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## Precarious Childhood: Law and its (Ir)Relevance in the Digital Lives of Children

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**PRECARIOUS CHILDHOOD: LAW AND  
ITS (IR)RELEVANCE IN THE DIGITAL  
LIVES OF CHILDREN**

*Liat Franco\* and Shulamit Almog†*

ABSTRACT

*This research provides insight to the way children perceive law and its relevance in the digital realm drawing on in- depth semi-structured interviews with sixty-six eighth- and ninth-grade students from three different Israeli middle schools. According to the findings, children experience the digital world as a precarious environment. Most children interviewed were unaware of or misunderstood relevant legal norms designed to protect web users in general and children in particular. Moreover, children experienced a lack of legal or other appropriate responses to severe incidents of cyberbullying that they experienced firsthand or witnessed as bystanders. Even though children are considered by adults to be digital savvy, as they are spending a growing share of time online and on social media apps, they have almost no awareness of their rights in this sphere. This study provides evidence suggesting that this low-level legal consciousness is responsible for the anxiety and fear articulated by the children we interviewed.*

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## I. INTRODUCTION

In the quest to capture children’s attitudes towards the digital realm, we engaged in qualitative research focusing on the real-life experiences of sixty-six children between the ages of twelve and

fifteen. In the process of conducting comprehensive interviews with our subjects and analyzing current legal structures related to regulating the online world, we came across some alarming testimonials. The children we spoke with signaled strong negative feelings associated with their involvement with the digital realm: they articulated an unrelenting need to always be on guard while using social networks.<sup>1</sup> They knew little, if anything, about what laws might pertain to their behavior or experiences online and how to react if they were the victims of online assaults or cyberbullying. Together, these descriptions painted a picture of a precarious vulnerability to exploitation and abuse on the part of the children who regularly socialize online, a vulnerability which necessitates a need to further examine children's knowledge of any legal norms that pertain to their online behavior, create better access to such legal norms and protections, rethink rights and they are enumerated in the United Nations Convention on the Rights of the Child ("CRC")<sup>2</sup> and to pressure policymakers to provide the resources necessary to keep children safe and comfortable in the digital realm.

Regardless of how popular or socially secure the children appeared, all of our subjects expressed similar fears and described comparable stressful situations they had encountered online. For example, one of our study's participants, a thirteen-year-old girl we shall call M, entered the room with ease and grace. According to her

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<sup>1</sup> A social networking application is defined as a "computing application" (accessed through web browsers, mobile devices, or other electronic means) "that supports and encourages online social networking." Social networking applications "typically share a common set of features which include: 'a profile (representation and/or description) for each user, means to build and manage a personal relational network (i.e., friends, family, acquaintances, etc.), and access to creative methods to communicate with members of their relational network and the online community.'" Michael J. Margo, Sherri D. Ryan, & Victor R. Prybutok, *The Social Network Application Post-Adoptive Use Model (SNAPUM): A Model Examining Social Capital and Other Critical Factors Affecting the Post-Adoptive Use of Facebook*, 16 *INFORMING SCI.: INT'L J. EMERGING TRANSDISCIPLINE* 37, 39 (2013) (quoting Michael J. Magro, Sherry D. Ryan, Jason H. Sharp, & Katie A. Ryan, *Using Social Networking for Educational and Cultural Adaptation: An Exploratory Study*, 528 *AM. CONF. INFO. SYSTEMS* 1, 1 (2009).

<sup>2</sup> Convention on the Rts. of the Child, adopted Nov. 20, 1989, U.N. Doc.A/44/736, 28 I.L.M. 1448, corrected at 29 I.L.M. 1340 (entered into force Sept. 2, 1990).

classmates, M is a very popular girl because she is the administrator of the most sought-after WhatsApp<sup>3</sup> groups. Due to her digital power, M was crowned “queen” of social media and was courted by her peers who wished to be included in these groups.<sup>4</sup> M expressed that her main social concerns are how to manage these groups, what to name them, whom to include and exclude, and how to stay relevant. It was therefore expected that M would articulate a deep comfort and confidence in navigating the digital realm, especially considering her powerful position, and would be leading a fulfilling and exciting social life online.

However, in an in-depth interview a different reality emerged, marked by uncertainty and a lack of control. M shared a story of a vicious rumor that happened to her classmate as a gateway to talk about herself, stating, “Also, there were many rumors [about me] . . . that I go with everyone, that I am a slut. . . I felt awful. It took me a long time to clear my name. I am dying to get rid of this [rumor].” M, who had at first seemed to be in control of the social digital realm, with the power to include or exclude her peers, was not able to control offensive communication about herself within the groups she administers.

Another fourteen-year-old girl, R, is digitally savvy, belongs to several social networks, and immediately expressed the importance of being “relevant in the online world.” However, R is a more mainstream teenager, aware of the need to belong and be liked in the social media realm, but simply as a participant, not as an administrator or leader of any of the social media groups. R is therefore not regarded as holding as much social power as M. Nevertheless, when we met her, R projected a high level of self-esteem, a strong personality, and had a

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<sup>3</sup> WhatsApp is considered one of the most popular mobile-based instant messenger applications. *See generally* Sophie F. Waterloo, Susanne E. Baumgartner, Jochen Peter, Patti M. Valkenburg, *Norms of Online Expression of Emotion: Comparing Facebook, Twitter, Instagram, and WhatsApp*, 20 *New Media & Soc’y* 1813 (2017). WhatsApp is generally used to communicate directly with one or a few friends and thus represents a private channel of communication. *See generally* Evangelos Karapanos, Pedro Teixeira, & Ruben Gouveia, *Need Fulfillment and Experiences on Social Media: A Case on Facebook and WhatsApp*, 55 *COMPUTERS HUM. BEHAV.* 888 (2015).

<sup>4</sup> At the time WhatsApp limited group memberships to 100 participants therefore membership was limited and thus desirable.

trusting disposition. When we asked her whether she feared offensive online communication, she uttered, “I know who I am, and I know what I am worth . . . so I don’t care what they say about me [over social networks]. . . .” However, as the interview progressed, notions of fear, anxiety, and doubt rose to the surface: “Be sure . . . I put my guards up—no way [cyberbullying] will happen to me.”

Then, she added, “There is a feeling that at any given moment, someone can hurt you. It’s like . . . someone can write something . . . anything. At any moment they can spread a rumor about you. . . .”

R must manage a battle on two fronts. On one hand, she feels obliged to maintain an active array of social digital participation. On the other hand, she is constantly on guard, meticulously monitoring her communications to ensure no mishaps.

Finally, we spoke with G, a quiet and shy thirteen-year-old boy who seems to be proud of his unique choice to abstain from digital life. Out of 66 interviewees, he was the only child who did not own a mobile phone. When asked why, he explained, “I am afraid that owning a phone will haunt me.”

These descriptions are drawn from our qualitative research which consisted of sixty-six in-depth interviews that took place over the course of three months in 2015.

While the interplay between children and the digital domain has received some degree of consideration in scholarly work, little specific attention has been paid to children’s rights in the digital realm.<sup>5</sup> Citing the dearth of such research, critics claim that international and national efforts have not addressed the role of the Internet in relation to children’s rights, but have instead focused narrowly on provision rights, such as Internet access, or protection from potentially harmful experiences, such as online bullying or exposure to pornography.<sup>6</sup> Moreover, critics have argued that while the Internet and related

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<sup>5</sup> Sonia Livingstone & Amanda Third, *Children and Young People’s Rights in the Digital Age: An Emerging Agenda*, 19 *NEW MEDIA & SOC’Y* 657, 659–60 (2017).

<sup>6</sup> Teresa Swist & Philippa Collin, *Platforms, Data and Children’s Rights: Introducing a “Networked Capability Approach”*, 19 *NEW MEDIA & SOC’Y* 671, 671 (2017).

technologies are certainly in the position to facilitate—or violate—children’s rights,<sup>7</sup> their role may be more fundamental than merely amplifying the risks and opportunities children face in their real-world communities.<sup>8</sup>

The discussion that follows is divided into two parts. Part II of this article offers background information and a discussion of how this research relates to previous research conducted around children’s general legal consciousness. Part III introduces our research, describes the method used, examines the themes that emerged from the interviews, and interprets the results in a wider context. Finally, we conclude in Part IV by highlighting the importance of teaching children about available legal frameworks and protections in the digital realm.

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<sup>7</sup> See Sonia Livingstone, John Carr, & Jasmina Byrne, CTR. INT’L GOVERNANCE INNOVATION & ROYAL INST. INT’L AFFAIRS, ONE IN THREE: INTERNET GOVERNANCE AND CHILDREN’S RIGHTS 1–2 (2015), [https://www.cigionline.org/sites/default/files/no22\\_2.pdf](https://www.cigionline.org/sites/default/files/no22_2.pdf).

