged to draft and/or reinforce existing national legislation to prevent and punish all forms of corporate environmental pollution that threaten children’s health and well-being under articles 2, 3, 6, 12 and 24 of the Convention.

In the case of digital technology, a significant majority of the world’s children are exposed to electromagnetic fields (EMF), including Extremely Low Frequency fields, generated by electrical appliances and power lines, and Radio Frequency fields, generated by wireless devices such as mobile phones, their antennas and base stations, and broadcast transmission towers. In our research, we argue that the lack of technical solutions capable of reducing the emissions of EMF, while still maintaining the same level of service, results in an unacceptable level of risk: as the telecom industry moves from third to fourth generation technology, the pace of change is such that the majority of the world’s children are being exposed to ever-increasing doses of EMF long before the scientific community is able to prove that exposure to these emissions is either entirely safe, or unsafe, for humans (Perry and Roda, forthcoming 2013). The World Health Organization’s International Agency for Research on Cancer (IARC) has classified radiofrequency electromagnetic fields as *possibly carcinogenic to humans* (Group 2B), based on an increased risk for glioma, a malignant type of brain cancer associated with wireless phone use (IARC-WHO, 2011). And the Council of Europe has advised member countries to “reduce threshold values for relay antennae in accordance with the ALARA principle (“as low as reasonably achievable”) and install systems for comprehensive and continuous monitoring of all antennae” (CoE, Res. 1815, 2011).

In light of the leadership of the Committee in choosing to issue a General Comment on the Rights of the Child and Business, and building on the Committee’s extensive efforts to clarify the health-related obligations of States Parties, we believe a forward-looking draft should include protection for children from all forms of environmental pollution as a seminal 21st century concern.

2. The General Comment should acknowledge that ***children’s physical morphology places them at greater risk to environmental pollution***, including electromagnetic wave emissions from mobile phones and Base Transceiver Stations (mobile phone towers), a factor that requires stricter legal thresholds and precautions under articles 2 and 3 of the Convention.

Paragraph 33 of the draft General Comment recognizes that “(i)ncreasing levels of environmental degradation and contamination arising from business activities can compromise children's food security, health and nutrition.” Paragraph 34 of the draft General Comment provides very specific examples of the “irreversible impact” that deprivation of food, clean water, shelter, play, healthcare, protection and education can have for the rest of a child's life. While the latter paragraph acknowledges the need for States Parties to consider “regulation of the environmental impact of business”, we recommend that the Committee reinforce this clause. At the very least, the clause should stipulate that children’s physical morphology places them at greater risk from environmental pollutants – particularly air, water, and all frequencies of electromagnetic contamination – requiring the highest standard of protection by States Parties.

The World Health Organization, along with partner UN agencies and international NGOs, has been extremely active in calling for heightened measures to protect children from toxic exposure, such as indoor and outdoor air pollution, industrial pollution of waterways and the water table, and ionizing electromagnetic radiation from Chernobyl and Fukushima. In each of these cases, the scientific evidence confirming the specific vulnerability of children has undergone extensive peer-review over several decades (with the exception of Fukushima), leading to a broad consensus in the international scientific community on heightened protection for children from environmental pollution.

In terms of electromagnetic contamination, an invisible and rapidly expanding form of environmental pollution, the WHO has also called for extended research on the impact of low-level electromagnetic frequencies on children. We believe that two important considerations should be taken into account in estimating the risk posed by this type of pollution: first, the standard of evidence required by regulating bodies in order to establish risk is unclear, and current standards may be too high given the potential dangers of such widespread human exposure. Second, acute, short-term effects are easier to demonstrate than long-term effects, thus a heightening of exposure over time from the interaction of several electromagnetic fields may prove far more difficult to measure.

Biologists concede a wide range of opinion on whether the electromagnetic wave frequencies emitted by mobile phones and phone towers generate enough energy in their interaction with human cells to cause long term damage. We would like to point to several peer-reviewed studies that suggest caution is in order. Columbia University scholars Martin Blank and Reba Goodman, in an independent scientific study published in 2009, demonstrate that exposure to weak electromagnetic fields over time stresses living cells, altering protein synthesis. Because the DNA code in each cell is continually being read

up and down the strand in order to replenish essential proteins that have broken down or that may be needed during cell division, the DNA sequences are fully operative and act as sensitive antenna that respond to the lowest electromagnetic frequencies. Moreover, the non-thermal impact of these frequencies on cellular protein production pathways extends beyond DNA to trigger the production of certain RNA enzymes present in oncogenic pathways at the cellular level (Blank and Goodman 2009). Other peer-reviewed studies, published by both the telecom industry (Wiart et al. 2008) and by independent researchers (Christ et al. 2010, p. 1780) confirm the specific vulnerability of children to weak electromagnetic frequencies: “In general and on average, children suffer a higher exposure of their brain regions than adults. This higher exposure is due to differences in anatomical proportions.”

The Committee should anticipate a rapid evolution in scientific knowledge concerning the specific vulnerability of children to all forms of environmental pollution and oblige States Parties to embrace the Principle of Precaution when legislating protection for children.

