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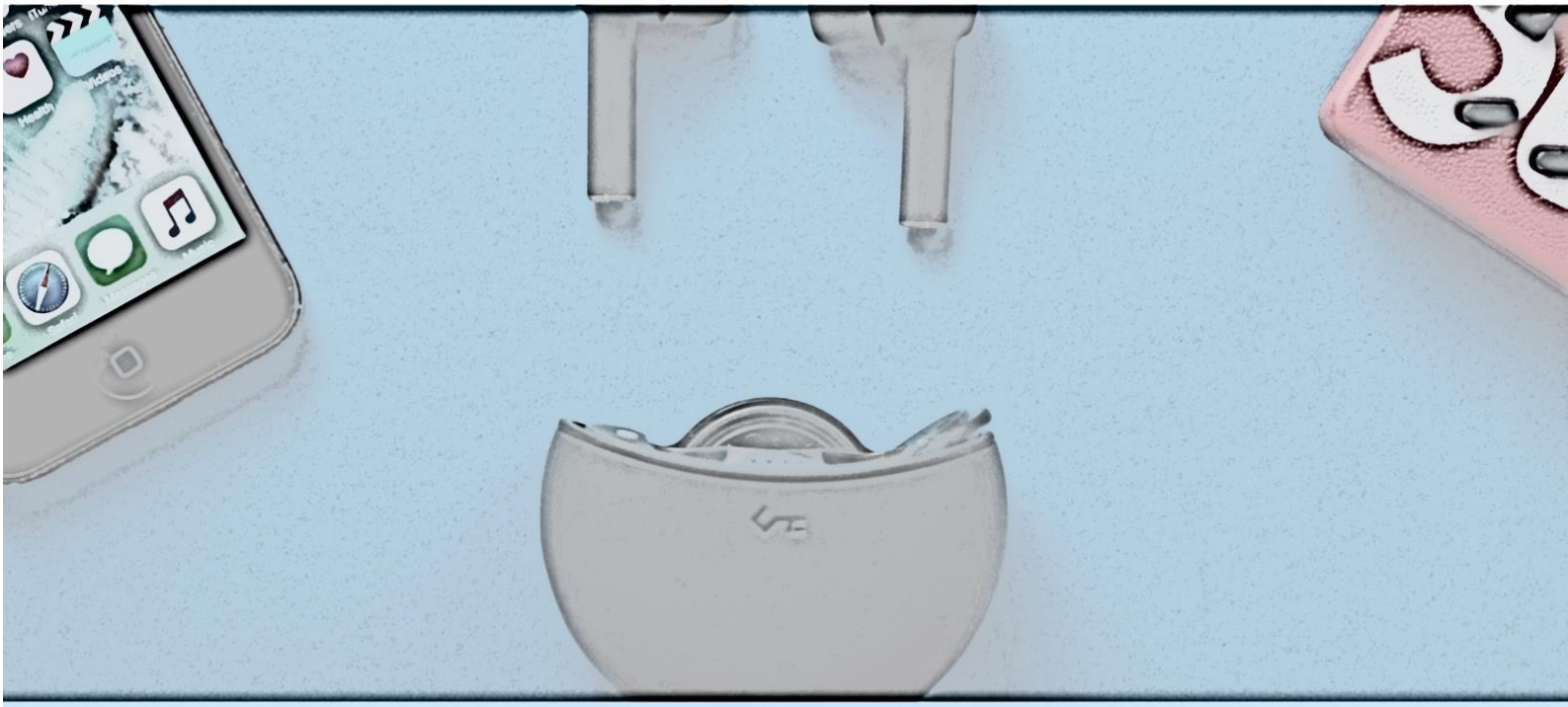

CHILDREN'S RIGHTS ONLINE:

TOWARDS A DIGITAL RIGHTS CHARTER

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// INTRODUCTION

The internet is a playground for children: a space where they can learn, develop and participate; where they can experience the world; and where they can dream, imagine and aspire. The internet provides innumerable opportunities for children, and is filled with exciting potential. However, not all children have access, and those who do may be faced with threats to their safety. As the world moves increasingly online, there is a need to ensure that all children are able to access the benefits that the internet provides, and are able to do so in a manner that is both safe and facilitates their rights to learn, express themselves and participate in decisions that affect them.