<sup>8</sup> Swist & Collin, *supra* note 6, at 677.

## II. BACKGROUND INFORMATION

### A. The Extent of Cyberbullying

Scholars have recently been debating whether incidences of cyberbullying<sup>9</sup> are on the rise<sup>10</sup> or whether they have leveled out.<sup>11</sup>

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<sup>9</sup> There are several definitions of cyberbullying: The U.S. Department of Health and Human Services defines bullying as “aggressive behavior between school-aged youth when there is a power imbalance that is repeated, or has the potential to be repeated, over time.” For this definition to be considered “cyberbullying,” it must also occur online. *See* United States Department of Health and Human Services, Office of Adolescent Health, Adolescent Bullying Basics, <https://www.hhs.gov/ash/oah/adolescent-development/healthy-relationships/bullying/index.html> (last visited Dec. 12, 2018). The U.S. Centers for Disease Control and Prevention define cyberbullying as “involving an **observed or perceived power imbalance** that is **repeated multiple times or [is] highly likely to be repeated**. Bullying may inflict **harm or distress** on the targeted youth including physical, psychological, social, or educational harm” through any kind of electronic platform—email, chat rooms, instant messages, a website, a text message, or social media. United States Department of Health and Human Services, Centers for Disease Control and Prevention, Bullying Research, <https://www.cdc.gov/violenceprevention/youthviolence/bullyingresearch/> (last updated July 16, 2018) (emphasis added). The various European definitions of bullying are similar to the U.S. definitions, with a few minor differences. The European Commission defined cyberbullying in 2009 as the “repeated verbal or psychological harassment carried out by an individual or group against others.” European Commission Press Release MEMO/09/58, Safer Internet Day 2009: Commission Starts Campaign Against Cyber-Bullying Press Release (Feb. 10, 2009), [http://europa.eu/rapid/press-release\\_MEMO-09-58\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-09-58_en.htm?locale=en). The UN Special Representative of the Secretary-General on Violence against Children provided a more recent definition in 2016 and described cyberbullying as “an aggressive, intentional act carried out by an individual or a group using electronic forms of contact against a victim who cannot easily defend himself or herself.” U.N. Special Representative of the Secretary-General, Annual Report of the Special Representative of the Secretary General on Violence Against Children, U.N. Doc. A/HRC/31/20 (Jan. 5, 2016).

<sup>10</sup> A study Commissioned by the Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the LIBE Committee in 2016 stated that the increased availability of new technologies has resulted in a rise in cyberbullying cases in recent years. CYBERBULLYING AMONG YOUNG PEOPLE: STUDY FOR THE LIBE COMMITTEE, at 8 (2016), [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571367/IPOL\\_STU\(2016\)571367\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571367/IPOL_STU(2016)571367_EN.pdf) [hereinafter “CYBERBULLYING AMONG YOUNG PEOPLE”].



Studies on cyberbullying present highly variable results, related in large part to the vast array of different and distinct definitions of cyberbullying used.<sup>12</sup> Furthermore, as a result of the absence of a commonly agreed upon definition of cyberbullying, the measurement of the phenomenon differs from country to country and from study to study.<sup>13</sup>

However, estimates of cyberbullying against children are similar worldwide<sup>14</sup> and range between approximately 10-40% of

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*See generally* R. Slonje & P.K. Smith, *Cyberbullying: Another Main Type of Bullying?* 49 SCANDINAVIAN J. PSYCHOL. 147 (2008) (suggesting that the prevalence of cyberbullying increases as the types of technology involved in its commission changes).

<sup>11</sup> *Compare* Dan Olweus, *Cyberbullying: An Overrated Phenomenon?* 9 EUR. J. DEVELOPMENTAL PSYCHOL. 520, 521, 527 (2012) (arguing that the incidence of cyberbullying has not increased over the last few years) *with* an official document prepared for the European Parliament which states that the growing availability of new technologies has resulted in a recent increase in cyberbullying cases. *See* CYBERBULLYING AMONG YOUNG PEOPLE, *supra* note 10, at 8.

<sup>12</sup> For a more detailed discussion of this issue, see Robin Kowalski et al., *Bullying in the Digital Age: A Critical Review and Meta-Analysis of Cyberbullying Research among Youth*, 140 PSYCHOLOGICAL BULL. 1073, 1110 (2014).

<sup>13</sup> CYBERBULLYING AMONG YOUNG PEOPLE, *supra* note 10, at 9.

<sup>14</sup> A worldwide survey conducted in twenty-four countries (Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Great Britain, Hungary, India, Indonesia, Italy, Japan, Mexico, Poland, Russia, Saudi Arabia, South Africa, South Korea, Spain, Sweden, Turkey, the United States of America) in 2011 found that 66% of the 18,687 interviewees, both children and adults, had seen, read or heard something about cyberbullying behaviors. *See* CYBERBULLYING AMONG YOUNG PEOPLE, *supra* note 10, at 26. In Israel in a study submitted to the Israel Ministry of Education in 2014 reveals that 27% of the participants, which included 1,094 students from eighteen schools nationwide, reported being victims of online violence and that 46% of the participants witnessed acts of violent online communication that were directed at another person. See Tali Heiman, Dorit Olenik-Shemesh, and Sigal Eden, *Violence and Harm on the Internet: Characteristics, Patterns, Risk Factors and Protective Factors among Children and Young Adults* (Ministry of Education Study Report, 7 January 2014): <http://ecat.education.gov.il/Attachment/DownloadFile?downloadId=7735> [In Hebrew]. The study involved the participation of 1,094 elementary, junior high, and high school students, and found that 27% of the students were harmed by online violence. In the U.S in a study including a sample of 5,700 children and young adults aged 12–17, Hinduja and Patchin, the founders and directors of the United States' Cyberbullying Research Center, determined that about 34% of the respondents

children reporting as victims.<sup>15</sup> Thus, cyberbullying is clearly pervasive and requires policy framers' attention as it becomes even more challenging and violent in nature due to evolving technologies.<sup>16</sup>

## B. Legal Measures Related to Cyberbullying

Cyberbullying can violate children's rights in numerous ways.<sup>17</sup> We chose the CRC as a framework for the current approach on children's rights.<sup>18</sup> Indeed, scholarly references to children's rights are

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reported being victims of cyberbullying. Sameer Hinduja and Justin W. Patchin, *2016 Cyberbullying Data*, CYBERBULLYING RESEARCH CTR (November 26, 2016), <http://cyberbullying.org/2016-cyberbullying-data>.

<sup>15</sup> See Kowalski et al., *supra* note 12, at 1108.

<sup>16</sup> For example, there is the case of the "Blue Whale," a Russian-created social media game in which participants receive a fifty-day challenge "by an online anonymous 'master.'" The game consists of a series of challenges that become increasingly dangerous—beginning with such relatively harmless tasks as watching horror films all night, proceeding to self-mutilation, and ending in a challenge to commit suicide. *'Blue Whale Game' Blamed in Suicide of Texas Teenager*, BBC NEWS (July 11, 2017), <http://www.bbc.com/news/world-us-canada-40561086>. Another extremely violent online game that involves children as perpetrators and victims is the "X Game." Developed in the UK, the "game" begins when someone sends the letter X to another child, who then replies with the name of the victim. Participants attempt to create as many insults as possible for the victim: i.e., attacking their weight, appearance, and personality. Toby Meyjes, *Mother's Warning over Sinister 'Letter X' Snapchat Bullying Game*, METRO (Mar. 6, 2017, 1:22 PM), <http://metro.co.uk/2017/03/06/mothers-warning-over-sinister-letter-x-snapchat-bullying-game-6491101/>. Two cases of suicide by fourteen-year-old teenagers from the UK have also been linked to this game. See Joshua Taylor, *Parents Warned about Sick New 'Letter X' Snapchat Bullying Craze Encouraging Children to Post Vile Abuse*, MIRROR (Mar. 5, 2017, 6:53 PM), <http://www.mirror.co.uk/news/uk-news/parents-warned-sick-new-letter-9971114>.

<sup>17</sup> Cyberbullying is undoubtedly a behavior that infringes upon many United Nations Convention on the Rights of the Child (CRC) recognized rights: for example, Article 19: the right to be protected from all forms of physical and mental violence and abuse; Article 15: the right to freedom of association and peaceful assembly; Article 16: the right to privacy; Article 24: the right to physical and mental well-being; etc. G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989). The CRC was ratified by almost all UN member countries with the exception of the United States and is thus fit to be the international constitutional reference on children's rights. Martin D. Ruck et al., *The United Nations Convention on the Rights of the Child: Its relevance for Adolescents*, 26 J. RES. ON ADOLESCENCE 16, 16 (2014).