3. The General Comment should include language stipulating ***regular testing for environmental impacts by an independent body of experts, with appropriate sanctions for widespread or systematic violations***, under articles 2, 3 and 32 of the Convention.

States Parties have developed a variety of reporting mechanisms for air and water pollution in order to assure that corporate actors respect safety standards for adult and child populations. Those states that generate nuclear power are expected to be especially vigilant concerning their reporting on radiation levels within a defined parameter of any nuclear power facility. The General Comment should acknowledge these examples of due diligence and require that due diligence be extended to include all environmental impacts to which children are exposed.

One of the principal problems with due diligence reporting by business is that results may be interpreted in a biased fashion, even within the framework provided by national law. If a government agency is linked in any way to a particular business sector, interpretation of measurement outcomes may also demonstrate an unacceptable level of “self-capture” in favour of local employers. Consequently, we ask that the General Comment recommend independent and multiple reporting for all business sectors known to produce a high level of environmental impact.

With respect to digital pollution, only Chile is the only Party to the Convention that has promulgated national legislation to protect children from

electromagnetic emissions at a precautionary level. It is the Ministry of the Environment, rather than the Under-Secretariat for Telecommunications, which will define and measure the norms for these emissions, a safeguard that should diminish any undue influence by the telecom companies. The Ministry aims to set norms for Base Transceiver Stations at 2V/m, a feasible ALARA standard. The spectacular dearth of regulation for electromagnetic emissions is a global phenomenon, due to an impressive spate of corporate lobbying that rivals that of the tobacco industry. In France, for example, no new national legislation on electromagnetic wave emissions from base transceiver stations has been promulgated since 2002, when norms were fixed 41-61V/m, far in excess of Chile's 2V/m.

A forward-looking General Comment would recognize the potential conflict of interest that States may face in regulating environmental pollution by business employers, but would underscore the differential impact of environmental pollution on children and require that States Parties serve the best interests of the child. Because it may be cheaper for a business to pollute in the pursuit of profit, environmental pollution by business also constitutes an indirect form of economic exploitation of children; we therefore recommend that the General Comment include a reference to "appropriate penalties or other sanctions", under article 32 of the Convention, thereby prompting States Parties to consider robust sanctions that may serve as a deterrent for business enterprises.

4. To reinforce all forms of implementation, we suggest that the General Comment mention the need for States Parties to ***monitor both voluntary and legally binding compliance on the part of the business sector***. The General Comment should also encourage States Parties to render voluntary compliance with human rights norms binding wherever possible.

Voluntary compliance with human rights standards has been the fashion for business enterprises since the development of the Corporate Social Responsibility framework in the 1990s. Business enterprises that have signed the UN Global Compact have been lauded for their embrace of a human rights discourse, even though the Global Compact is not legally binding and requires self-reporting, rather than monitoring of compliance by States Parties or an independent agency. Elected and appointed officials of States Parties have thus been lulled into a sense of cooperation with the business sector, while transnational corporations have expanded their financial power and political reach over the course of the past two decades.

UN Special Representative for Human Rights and Business, John Ruggie, has been remarkably successful in articulating a shared vision of compliance designed to bring multinational business practices into line with binding

international human rights treaties and to restore public trust in multinational enterprises. The Ruggie Report imposes on State governments the obligation to protect, respect and remedy human rights violations committed, at home and abroad, by nationally registered businesses. This “Protect, Respect and Remedy” Framework joins the OECD’s updated Guiding Principles for Multinational Enterprises, the International Labour Organisation’s Tripartite Declaration on Multinationals and Social Policy, UNICEF’s Children’s Rights and Business Principles, and the UN Global Compact to form a solid, interactive body of customary law which makes it the responsibility of the State to evaluate business compliance with binding human rights law. The Committee’s General Comment on the Rights of the Child and the Business Sector joins this influential corpus.

We recommend that the Committee articulate a strategy in the General Comment to render voluntary compliance with human rights norms binding wherever possible. In the meantime, States Parties should be strongly encouraged to monitor voluntary, as well as binding fulfilment of human rights norms with respect to children. In the case of digital technology, States have been quick to extend binding norms that protect children from pornography to include online violations – the prohibition and active prosecution of Web pornography involving minors is a case in point. But, the protection for children from the impact of long-term exposure to low-level electromagnetic frequencies, for example, is almost totally absent from the legislative agenda of most States Parties. Local guidelines and recommendations for voluntary compliance are the norm.

To conclude, we ask that the Committee recommend that States Parties undertake further independent scientific research on effective measurement and monitoring in real world environments of human exposure to multiple sources of EMF and the effects of such exposure on child physiology. The burden of proof should shift to the service provider. It is the telecom industry that must prove that EMF exposure is entirely safe for children, in much the same way that the pharmaceutical industry must prove that a drug is safe for human consumption *before* it is placed on the market. As the use of digital technology explodes, creating a vibrant tool for extending the human rights paradigm worldwide, legally binding standards and regulations that make this technology safe to use are surely in order.