The Convention of the Rights of the Child (CRC)[1] – the most extensively ratified human rights treaty in history – seeks to promote and protect children's rights, and to ensure that children can live a life with dignity. When the CRC came into effect, the internet was a far-off reality for many, and the CRC was arguably not drafted with it in mind. However, it is by now well-established that "the same rights that people have offline must also be protected online".[2] While children navigate the exciting and complicated digital environment, their rights pursuant to the CRC must be respected, protected and promoted. Notwithstanding the application of the CRC online, it is apparent that there is a need to clarify how this rapidly evolving digital environment impacts the full range of children's rights in positive and negative ways. Accordingly, the United Nations Committee on the Rights of the Child (Committee) has acknowledged that there is a need to interpret and implement the CRC in a digital age.[3] To this end, the Committee has prepared a Draft General Comment on Children's Rights in Relation to the Digital Environment (Draft General Comment) to inform developing understandings of how best to promote and protect children's rights in and through the digital environment, and to ensure that children are heard in matters which affect them.[4] This exciting international development is likely to have a positive impact on children's digital rights. Evolving understandings regarding the application of children's rights in the digital environment should equally be reflected at regional and domestic levels.

Media Monitoring Africa (MMA) welcomes discussions and developments regarding children's digital rights, and seeks to continue and develop these discussions along with children, to work towards a digital environment that respects, protects and promotes the rights of all children. Children's rights play a central role in MMA's work, ranging from empowering children through media literacy workshops, providing editorial guidelines and principles for the reporting of children in the media, and making submissions to the Department of Justice and Constitutional Development on behalf of children. MMA has established a digital literacy project designed to allow young people to gain critical skills and knowledge around online

[1] Convention on the Rights of the Child (1989) (accessible at https://www.unicef.org/child-rights-convention/convention-text). See further UNICEF, 'What is the Convention on the Rights of the Child?' (accessible at https://www.unicef.org/child-rights-convention/what-is-the-convention).

[2] United Nations Human Rights Council (UNHRC), 'The Promotion, Protection and Enjoyment of Human Rights on the Internet' A/HRC/38/L.10/Rev.1 (2020) (accessible at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/L.10/Rev.1).

[3] Committee on the Rights of the Child, 'Concept Note for a General Comment on Children's Rights in Relation to the Digital Environment' (2019) (Committee Concept Note) (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).

[4] Committee on the Rights of the Child, 'Draft General Comment on Children's Rights in Relation to the Digital Environment' (2020) (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).

safety and digital citizenship. The Web Rangers programme is run together with major partners, including Google, Facebook, the Department of Communications and Digital Technologies, the Media Development and Diversity Agency and MTN. In addition to online safety, the programme also equips young people with the skills to critically engage with content, learn how to spot disinformation and develop methods on how to use the internet to build South Africa's democracy.

MMA has developed this discussion document to unpack what it means for children to participate in a digital environment, focusing on challenges, threats and opportunities, with the view of establishing a Digital Rights Charter which gives effect to an internet that is accessible, safe and empowering, and which advances the development of children in line with their rights and interests. In October 2020, MMA met with a group of Web Rangers who debated and discussed their online rights and began developing the first version of the Digital Rights Charter. This discussion document is therefore informed by the views of children, as well as a developing understanding of children's digital rights.