<sup>18</sup> See generally G.A. Res. 44/25, *supra* note 17.

incomprehensible without considering the CRC as the standard-bearer of the children's rights debate.<sup>19</sup> The CRC was ratified by all UN member countries, with the exception of the United States,<sup>20</sup> and is fit to be the international constitutional reference for children's rights.<sup>21</sup>

Recently, influential policy and standards-setting juvenile rights organizations have recently started paying attention and are ready to take action in order to better protect these rights.<sup>22</sup> Legislatures, too, have begun to recognize that cyberbullying, a behavior that usually targets children,<sup>23</sup> needs to be addressed in a unique manner rather than via traditional criminal law.<sup>24</sup> In the United States, federal and state legislatures are debating which measures are appropriate to mitigate cyberbullying. Since 2009, twenty-three states have reduced the charges related to cyberbullying from felonies to misdemeanors. This change in policy may have resulted from the inapplicability of adult penalties to minor offenders: instead, some jurisdictions have

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<sup>19</sup> See generally Didier Reynaert, Maria Bouverne-De Bie & Stijn Vandeveld, *A Review of Children's Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child*, 16 CHILDHOOD 518 (2009).

<sup>20</sup> Martin D. Ruck et al., *The United Nations Convention on the Rights of the Child: Its Relevance for Adolescents*, 26 J. RES. ON ADOLESCENCE 16, 16 (2014).

<sup>21</sup> See *id.* at 23. See generally Liat Franco, *Minorgraphy—Minors Creating Pornography—A New Digital Practice Demands a Reframing of Children's Rights*, 57 WASHBURN L.J. 481, 489 n.45 (citing a forthcoming work that “suggest[s], inter alia, the drafting of a new international treaty on children's digital rights, or at least a significant emendation of the CRC in order to introduce additional rights that will both ensure children's awareness of their digital rights as well as declare a new set of rights meant for protecting children's welfare in the digital era.”)

<sup>22</sup> Livingstone & Third, *supra* note 5, at 658.

<sup>23</sup> Even though involvement in cyberbullying may continue into adulthood, it reaches a pick between ages 13–15, and decreases as age progress. See Robert Slonje, R., Peter K. Smith, Ann Frisén, *The nature of cyberbullying, and strategies for prevention*, COMPUTERS IN HUMAN BEHAVIOR 26, 28 (2013). Some states (Idaho, Louisiana, Nevada, Washington, and Kentucky in the United States, and New South Wales in Australia) define the problem of cyberbullying as primarily associated with children and have accordingly instituted pertinent legislation that focuses on cyberbullying perpetrated against minors.

<sup>24</sup> See generally a discussion in Liat Franco, *Minorgraphy—Minors Creating Pornography—A New Digital Practice Demands a Reframing of Children's Rights*. 57 WASHBURN L.J. 481, which calls for amendment of the CRC due to new behaviors in the digital realm such as minorgraphy, minors creating pornography.

created educational programs or allowed for prosecutions to be waived if certain conditions are met.<sup>25</sup>

Some countries have enacted specific cyberbullying laws,<sup>26</sup> whereas others adapt existing laws to online behavior. As of 2018, 48 U.S. states include the term “cyberbullying” or “online harassment” in their laws, with seven of these choosing a dedicated offense model enacted for the purpose of mitigating and handling cyberbullying as a behavior.<sup>27</sup> Israel, on the other hand, uses existing laws encompassing offenses such as defamation, violation of privacy, intimidation, harassment, and sexual harassment, and, in 2014, Israel enacted an interesting and relevant offence to address cyberbullying. This law is an amendment to the Prevention of Sexual Harassment Law, known

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<sup>25</sup> Kallee Spooner & Michael Vaughn, *Youth Sexting: A Legislative and Constitutional Analysis*, 15 J. SCH. VIOLENCE 213, 217 (2014).

<sup>26</sup> Consider Austria, for example. In 2016 it adopted §107(c) of the Austrian Penal Code to combat online violence and defined it as “continuous harassment by telecommunication or a computer system.” STRAFGESETZBUCH [STGB] [PENAL CODE] § 107(c), <https://www.refworld.org/docid/3ae6b5bf0.html> (Austria). The law was primarily meant for protecting children and those in their teen years from online violence. *Austria Cracks Down on Cyber Abuse*, THE LOCAL (Jan. 4, 2016), <http://www.thelocal.at/20160104/austria-cracks-down-on-cyber-abuse>. England enacted §127 of England’s 2003 Communications Act, entitled ‘Improper use of public electronic communications network’ to handle online violence. Communications Act 2003, c. 21, § 127 (Eng.). The law’s scope encompasses the transmission of any kind of harmful message. *Id.* The full text of the law is available at <https://www.legislation.gov.uk/ukpga/2003/21/section/127>. New Zealand also passed a law dedicated to online violence on July 2, 2015. This law, entitled the Harmful Digital Communications Act, sought to handle the cyberbullying phenomenon, while §22 of this Act, entitled “Causing harm by posting digital communication” defines cyberbullying as an independent offense. Harmful Digital Communications Act 2015, ss 3, 22 (N.Z.). Full text of the law is available at <http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM5711856>.

<sup>27</sup> The seven states are Arkansas, Louisiana, Missouri, Nevada, North Carolina, Tennessee and Washington. Tiffany Sumrall, *Lethal Words: The Harmful Impact of Cyberbullying and the Need for Federal Criminalization*, 53 Hous. L. Rev. 1475, 1490–91 (2016). BULLYING LAWS ACROSS AMERICA, CYBERBULLYING RESEARCH CTR., <https://cyberbullying.org/bullying-laws> (last visited Dec. 13, 2018). Most U.S. states that do not criminalize this behavior with dedicated legislation pass laws and regulations addressing schools with a view to the creation of school policies that would be able to handle cyberbullying. Sumrall, *supra*, at 1492.

as the Video Law.<sup>28</sup> This amendment stated that “the publication of an image, video, or recording of a person that focuses on said person’s sexuality” without the subject’s knowledge constitutes sexual harassment punishable by a maximum of five years’ imprisonment.<sup>29</sup>

This law was specifically intended to protect children and youth.<sup>30</sup> Indeed, during an October 2015 meeting of the State Control Committee, one of this law’s enactors, Advocate Azriel of the Israel Ministry of Justice, suggested that the law is primarily meant to address youth online offensive behavior.<sup>31</sup> This law prohibits the dissemination and distribution of sexually explicit videos without the subject’s consent and carries a punishment of up to five years’ imprisonment.<sup>32</sup>

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<sup>28</sup> Prevention of Sexual Harassment Law, 5758–1998. In addition, see the explanatory portion of the Prevention of Sexual Harassment Bill, 5773 AM – 2013, B516.

<sup>29</sup> Prevention of Sexual Harassment Law article 3 (a) (5a). 5773 AM – 2013, B516, [StGB] [Penal Code] § 107(c), <https://www.refworld.org/docid/3ae6b5bf0.html> (Austria). The law was primarily meant for protecting children and those in their teen years from online violence. *Austria Cracks Down on Cyber Abuse*, The Local (Jan. 4, 2016), <http://www.thelocal.at/20160104/austria-cracks-down-on-cyber-abuse>. England enacted §127 of England’s 2003 Communications Act, entitled ‘Improper use of public electronic communications network’ to handle online violence. Communications Act 2003, c. 21, § 127 (Eng.). The law’s scope encompasses the transmission of any kind of harmful message. *Id.* The full text of the law is available at <https://www.legislation.gov.uk/ukpga/2003/21/section/127>. New Zealand also passed a law dedicated to online violence on July 2, 2015. This law, entitled the Harmful Digital Communications Act, sought to handle the cyberbullying phenomenon, while §22 of this Act, entitled “Causing harm by posting digital communication” defines cyberbullying as an independent offense. Harmful Digital Communications Act 2015, ss 3, 22 (N.Z.). Full text of the law is available at <http://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html#DLM5711856>.

<sup>30</sup> This amendment states that “the publication of an image, video, or recording of a person that focuses on said person’s sexuality” without the subject’s knowledge constitutes sexual harassment punishable by a maximum of five years’ imprisonment. See the explanatory portion of the Prevention of Sexual Harassment Bill, 5773 AM – 2013, B516.

<sup>31</sup> Protocol of the 33rd Meeting of the State Control Committee, The 20th Knesset (13.10.2015) [hereinafter State Control Committee Protocol No. 33].

<sup>32</sup> Prevention of Sexual Harassment Law, article 3(a)(5a).

### C. Digital Natives: A Paradox

The rapid rise of the digital age has created a generation of “digital natives,”<sup>33</sup> but children remain the most vulnerable demographic to exploitation or injustice.<sup>34</sup> We must therefore recognize this paradox and provide children with the tools they need to engage with the digital domain safely. Society as a whole, and the justice system in particular, must ensure the existence and maintenance of legal norms pertaining to children’s rights in the online world.

Furthermore, research indicates that the current generation of children is more vulnerable and emotionally sensitive than generations of children before. An alarming 2018 study found that depressive symptoms and suicide rates among adolescents have risen since 2010.<sup>35</sup> This increase in depressive symptoms and higher suicide rates has been linked to this generation of children’s use of social media and electronic devices, and a positive correlation was established between the amount of time spent on social media and electronic devices and depressive symptoms and suicide-related outcomes.<sup>36</sup> From 2010 to

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<sup>33</sup> Children who were born after 1980, when social digital technologies first came online, are referred to as “Digital natives” and are assumed to possess the skills to operate these technologies. John Gorham Palfrey & Urs Gasser, *BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES* [Introduction ii] (2011).

<sup>34</sup> Stuart N. Hart, *From Property to Person Status: Historical Perspective on Children’s Rights*, 46 *AM. PSYCHOLOGIST* 53 (1991).

<sup>35</sup> Jean M. Twenge, Thomas E. Joiner, Megan L. Rogers, & Gabrielle N. Martin, *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates among U.S. Adolescents after 2010 and Links to Increased New Media Screen Time* 6 *CLINICAL PSYCHOL. SCI.* 3, 8 (2018).

<sup>36</sup> *See id.* at 9–13. Children and adolescents who spent more than five hours per day on electronic devices were 66% more likely to have at least one suicide-related outcome than those who spent one hour per day. *Id.* at 9. In addition, eighth and tenth graders who spent more than forty hours per week on social media were nearly twice as likely to be unhappy as those who spent one to two hours per week (24% vs. 13%). *Id.* One form of offensive communication children engaged in and encountered while using social networks is cyberbullying; 17% of the calls received by European helplines in 2015 were related to cyberbullying, with sexuality and online relationships coming second and being the focus of over 11% of calls. See DUBLIN INST. TECH., Thuy Dinh et al., *INSAFE HELPLINES: OPERATIONS, EFFECTIVENESS AND EMERGING ISSUES FOR INTERNET SAFETY HELPLINES* 14

2015, 33% more adolescents exhibited high levels of depressive symptoms; 12% more reported at least one suicide-related injury; and 31% more died by suicide.<sup>37</sup>

#### D. Theoretical Background

##### 1. Legal Consciousness

As we have established, legal norms and frameworks pertaining to the cyberbullying of children do exist at both the local as well as global level. If children witness or experience offensive, illegal conduct on social networks, they can invoke plausible legal claims under numerous existing legal frameworks. However, the mobilization of existing legal frameworks in response to any inflicted harm, whether on- or offline, requires that children be able to identify negative experiences, attribute them to illegal or prohibited conduct, and feel confident in bringing them to the attention of regulatory agents (e.g., teachers, parents, or other legal guardians). A critical factor in this attribution process is “legal consciousness,” the degree to which an individual invokes legal concepts to define and understand everyday experiences.<sup>38</sup> In other words, in order for laws to influence and to be used proactively in children’s lives, the children must first possess legal consciousness.<sup>39</sup>

John Stuart Mill elucidated the concept of legal consciousness more than 150 years ago. In his work, *On Liberty*, he articulated that

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(2016). Moreover, youth-produced sexual imagery, abuses of privacy, and “sexting” have likewise been identified as a growing concern across Europe and beyond. See Monica Bulger et al., *Where Policy and Practice Collide: Comparing United States, South African and European Union Approaches to Protecting Children Online* 19 NEW MEDIA & SOC’Y 750, 753 (2017).

<sup>37</sup> The increase in depressive symptoms and suicide related outcomes was driven almost exclusively by female adolescents; from 2009/2010 to 2015, 58% more female adolescents scored high in depressive symptoms and 14% more reported at least one suicide-related outcome. Twenge et al., *supra* note 35, at 8.

<sup>38</sup> PATRICIA EWICK & SUSAN S. SILBEY, THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE 46 (1998).

<sup>39</sup> Kay Levine & Virginia Mellema, *Strategizing the Street: How Law Matters in the Lives of Women in the Street- Level Drug Economy* 26 L. & SOC. INQUIRY 169, 170 (2001).

such rights must be recognized before they can be materialized. Mill's writings emphasize that the appropriate application of human liberty "comprises, first, the inward domain of consciousness. . . ."<sup>40</sup> It follows, then, that understanding human consciousness and the manner in which human needs are perceived and met are prerequisite toward the implementation of a person's rights. Thus, information on how children perceive their basic rights—how "legally conscious" they are—is crucial to their understanding of children rights.

A prerequisite for understanding law is assimilating social values. The process of understanding and adopting social values develops during childhood and is influenced by socialization experiences of a child.<sup>41</sup> "Most children's basic orientations toward society and social institutions are shaped most profoundly during the early years of their lives, through their experiences with their families and school."<sup>42</sup> Generally, "childhood socialization is the period during which people's basic orientation toward moral rules is formed."<sup>43</sup> This will influence their perspective behavior as adults, since typically, people are less willing to follow legal rules when those legal rules are not supported by their moral values.<sup>44</sup> Law abidingness is found to be linked both to moral values,<sup>45</sup> which form during childhood, and to feelings of obligation toward legal authorities.<sup>46</sup>

In this article, we use the notion of legal consciousness broadly to describe the importation of legal principles into everyday life and the transformation that occurs as individuals move toward an

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<sup>40</sup> JOHN STUART MILL, *ON LIBERTY* 27 (Boston: Ticknor & Fields, 2d ed., 1863).

<sup>41</sup> See Patricia M. Worthy, *Diversity and Minority Stereotyping in the Television Media: The Unsettled First Amendment Issue*, 18 HASTINGS COMM. & ENT. L.J. 509, 534 (1996).

<sup>42</sup> Tom R. Tyler & John M. Darley, *Building a Law-Abiding Society: Taking Public Views about Morality and the Legitimacy of Legal Authorities into Account when Formulating Substantive Law*, 28 HOFSTRA L. REV. 707, 718 (2000).

<sup>43</sup> *Id.*

<sup>44</sup> See TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 57, 64–66, 68 (Yale University Press 1990).

<sup>45</sup> See Augusto Blasi, *Bridging Moral Cognition and Moral Action: A Critical Review of the Literature*, 88 PSYCHOL. BULL. 1, 12 (1980).

<sup>46</sup> See Tyler & Darley, *supra* note 42, at 31.



understanding of events or experiences as injurious and deserving of redress. This transformation may also involve widening moral consciousness or the application of a justice framework, both of which recognize that an experience or condition violates some moral if not legal principle.<sup>47</sup>

## 2. Legal Consciousness in the Digital Realm

Usually legal consciousness is formed and shared by people who have similar experiences and share similar social status.<sup>48</sup> The digital era, with its vast array of social networks, amplifies the notion of “shared legal consciousness” since digital platforms in general, and social networks in particular, consist of clusters of children and youth<sup>49</sup> and provide platforms that enhances the notions of shared, common, and similar experiences. From these common experiences, children draw similar forms of legal consciousness or lack thereof.

For offensive communication on social networks to be categorized as illegal, one needs to identify and name an experience as illegal cyberbullying.<sup>50</sup> This process involves the recognition that a standard exists and has been violated and then the application of a legal principle— in social network relations and communications. This research was designed to establish how children perceive legal norm in the digital space; specifically, to discover whether children possess legal consciousness about social networks in general and legal norms in particular, that relate to cyberbullying.

## 3. Related Research: The Law’s Perception of Children

There is a growing call for the inclusion of children in the molding of public policy related to them to account for their opinions

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<sup>47</sup> See generally Sandra R. Levitsky “What Rights?” *The Construction of Political Claims to American Health Care Entitlements*, 42 L. & SOC’Y REV. 551 (2008).

<sup>48</sup> Ewick et al., at 173.

<sup>49</sup> Social networks show higher levels of “clustering” than non-social networks. See generally M. E. J. Newman & Juyong Park, *Why Social Networks are Different from other Types of Networks*, 68 PHYSICAL REV. E, 036122 (2003).