While navigating these complex issues, it is necessary to recognise that children, as diverse individuals, are exposed to different contextual challenges and opportunities in relation to their access and use of digital technologies. This discussion document talks about children generally, but it is important to note that MMA recognises that children develop at different rates, are exposed to different realities and contexts, and that children of different ages are likely to need differing levels of access, protection and participation.[5]

This discussion document is structured as follows:

1. First, providing an overview of how children's rights apply online: This section looks at the different ways traditional understandings of children's rights can find application in new and emerging digital spaces.
2. Second, discussing access to the internet: This section provides an overview of one of the most prevalent challenges facing children who wish to be part of the digital environment: a lack of meaningful access to the internet. This section explores the different barriers to access and grapples with notions of meaningful access.
3. Third, outlining online participation: This section delves into children's participation online, be it through participating in decisions that affect them or through participating in their own right, through movements, actions and social and civic spaces.
4. Fourth, highlighting certain concerns around online safety: Issues of online safety are addressed in this section, with a focus on online harms such as cyberbullying and online sexual violence and exploitation, as well as issues relating to privacy and data protection.
5. Finally, working towards a Digital Rights Charter: In conclusion, this discussion document provides a proposed Digital Rights Charter, drafted along with Web Ranger participants, which seeks to reflect key elements of an ideal and achievable digital world for children.

[5] In this regard, the Gender and Adolescence: Global Evidence (GAGE) programme has noted that younger children face different challenges and opportunities concerning their access and use of digital technologies, which requires age-based considerations to be a key factor when addressing the challenges and opportunities posed by the digital environment. Such age-based considerations include differential access, differing measures in terms of protection of privacy and data processing, as well as the protection from violence, sexual exploitation and other harms. See GAGE, 'Submission to the UN Committee on the Rights of the Child on the General Comment on Children's Rights in Relation to the Digital Environment' (2019) (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).

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// UNDERSTANDING CHILDREN'S RIGHTS IN THE DIGITAL ENVIRONMENT – AN OVERVIEW

Children are afforded special legal protections which take into account their vulnerabilities, developing capacities, and the unique position they hold as young members of our society. Domestically, regionally and internationally, children are afforded various rights which, on the one hand, seek to protect them, but also seek to enhance the competencies and capacity of children, promote their development and encourage them to take responsibility for decisions affecting their lives. As our off- and online experiences become increasingly intertwined, we are starting to see the emergence of new understandings of how children's rights apply online. This section works through the recent understandings of how children's rights can be interpreted and applied in a digital age, in order to inform how best to promote and protect children's rights both on- and offline.

There are three overarching ways in which children's rights can be understood online:

1. General principles underpinning children's rights;[6]

[6] In General Comment 5, the Committee on the Rights of the Child identified a set of rights that have emerged as general principles, namely:

- Article 2: the obligation of states to respect and ensure the rights set forth in the CRC to each child within their jurisdiction without discrimination of any kind.
- Article 3(1): the best interests of the child as a primary consideration in all actions concerning children;
- Article 6: the child's inherent right to life, and states parties' obligation to ensure to the maximum extent possible the survival and development of the child; and
- Article 12: the child's right to express his or her views freely in "all matters affecting the child", with those views to be given due weight.

These principles inform the interpretation and implementation of the provisions of the CRC. See Committee on the Rights of the Child, 'General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child' CRC/GC/2003/527 (2003) (accessible at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en).

2. Children's rights;[7] and
3. The roles and responsibilities of children, the state, the private sector, civil society and the family structure.[8]

The tables below illustrate how some of the various principles, rights and responsibilities apply in the online context.[9]

General principles	Non-discrimination	Getting online: All children, including those from diverse socio-economic backgrounds, must have equal and effective access to the digital environment so that that their use and enjoyment in those spaces is meaningful for them. Equality online: Measures must be put in place to prevent discrimination in online spaces, particularly for children who may be at a heightened risk.[10]
	Children's best interests	Decision making: In all decision-making processes regarding the provision, regulation, design and management of the digital environment that may impact children's rights, the best interests of the child must be a primary consideration.
	Right to life, survival, and development	Protection from harm: Children must be protected from existing and emerging harms that exist in the online world. Impact on development: Access to and the use of digital technologies may have differing impacts on children's development, where appropriate, access and use may have a positive impact and should be encouraged and made available. There is however a need to take into account that there may be negative effects. States, parents and caregivers need to be cognizant of the various effects of digital technologies on children's development.[11] Access in emergency situations: As the global pandemic has illustrated, access to the internet can be a lifeline and critical tool during times of crisis.[12]
	Right to be heard	Participation: The online world offers significant potential for children to have their voices heard. It can enable them to participate in decisions that affect them. Additionally, through the use of ICTs, children can engage locally, domestically and internationally. Alongside using the internet as a space for