<sup>50</sup> See generally William L.F. Felstiner, Richard L. Abel, & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .*, 15 L. & SOC’Y REV. 631 (1980).

and wishes.<sup>51</sup> Alongside paradigms of the risks and safety of Internet usage, new research is beginning to demonstrate and document a broad range of benefits associated with children's online participation and the role that the digital realm could play in securing, materializing, and guaranteeing children's rights.<sup>52</sup> Some even claim that the digital platform should play a role in promoting the rights of children and be used as an opportunity to empower children and maximize the opportunities that the digital realm entails.<sup>53</sup>

Others similarly assert that the "data revolution" involves the rethinking and remaking of public policies, by children and not just for them.<sup>54</sup> Such an undertaking requires an exploration of how different types of platforms can be changed to better include children's voices in order to learn and understand digital media through children's eyes and also to better implement children's rights the way they are enumerated in the CRC.<sup>55</sup>

Since the turn of this century, empirical research has examined children's awareness of their rights.<sup>56</sup> Many believe that incorporating children's empirically gathered perspectives at the policy-making stage

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<sup>51</sup> Swist & Collin, *supra* note 6, at 680–81. It is important to note that a passage of children's participation rights exists in Article 12, Paragraph 1 of the CRC: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." G.A. Res. 44/25, *supra* note 17, at 12 ¶ 1. Paragraph 2 states that: "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law." *Id.* at 12 ¶ 2.

<sup>52</sup> Livingstone & Third, *supra* note 5, at 667.

<sup>53</sup> *Id.* at 666.

<sup>54</sup> Swist & Collin, *supra* note 6, at 680–81.

<sup>55</sup> See G.A. Res. 44/25, *supra* note 17; Amanda Third et al., YOUNG & WELL COOP. RESEARCH CTR., CHILDREN'S RIGHTS IN THE DIGITAL AGE: A DOWNLOAD FROM CHILDREN AROUND THE WORLD 6 (2014), <https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A28202/datastream/PDF/download/citation.pdf>.

<sup>56</sup> See generally Michelle Peterson-Badali & Martin Ruck, *Studying Children's Perspectives on Self-determination and Nurturance Rights: Issues and Challenges*, 64 J. SOC. ISSUES 749 (2008).

can improve the resulting laws and regulations relating to children.<sup>57</sup> Data gathered from children regarding the way they perceive their existing rights can be employed in order to create age-appropriate structures and mechanisms designed to implement those rights while facilitating children's legal and political socialization.<sup>58</sup>

Focusing on children's perceptions of their rights in the digital realm, seventeen leading NGOs in the field of children's digital rights partnered to conduct a worldwide survey of 148 children (ages six to eighteen) in sixteen different countries in 2014 (the Worldwide Survey). The Worldwide Survey respondents' general answers indicated their ignorance of any regulatory frameworks relevant to them.<sup>59</sup> Children were better able to articulate the risks and challenges of digital media practices rather than existing legislative safety schemes.<sup>60</sup>

Additional relevant research issued by the Australian government in 2014 focused on children's perceptions of their rights and legal norms, specifically vis-à-vis cyberbullying. This research found that age-specific elements associated with childhood and youth (e.g., impulsivity, self-centeredness, the belief that children are technologically superior, their experience that few cyberbullies have

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<sup>57</sup> See CTR. FOR EXCELLENCE IN CHILD & FAMILY WELFARE, MONOGRAPH, THEIR VOICE: INVOLVING CHILDREN AND YOUNG PEOPLE IN DECISIONS, SERVICES AND SYSTEMS 6–7 (2011). See generally GERISON LANSDOWN, SAVE THE CHILDREN U.K., EVERY CHILD'S RIGHT TO BE HEARD: A RESOURCE GUIDE ON THE UN COMMITTEE ON THE RIGHTS OF THE CHILD GENERAL COMMENT NO. 12 (2011).

<sup>58</sup> Asher Ben-Arieh, Ferran Casas, Ivar Frønes, & Jill E. Korbin, *Multifaceted Concept of Child Well-Being*, in HANDBOOK OF CHILD WELL-BEING: THEORIES, METHODS AND POLICIES IN GLOBAL PERSPECTIVE 1–27 (Asher Ben-Arieh et al., eds., 2014). See generally Robert A. Cummins, *Understanding the Well-Being of Children and Adolescents Through Homeostatic Theory*, in HANDBOOK OF CHILD WELL-BEING: THEORIES, METHODS AND POLICIES IN GLOBAL PERSPECTIVE 635 (Asher Ben-Arieh et al., eds., 2014); Martin D. Ruck, Michele Peterson-Badali, & Charles C. Helwig, *Children's Perspectives on Nurturance and Self-Determination Rights: Implications for Development and Well-Being*, in HANDBOOK OF CHILD WELL-BEING: THEORIES, METHODS AND POLICIES IN GLOBAL PERSPECTIVE 2537 (Asher Ben-Arieh et al., eds., 2014).

<sup>59</sup> Third et al., *supra* note 55, at 10, 47.

<sup>60</sup> *Id.* at 10–11.

been convicted, and the ignorance of relevant laws) precluded the effectiveness of a one-dimensional legal response and necessitated a multi-level legal remedy against cyberbullying; the authors concluded that current anti-cyberbullying laws should be amended to raise the profile of cyberbullying and highlight its consequences.<sup>61</sup>

Against this background, the purpose of this study is to expand on previous research that explores children's views and knowledge of existing legal norms regarding their digital experiences. In our research, we do not analyze whether existing legal frameworks are appropriate to mitigate cyberbullying, but rather whether children are even aware that these frameworks exist. Our research draws on specific data regarding children's perceptions joined with the theoretical comprehension we garnered from the current discourse of legal consciousness. Our aim is to enhance the legal means available to children to any such existing frameworks, thereby providing children with better access to justice. We examine the disconnect between the way children experience and perceive legal frameworks in the digital realm and the reality of their existence. Thus, this research uses qualitative measures to examine children's perception of legal norms in the digital domain.

#### E. The Necessity of Engaging in Qualitative Empirical Legal Research

We believe that the empirical method of research, "which derives knowledge from actual experience rather than from theory or belief"<sup>62</sup> is the best tool to test whether access to justice in the online world exists for children. Empirical research benefits both legal scholars and legal practitioners: it can produce valuable data, for

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<sup>61</sup> ILAN KATZ ET AL., SOCIAL POLICY RESEARCH CTR., UNSW AUSTRALIA, RESEARCH ON YOUTH EXPOSURE TO, AND MANAGEMENT OF, CYBERBULLYING INCIDENTS IN AUSTRALIA: SYNTHESIS REPORT 6–8, 14–16 (2014).

<sup>62</sup> *Empirical Research in the Social Sciences and Education*, Penn State University Libraries, <http://guides.libraries.psu.edu/emp> (last updated Dec. 7, 2018, 4:49 PM).

example, as a basis for policy decisions, as well as for a deep and critical understanding of how laws impact children in the real world.<sup>63</sup>

Some scholars predict that the legal sector faces “unrelenting, dynamic and transformative changes”<sup>64</sup> from forces such as globalization and technological innovation that are not only changing the demands of those adequately represented in the legal system but also highlighting the segments of the population with inadequate access to justice.<sup>65</sup> Children are especially disenfranchised.<sup>66</sup> In order to address this lack of access to justice, innovation in the justice sector is essential.<sup>67</sup> Two of the most promising tools currently available to legal professionals<sup>68</sup> include “reflective practice” and “action research.”<sup>69</sup>

A world where technology has become an eminent part of children’s lives and can improve or diminish children’s online experiences gives rise to two competing nexuses of scholarly discourse: society’s responsibility and need to protect children (children’s right to protection)<sup>70</sup> and children’s rights to access online platforms (children’s right to participation has even come to be recognized as a

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<sup>63</sup> Felicity Bell, *Empirical Research in Law*, 25 GRIFFITH L. REV. 262, 262–64 (2016).

<sup>64</sup> CANADIAN BAR ASS’N, FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA 10 (2014), [https://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf).

<sup>65</sup> *See id.*

<sup>66</sup> CHILD RIGHTS INT’L NETWORK, RIGHTS, REMEDIES & REPRESENTATION: GLOBAL REPORT ON ACCESS TO JUSTICE FOR CHILDREN 4–5 (2016), [https://www.crin.org/sites/default/files/crin\\_a2j\\_global\\_report\\_final\\_1.pdf](https://www.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf).

<sup>67</sup> Michele M. Leering, *Enhancing the Legal Profession’s Capacity for Innovation: The Promise of Reflective Practice and Action Research for Increasing Access to Justice*, 34 WINDSOR Y.B. ACCESS JUST. 189, 190 (2017).

<sup>68</sup> “Legal professionals” includes “law students, legal educators, lawyers, judges, policy-makers, mediators, government and court staff, and other legal practitioners.” *Id.* at 191.

<sup>69</sup> *Id.* at 191.

<sup>70</sup> Livingstone & Third, *supra* note 5, at 662.

right in and of itself).<sup>71</sup> This research combines these two often-competing nexuses and analyzes whether there is a need to raise children's legal consciousness related to online platforms where they may experience numerous various violations of their rights. After all, protecting children in the digital world thus requires an empirical examination of whether children are even aware that they possess rights.

Lastly, qualitative empirical research such as our own provides essential information for policy framers to deal with new issues in the digital realm, such as a lack of access to justice for the most vulnerable population of Internet users. Empirical research can also aid in exploring the possibilities social networking and Internet-based strategies have to increase access to justice and upturn the legal empowerment of children. We need to undertake further empirical research on effectiveness—a form of research that both focuses on diagnosing problems and developing potential solutions—to create a true understanding of complex issues such as cyberbullying among children, thus creating a culture of reflective inquiry.<sup>72</sup> Using empirical research that analyzes legal effectiveness and access to justice could better equip the justice system to respond constructively to the problems children face.<sup>73</sup>

Considering the background information discussed, the questions that form the focus of our research become clear: are children aware of the existence of legal norms pertaining to their online activity? Do children perceive a connection between legal norms and their digital behavior? Providing answers to these questions is essential for examining whether law matters to children, and further, whether

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<sup>71</sup> See Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue, U.N. Doc. A/HRC/17/27, at 4, 9, 18 (2011). Amanda Third et al., explain that “[p]articipation rights imply a degree of self-determination, albeit in accordance with the child’s age and maturity, which is much closer to the notion of civil and political rights previously reserved for adults.” Third et al., *supra* note 55, at 14. Moreover, “[c]hildren’s participation demands constant vigilance about the extent to which children’s voices are being actively listened to and activated in policy making and related areas.” *Id.* at 16.

<sup>72</sup> Leering, *supra* note 67, at 221.

<sup>73</sup> *Id.*

existing legal norms are appropriate and applicable to children's digital social lives.

### III. OUR RESEARCH

#### A. Method

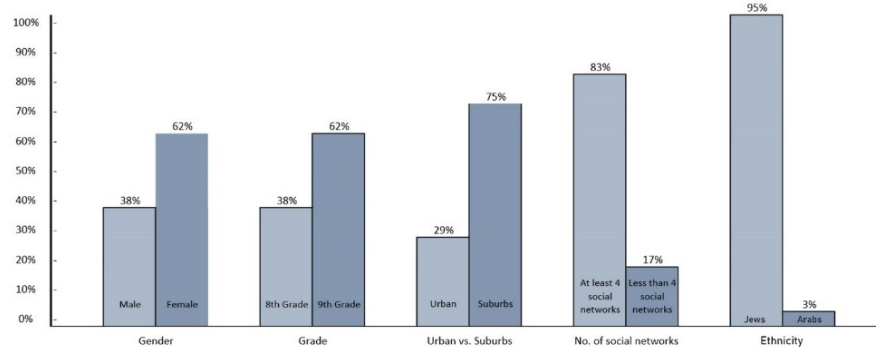


Fig. 1 – *Participants*

Sixty-six children ages twelve through fifteen from three middle schools in the northern region of Israel participated in the study. Twenty-five were male, and forty-one were female. Twenty-five of the children were in eighth grade, and forty-one were in ninth grade.<sup>74</sup> One school was urban and two were suburban, thus representing distinct demographic which adheres to varied socioeconomic background.

In detailed face-to-face, semi-structured interviews,<sup>75</sup> conducted over a three-month period from April through June of

<sup>74</sup> We chose to interview middle school adolescents (ages twelve to fifteen) because research shows that while physical bullying declines with age, verbal, social, and cyberbullying tend to increase between the ages of twelve and fifteen. *Bullying*, CHILD TRENDS, <https://www.childtrends.org/?indicators=bullying> (last updated May 2016).

<sup>75</sup> Semi-structured interviews are organized around a predetermined set of questions, but additional questions may emerge during the interview. See Lisa S. Whiting, *Semi-structured Interviews: Guidance for Novice Researchers*, 22 NURSING STANDARD 35, 36 (2008).

2015, children were asked several questions about their experiences and perceptions regarding the digital realm and social networks, including their views about the existence of legal norms pertaining to their online behavior in general and cyberbullying incidents in particular.

## B. Results

Two main themes emerged after coding the interviews: one concerned the perception of legal norms by the children, and the other pertained to responses to incidents of cyberbullying. Responses measuring children's knowledge of anti-cyberbullying laws and relevant legal norms were coded as "no knowledge," "limited knowledge," or "inaccurate knowledge." We found that children have a variety of mistaken perceptions of legal norms. Regarding accountability for cyberbullying, answers were coded as "acts received legal response," "acts received no legal response or an inappropriate response," or "legal response considered irrelevant." A majority of children recounted many incidents of cyberbullying that received an inadequate legal response or no response at all. The coded themes thus depict the children's lack of legal consciousness and their sense of disillusionment with traditional authority figures and responses when faced with incidents of cyberbullying.<sup>76</sup>

### 1. Children Articulate Mistaken Perceptions of Legal Norms

The first theme—children's articulated mistaken perceptions of legal norms—is divided into three subcategories: no knowledge, limited knowledge, and inaccurate knowledge of relevant law.

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<sup>76</sup> This article is part of a larger research project that aims to assess children's overall digital reality. The findings gathered are relevant to many aspects of the law. Inter alia, we found that gender differences influence children's experiences and behavior on social networks. Moreover, our findings flag the need to reevaluate and re-conceptualize the way children grasp and understand human rights—i.e., the right to privacy, the right to dignity, and the right to freedom of speech. Additionally, our findings point to criminal justice issues, specifically regarding the regulation of offensive online behavior by minors against other minors. These various matters will be thoroughly discussed in separate articles.



*i. No Knowledge of Relevant Law*

Children were asked whether they were aware of any law(s) regulating digital behavior, specifically those on social networks. Of the sixty-six participants, thirty reported that they were unaware of any such laws.

According to a fourteen-year-old female respondent: “There are no laws on WhatsApp, no laws on Instagram, no laws on nothing [*sic*]. No laws . . . not a single one.”

Another thirteen-year-old boy stated that he was unaware of any relevant laws: “[This is the] first time I heard this kind of question . . . laws do not pertain to us . . . we are kids.”

Another thirteen-year-old girl, when asked whether cyberbullying laws exist, stated: “What do you mean laws? In our house there is a rule that you cannot curse . . . but state laws, legal rules . . . ? I don’t think they exist. . . . It’s like censorship . . . you can censor a newspaper but you cannot censor private people . . . they are private people . . . they have freedom . . . you cannot put somebody in jail . . . or fine him because he offended someone else.”

*ii. Limited Knowledge of Relevant Law*

Forty-eight out of the sixty-six participants had no knowledge or a very limited knowledge of the relevant cyberbullying law.<sup>77</sup> Seven children were aware of a very limited set of laws, such as privacy laws. Others recounted vague knowledge of the relevant law and commented on its questionable applicability to online behavior. As was well put by a fourteen-year-old girl: “Some children realize that law exists but are unaware of what it entails . . . they don’t know what is allowed and what is forbidden, and what happens when you break the law. . . . There is some awareness, but it is not meaningful.”

None of the sixty-six children interviewed understood, precisely or fully, relevant law. Only a few had some notion of the existing law and its relevance to their social media communications.

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<sup>77</sup> Thirty had no knowledge, and eighteen exhibited limited knowledge.

Those with some legal knowledge usually were the children of lawyers. One fourteen-year-old boy claimed to have some knowledge of anti-cyberbullying laws but described the interplay of law and the Internet as complex: “As a son of an attorney, I know that laws exist but it’s complicated. You cannot distribute material . . . it’s criminal . . . however it is not clear that this law is enforced . . . it depends.”

*iii. Erroneous Knowledge of Relevant Law*

Some of the participants articulated inaccurate knowledge of the law. For instance, a fourteen-year-old incorrectly described privacy law: “I know the law regarding privacy . . . but hurting your privacy? How? By sending something private – that you had sent me? If you sent it to me by your own choice I am not to blame if I later distribute it.” Apparently, this respondent mistakenly believed that distributing private material is lawful; thus, as long as the subject initially agreed to be photographed, all subsequent distributions of the images are allowed.<sup>78</sup>

Another fourteen-year-old boy also conveyed an inaccurate understanding of the law, stating, “let’s say someone took a picture of herself naked and send it to me—it is within my right to privacy to do whatever I want with the picture if I sent it—oops—it is my right, I have done nothing wrong, and I am not legally bound . . . it is not illegal for me to send it.”

Another participant demonstrated inaccurate knowledge of the law while recounting an example of a thirteen-year-old classmate who sent her boyfriend a video of herself in the nude. The video was then resent to thousands of teens. When the participant was asked whether this event was reported by the victim to the police, she answered: “She did not go to the police . . . [because] she is to blame . . . she sent the picture at her own will. If she would have gone to the police, then she is twice a whore . . . once for sending the naked picture and the second time for reporting it to the police.”