[7] For purposes of this discussion document, children's rights are understood as those contained in article 3(1) of the CRC and the African Charter on the Rights and Welfare of the Child (ACRWC) (1990) (accessible at https://au.int/en/treaties/african-charter-rights-and-welfare-child). Additionally, the rights contained in the Constitution of the Republic of South Africa (1996) (accessible at https://www.justice.gov.za/legislation/constitution/SAConstitution-web-eng.pdf) and the Children's Act 38 of 2005 (accessible at https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf) equally apply.

[8] Roles and responsibilities play a significant role in the application, promotion and protection of children's rights, both on- and offline. The international, regional and domestic legal frameworks listed above cater for the various stakeholders who have roles and responsibilities in relation to children's rights.

[9] These tables incorporate some of the proposed provisions of the Draft General Comment above n 4, as well as MMA's own interpretation of the applicability of children's rights online.

[10] Considerations here may relate to grounds of race, sex, gender, sexual orientation, disability, socio-economic background, ethnic or national origin, asylum-seeking, refugee and migrant children, gender diverse children, children, child victims and survivors of sexual exploitation, children in poverty and children in alternative care, including institutions, and children from other vulnerable situations. See Draft General Comment above n 4 at para 12.

[11] It is necessary to note, as has been laid out in the Draft General Comment, there is currently insufficient evidence regarding the consequences of use of digital devices, particularly from an early age.

[12] Jorge, Sarpong, and Nakagaki 'Covid-19 Policy Brief: Internet Access & Affordability. Alliance for Affordable Internet and Web Foundation' (2020) (accessible at https://a4ai.org/research/ covid-19-policy-brief-internet-access-and-affordability).

		children to be heard, children must also be given opportunities to participate in the development of laws, policies, programmes, and services in relation to the online tools, platforms and spaces they use.

Children's rights	Access to information	The right to access to information and content from a variety of sources is applicable online in three overarching ways: (i) through the physical act of getting online, which requires meaningful access and connectivity; (ii) having access to appropriate and relevant content that is in accordance with a child's developing capacities; and (iii) having digital literacy skills to navigate accessing information online.
	Freedom of expression	The internet can be a powerful enabler of the right to seek, receive and impart information and ideas of all kinds. Children must be able to share their experiences and express themselves online, and must be informed on how to create and share digital content, while respecting the rights and dignity of others.[13] Any limitations to their freedom of expression must be provided by law, and be necessary and proportionate.[14]
	Freedom of thought, conscience and religion	Similarly to freedom of expression, the digital environment can enable children to exercise their rights of freedom of thought, conscience and religion in new and creative ways. However, the internet can also impede these right if they are exposed to undue influences, or face discrimination as a result of their views or beliefs.
	Freedom of association and peaceful assembly	Participating, engaging and protesting has taken on new forms in the online realm, with children being able to organise locally, domestically and internationally. This accords with developing understandings and standards that the "rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law."[15]
	Right to privacy	Privacy is essential for children's agency, dignity, and safety online. There are new and emerging threats which can jeopardise children's privacy rights, and while it is important to ensure there are appropriate safeguards, such as appropriate data protection laws, responses to privacy concerns should not unduly curb children's abilities to express themselves and access information.
	Violence against children	Online harms are in many ways an extension of harms that occur offline, but the online world has also facilitated the proliferation of new forms of harm.[16] Children are therefore equally deserving of protection against harms that occur online,

[13] Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa (Revised Declaration) (2019) (accessible at https://www.achpr.org/legalinstruments/detail?id=69), which requires states to recognise and respect the evolving capacities of children, and take measures that enable children, including adolescents, to exercise the right to freedom of expression and the right of access to information.