Though the age of criminal liability in Israel is twelve years old, a fourteen-year-old girl claimed that no relevant laws exist: “Even if

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<sup>78</sup> This statement is incorrect. *See supra* notes 16–18 and accompanying text.

such laws existed nobody would enforce them, because teenagers don't exactly listen to these laws. People say 'rebellious youth' . . . it's not that . . . it's just that some children just don't care. I say it about myself as well. If such a law existed, I wouldn't follow it . . . because it is about how you speak . . . how you flow . . . it goes together with the situation and what you are going through. . . ."

A thirteen-year-old girl said that children are not afraid of laws because "they don't think they are doing something bad . . . at the moment they are doing it [behaving in an offensive manner] they can only think of what they want at that moment, they don't think about the consequences . . . the same way children threaten other children--the law is a threat. Nobody would open [initiate] a criminal record against a child . . . law is only a threat."

## 2. Legal Responses to Known Incidents of Cyberbullying

While some of the children's relevant legal knowledge seems almost non-existent, many children were able to provide multiple examples of cyberbullying incidents that resulted in inadequate or no legal response. Of the sixty-six participants, fifty-two knew of incidents that received no criminal/civilian action and/or response, legal or otherwise. Here, too, we identified several subcategories after asking the children about the responses these incidents received: acts which received a legal response, acts received no legal response or inappropriate responses, and cyberbullying incidents to which the legal responses were considered irrelevant.

### *i. Cyberbullying with No Legal Redress*

During the interviews, we recorded ninety-six accounts of cyberbullying, of which only two were reported to the police. Most of the incidents were treated within the school, without notifying authorities, legal or otherwise ("the silent response"). Even when brought to the attention of parents or teachers, the most severe and offensive incidents involving the distribution of pornographic material received no legal response. Twelve of the sixty-six participants claimed that the police should have been involved in the acts they witnessed.

One example of the “silent response” involved a thirteen-year-old girl who sent a nude picture of herself to a fifteen-year old boy. The picture was distributed to various social media networks and, according to her account, “to the whole school.” At first, she kept it a secret, hoping it would go away. However, after eight months of her picture reappearing online, she decided that she had to inform someone. She told her teacher, who then involved her parents. When asked why the police were not involved, the girl replied, “I preferred not to get the police involved. . . . I would have to look at the picture again . . . and deal with it again. . . . I did not want talk about it again. . . . I did not want to re-experience what happened to me. . . .”

Another serious case of cyberbullying involved the distribution of a ninety-second video of a naked thirteen-year-old girl, self-recorded in the privacy of her room and sent to her boyfriend. Her boyfriend distributed the video to his friends and to thousands of other children. We heard accounts of this particular event in all three schools where we conducted interviews. This very severe incident was addressed only by the school staff and the victim’s parents. One of her classmates described her dismay of how it was handled: “[N]obody talked to us . . . they did not talk to us about the dangers . . . and why we should not do those things . . . and that it is a criminal offense when you distribute such a thing . . . and that it is a criminal offense to do so . . . they should have talked to us . . . there is no point ignoring it.”

Another classmate who watched the offensive video interpreted the lack of police response as a “message . . . that it all passes. It is not that bad. It happens. . . .”

One thirteen-year-old boy interviewed claimed that the victim’s “parents did not want the police involved because she had filmed the video . . . it was her fault since she sent the video.”

A fourteen-year-old girl added that “[t]he fact that police were not involved says that you can do this . . . and . . . we will talk about the girl instead of talking and pointing to those who distributed the video.”

Another fourteen-year-old girl expressed that involving the police would harm the victim further, asking, “How can she willfully

send this video and then file a complaint against the boy who distributed the video . . . ? [S]he will be a wrong-doer twice . . . she will be two times a slut. . . . Moreover, they did not involve the police because she is to blame . . . who else is at fault?”

Yet, some classmates opined that the police should have been involved for another reason. “[The victim] has learned her lesson,” said a fourteen-year-old girl, “but [the distributors] did not.”

A fourteen-year-old girl said, “[T]hose who distributed the offensive message must be punished . . . if they are to be treated as sex offenders then any potential employer or school will be made aware of his criminal history . . . it should be on their resume [*sic*].” Another fourteen-year-old stated that “if the distributors were severely punished then this behavior would not reoccur . . . here . . . nothing happened. It’s very bad because the message is that shit happens and you have to overcome it.”

As noted above, only two out of the ninety-six events of cyberbullying encountered in this study were reported to the police. In one of those incidents, the victim was a teacher. A thirteen-year-old girl recounted that the teacher involved the police after an offensive picture of her was circulated online. “[N]othing was wrong with the picture,” the girl stated, “but the teacher did not want the picture spread online.” A fourteen-year-old girl informed us of the other reported incident — a video of two thirteen-year-old children having sex. As another fourteen-year-old girl summarized, “[s]ome laws exist . . . but nobody cares . . . bullies know that nothing will happen to them—they see certain behavior and nobody does anything, no one enforces the law—so they continue. . . .”

### *ii. Denying Law’s Relevance to the Digital Realm*

A disturbing, reoccurring theme that emerged was the participants’ acute sense that the law is irrelevant to their online behavior and thus no one could protect them.<sup>79</sup> Twenty of the sixty-

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<sup>79</sup> Notwithstanding the overlap between this theme and the themes discussed in the previous section (misconception or ignorance of legal norms and witnessing unaddressed offensive behavior), we opt to include it here because it

six participants disclaimed law's relevance. Their wariness is likely a consequence of those events left unaddressed. One thirteen-year-old girl put it best: "Laws can be broken . . . even on Facebook that prohibits this and . . . still you see millions of children do it. . . ."

In a separate interview, another thirteen-year-old elaborated, "It's like the laws that Facebook has . . . age limit—only twelve years of age are allowed to be on Facebook and children are on Facebook already at seven . . . there are relevant laws . . . but nobody listens." One twelve-year-old girl remarked, "Law does not really matter . . . you cannot erase the [offensive] picture. Whatever is online stays online. Everybody had seen it . . . the damages have been done. The picture is saved by whoever distributed it . . . it will not be erased from his computer. . . . [H]e had already send [sic] it and saved it and moved it to a file with a code you cannot break unless you are a hacker. . . . [W]ith a fairly simple search on Google you can find many pictures that a lot of people don't want to be found . . . so even if there is a solution—practically, it does not matter."

Some children linked their skepticism to the ineffectiveness of legal norms in face of the allusive nature of evidence in the digital age. A fourteen-year-old girl stated that "you can't catch [the offensive message]. . . ." Similarly, a thirteen-year-old girl described an event in which her classmate was cursed and was called offensive names on her Facebook wall and in private messages. When her classmate finally gathered enough courage to complain, the offender simply deleted the messages.

### *iii. Lack of Response or Inappropriate Responses*

The last subcategory involves teachers' and parents' responses to acts of electronic aggression. Though this subcategory certainly overlaps with the previous ones, we address this issue separately because children's expectations of their teachers and parents are not necessarily, and perhaps not primarily, legal. In this subcategory, we identified eighteen participants who described a complete lack of

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exposes a core problem distinct from the other. In this instance, some children clearly believe that law is important in digital space – even despite their ignorance of these legal norms.

response to incidents they reported and two participants who reported extreme responses from their guardians.

One of the most striking cases we encountered involved a fourteen-year-old girl who was a victim of severe cyberbullying. Two classmates, after a minor fight with the victim, wrote an obscene and offensive text introduced as a “poem” that they distributed and shared to hundreds of other teenagers. At one point, children would quote the text of the poem when they saw her at recess. She never told anyone until one of the girls who wrote the offensive poem admitted it to a teacher, who in turn told the victim’s parents. The girl recalled, “[A]t the beginning they wanted to go to the police . . . but I asked them not to. . . . I didn’t want to make a big deal . . . and then we [the victim and her parents] met with the children [offenders] and their parents and we closed it between us.” Yet, the teacher’s and parents’ involvement did not end the tragic affair: when we conducted the interviews, the “poem” was shown to us by one of the victim’s classmates who still had the offensive poem on her cell phone.

One thirteen-year-old girl mentioned the school counselor’s inability to act. She told us about a boy who had distributed false sexual accusations about her friend online. The interviewee and her friend went to talk with the school counselor, but the counselor “barely did anything about it. . . .”

Sometimes a lack of knowledge and moral panic surrounding electronic communications can cause inappropriate responses by teachers and parents, who may react strictly to minor incidents yet may also fail to recognize an appropriate response to more serious incidents. This in turn can contribute to children’s discomfort in the digital realm. If children fear an overreaction by a parent or authority figure, they will be less likely to report any type of online incident, no matter the severity. Such cases are albeit much rarer but still influential.

In one such case, a thirteen-year-old boy filmed a short video of his classmates during a field trip. The last frame was of his female classmate from behind. The female classmate was clothed, but because it was the last frame, the still frame of the video always showed her backside until a viewer pressed play. The female classmate thought it was not an innocent video, and she complained to the principal. The

thirteen-year-old boy who took the video was summoned to the principal's office for an "inquiry," was called a "sex offender," and was sent home. He recalls: "I did not do it on purpose . . . it's like taking a picture of a man's behind . . . why should I be punished for something I should not be punished for . . . [?] [I]t was hard coming home and explaining what had happened. . . ." A classmate who had witnessed the incident stated that the incident "was totally exaggerated . . . it was a party . . . and she jumped into the frame . . . the problem is that she did not like it . . . they could not even see her face. Nobody knew who she was. He was kicked out of the trip."

### C. Discussion

#### 1. Dominant Themes

One of the main purposes of conducting this study was to explore children's perceptions and knowledge of relevant legal norms that pertain to their and their peers' online behavior. While there is very limited research available that investigates the perceived legal protections available to children in the digital media,<sup>80</sup> the present study demonstrates how children perceive the digital realm and its applicable legal norms. To this end, our findings illuminate several themes. First, most children are aware neither of their digital rights, nor of legal norms meant to protect those rights.<sup>81</sup> Second, most of the children we interviewed were able to provide numerous examples of cyberbullying incidents that received inadequate or no response, legal or otherwise.<sup>82</sup> Finally, of the sixty-six participants, sixty-three were asked how they perceived the social network territory: forty-six responded "dangerous." Thus, 73% of our research participants who were asked this question perceived social networks as being dangerous

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<sup>80</sup> See generally Katz et al., *supra* note 61.

<sup>81</sup> See Third et al., *supra* note 55, at 10, 11, 47.

<sup>82</sup> Ninety-six accounts of cyberbullying were recorded during the interviews, of which only two were reported to the police. Most of the incidents were treated within the school and without notifying the authorities, whether legal or otherwise ("the silent treatment"). It is, however, important to note, that even the most severe and offensive incidents involving the distribution of pornographic materials which were brought to the attention of parents or teachers received no legal response. Twelve of the sixty-six participants stated that they believe the police should have been involved in the electronic aggression incidents they had witnessed.



spaces compared to their real and physical social domains. This finding is alarming, given the prevalence of the Internet in children's lives.<sup>83</sup>

## 2. Access to Justice

Our research provides a “topographical map” of children's experiences of the digital domain as well as their perceptions of their rights, or lack thereof, as they relate to offensive cyberbullying behavior. Further, it highlights the acute need for providing access to online justice and for improving legal frameworks that will create and disseminate charters of children's rights in the digital space. The interviews revealed a discrepancy between the existence of national and international laws<sup>84</sup> and children's familiarity with these laws. Cyberbullying is clearly a behavior that may hinder many children's rights as enumerated in the CRC.<sup>85</sup> Yet, the unique characteristics of the digital age, and the mostly inadequate responses to incidents of cyberbullying, prevent children from exercising these rights and give rise to a chaotic reality that existing laws do not address.

Children's existing fears about the digital world and their place in it are endorsed by previous research: “[a]ny discussion focused on better understanding how the ubiquity of digital tools impacts on children's rights, must be informed by children and young people themselves.”<sup>86</sup> We incorporate this perception in our research, while

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<sup>83</sup> Some research indicates that “[c]hildren aged five to 16 spend an average of six and a half hours a day in front of a screen. . . .” Jane Wakefield, *Children Spend Six Hours or More on Screens*, BBC NEWS (Mar. 27, 2015), <http://www.bbc.com/news/technology-32067158>. Another study has found that 92% of teens ages 13–17 report going online daily, with 24% claiming to use the Internet “almost constantly.” AMANDA LENHART ET AL., PEW RESEARCH CTR., TEENS, SOCIAL MEDIA & TECHNOLOGY OVERVIEW 2 (2015), [http://www.pewresearch.org/wp-content/uploads/sites/9/2015/04/PI\\_TeensandTech\\_Update2015\\_0409151.pdf](http://www.pewresearch.org/wp-content/uploads/sites/9/2015/04/PI_TeensandTech_Update2015_0409151.pdf).

<sup>84</sup> See discussion *supra* Section II.B.

<sup>85</sup> Cyberbullying violates numerous provisions of the CRC: Article 19 confers upon children the right to protection from all forms of physical and mental violence and abuse; Article 15 imbues them with the right to freedom of association and peaceful assembly; Article 16 states that children have a right to privacy; Article 24 states the right for physical and mental well-being-and so forth. G.A. Res. 44/25, *supra* note 17.

<sup>86</sup> Third et al., *supra* note 55, at 7.

suggesting that children are not only unaware of their digital rights, but also unaware of existing legal norms to maintain and materialize these rights.

### 3. Children's Perceptions: A Harsh Reality

The findings of this study expose a harsh reality in which children believe legal norms have little to no effect on their online behavior. Consequently, many children do not feel safe in the environment in which they spend most of their leisure time. Most children believe that laws do not pertain to them because they are children, even if the children have reached the age of legal liability. Others think that the elusive nature of digital evidence makes proving the offense impossible and thus there is no point in involving any authoritative figures, from teachers to parents to police.

However, the most troubling finding was that more than 95% of cyberbullying incidents reported in this study received no legal response. Even the most offensive and severe incidents received the "silent response" by the schools. Schools shy away from punishing offensive online conduct.

Often, victims themselves chose to avoid police involvement due to concerns over reporting and investigating. Avoiding legal redress has severe consequences, not just for the victims themselves, but for bystanders. Choosing to turn a blind eye sends a disturbing message to children, namely that the digital realm is outside adult supervision and legal protection. This lack of treatment causes even non-victimized children anxiety and insecurity.

## IV. CONCLUSION

This research reveals that children are generally not aware of legal norms or of their rights in the digital domain. Our findings illustrate the need to take a closer look at children's rights and signal the extent of the legislative work required to protect children's rights online.

Even though there are legal frames that pertain cyberbullying exist, children are not aware of these laws. Legislatures need to invest true efforts in providing better access to justice by informing children of relevant legal norms that exist to protect their rights. In our view, digital environments in general, and social networks in particular, can be leveraged and utilized to efficiently and quickly elevate children's perspectives of their own rights: the digital realm can actually be a source of knowledge for children as they learn about their rights and obligations online.<sup>87</sup> Regardless, a situation in which children are ignorant of their digital rights find no succor from the law, law enforcement, schools, and parents, and fear their digital existence must be urgently and decisively addressed.

This research has several important implications for national and international policymakers, caretakers, children rights' advocates, and the public. First and foremost, our research represents only the beginning of the scholarship this particular area of law requires. Additional findings can help improve existing legal frameworks and develop new ones. As we mentioned, the CRC must be reexamined without delay to consider the addition of relevant digital rights or at least provide better access and knowledge to children.

Our findings also hold implications for parents and teachers. First, parents and teachers must educate children on their existing digital rights and the legal norms that govern online behavior. Second, teachers and parents alike must develop responsible, nuanced responses to cyberbullying. By addressing incidents promptly and seriously, parents and teachers send a clear message that laws exist in the digital realm to protect children.

Further research is needed to explore and question children's views on the necessary practical and legal steps that could allow them to realize their rights in general and their right of participation in particular. Participatory research and methods should be employed to

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<sup>87</sup> See generally Martin D. Ruck, Michele Peterson-Badali, & Charles C. Helwig, *Children's Perspectives on Nurturance and Self-Determination Rights: Implications for Development and Well-Being*, in HANDBOOK OF CHILD WELL-BEING: THEORIES, METHODS AND POLICIES IN GLOBAL PERSPECTIVE 2537 (Asher Ben-Arieh et al., eds., 2014).

raise children's awareness of what constitutes legal harm and their available legal protections to address these harms. Despite past efforts to involve children in discussions on Internet policy, these deliberations have been narrowly focused on online safety only, and policy makers frequently ignored children's opinions. "As one of the most governed groups . . . children continue to have little, if any input into the policy, research and practice decisions made about them."<sup>88</sup> This research encourages the inclusion of children in the quest to articulate and generate public policy that will both ensure the fulfillment of their right to participation as well as policy's relevance to their digital lives.

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<sup>88</sup> Anne Graham & Robyn Margaret Fitzgerald, *Young People Big Voice: Reflections on the Participation of Children and Young People in a University Setting*, in INVOLVING CHILDREN AND YOUNG PEOPLE IN RESEARCH: A COMPENDIUM OF PAPERS AND REFLECTIONS FROM A THINK TANK CO-HOSTED BY THE AUSTRALIAN RESEARCH ALLIANCE FOR CHILDREN AND YOUTH AND THE NSW COMMISSION FOR CHILDREN AND YOUNG PEOPLE 65 (2008).