[14] Article 13 of the CRC above n 1 provides that restrictions to the right to freedom of expression may be subject to certain restrictions, but such restrictions must be provided by law, and be necessary for respecting the rights or reputations of others; or for protecting national security or of public order (ordre public), or of public health or morals.

[15] United Nations General Assembly, 'Resolution Adopted by the General Assembly on 14 November 2018', A/RES/C.3/73/L.41 (14 November 2018) at para 4, (accessible at https://undocs.org/A/C.3/73/L.41/Rev.1).

[16] UNICEF, 'Children in a Digital World' (2017) at 76 (accessible at https://www.unicef.org/publications/files/SOWC_2017_ENG_WEB.pdf).

		or harms that are abetted or aggravated, in part or fully, by the use of information and communication technologies.[17] Protecting children further requires that children develop appropriate digital literacy skills.[18]
	Family environment and alternative care	Just as parents and caregivers need to support and protect their children, and in turn, be supported and capacitated to do so offline, parents and caregivers equally need to be able to support and protect their children online. This requires the development of digital literacy skills for parents and caregivers so that they can encourage children's social, creative and learning activities in the digital environment, but also know how to identify risks that may harm their children, and be able to respond appropriately.
	Children with disabilities	Children with disabilities, provided they have meaningful access and connectivity through the online world, have improved opportunities to engage in social relationships with their peers, access and disseminate information, and participate in decision-making processes.
	The right to education	Internet access is seen to have the potential to enhance children's learning opportunities. It can be used in various ways to learn new skills or advance their existing skills.[19] It is well established that digital literacy and access to information on the internet can be an "important tool in facilitating the promotion of the right to education."[20]
	The right to culture, leisure and play	The right to culture, leisure, and play can be advanced in beautiful ways when children have access to the digital environment, which in turn can have significant benefits for a child's development and their growing understandings of diversity, equality and social cohesiveness.
	Protection from economic, sexual and other forms of exploitation	Similarly to protections against online harms, children must be protected from all forms of exploitation in the online world.

[17] See Association for Progressive Communications (APC), 'Online gender-based violence: A submission from the Association for Progressive Communications to the United Nations Special Rapporteur on violence against women, its causes and consequences' (2017) (accessible at https://www.apc.org/sites/default/files/APCSubmission_UNSR_VAW_GBV_0_0.pdf).

[18] See Revised Declaration above n 13 which requires States to "adopt laws, policies and other measures to promote affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity".

[19] See MMA, 'Submissions on the Draft National Youth Policy for 2020-2030 (NYP2030)' (2020) (MMA NYP Submission) (accessible at https://mediamonitoringafrica.org/wp-content/uploads/2020/03/200316-MMA-Submission-on-the-NYP2030.pdf).

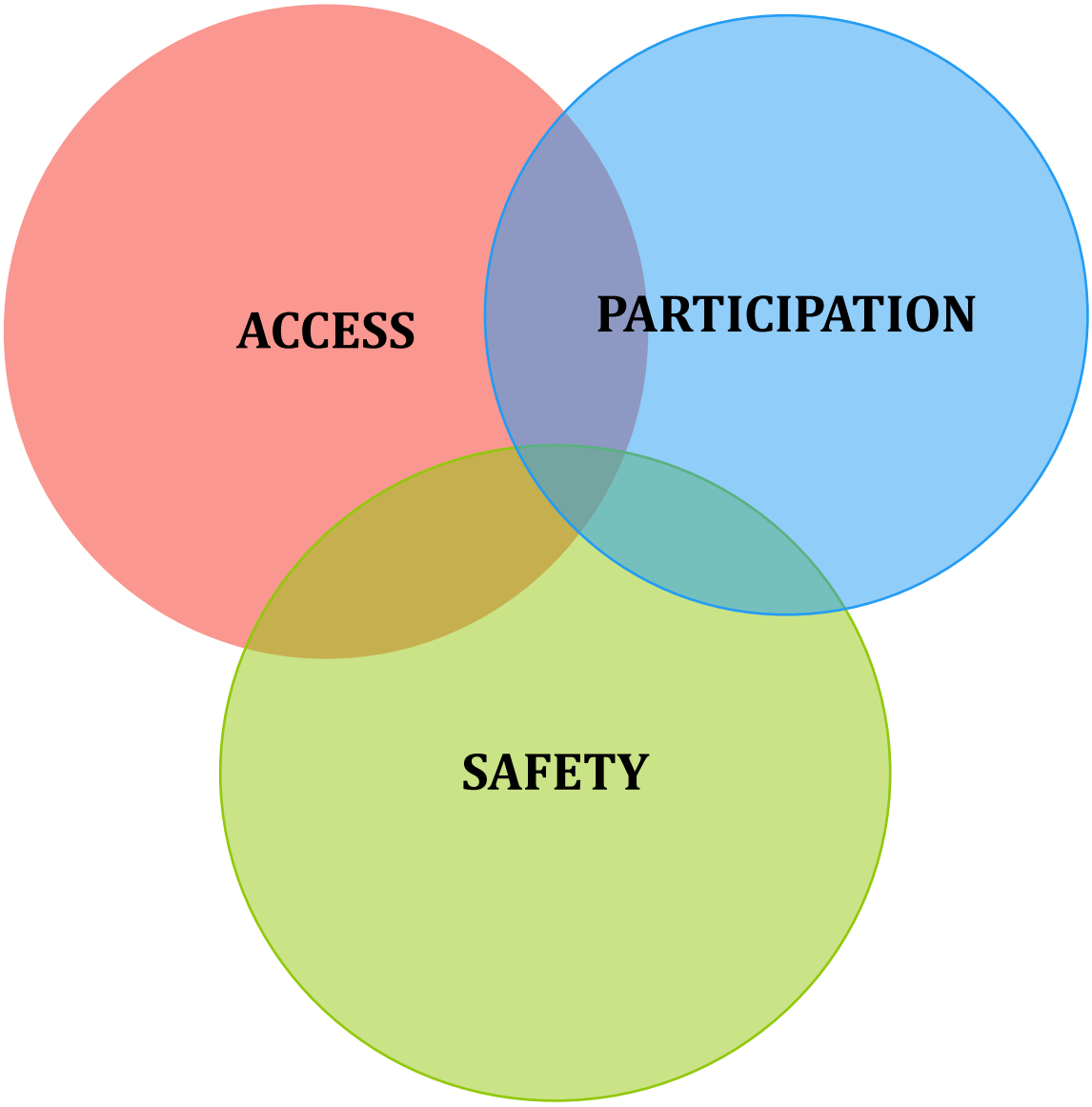
[20] UNHRC above n 2.

Role players	Children	While children are deserving of respect and protection, they in turn, and in line with their evolving capacities, must respect others and promote the protection of the rights of others. Children who are online become digital citizens, and just as there is an expectation for children to treat others with dignity and respect at school, at home and in other physical spaces, children must treat others with dignity and respect in online spaces.
	State	The State, in order to fulfil its international, regional and domestic obligations must ensure that children's rights are respected, protected and fulfilled in the digital environment.
	Private sector	Owing to the direct and indirect impact that the private sector has on children's rights through their activities and operations in providing services and products related to the digital environment, it is imperative that they too are compliant with their international, regional and domestic obligations to ensure that children can exercise their rights online.
	Civil society	Civil society must work with the State, the private sector, family structures, and children to ensure the promotion and protection of the rights of children. This may include assisting in the development, implementation, monitoring and evaluation of laws, policies, plans and programmes related to children's rights. It may equally include facilitating digital literacy and digital rights awareness and training.
	Family structures	The rights and duties of parents, caregivers and diverse family structures apply equally online, and must be applied in a manner consistent with the evolving capacities of the child.

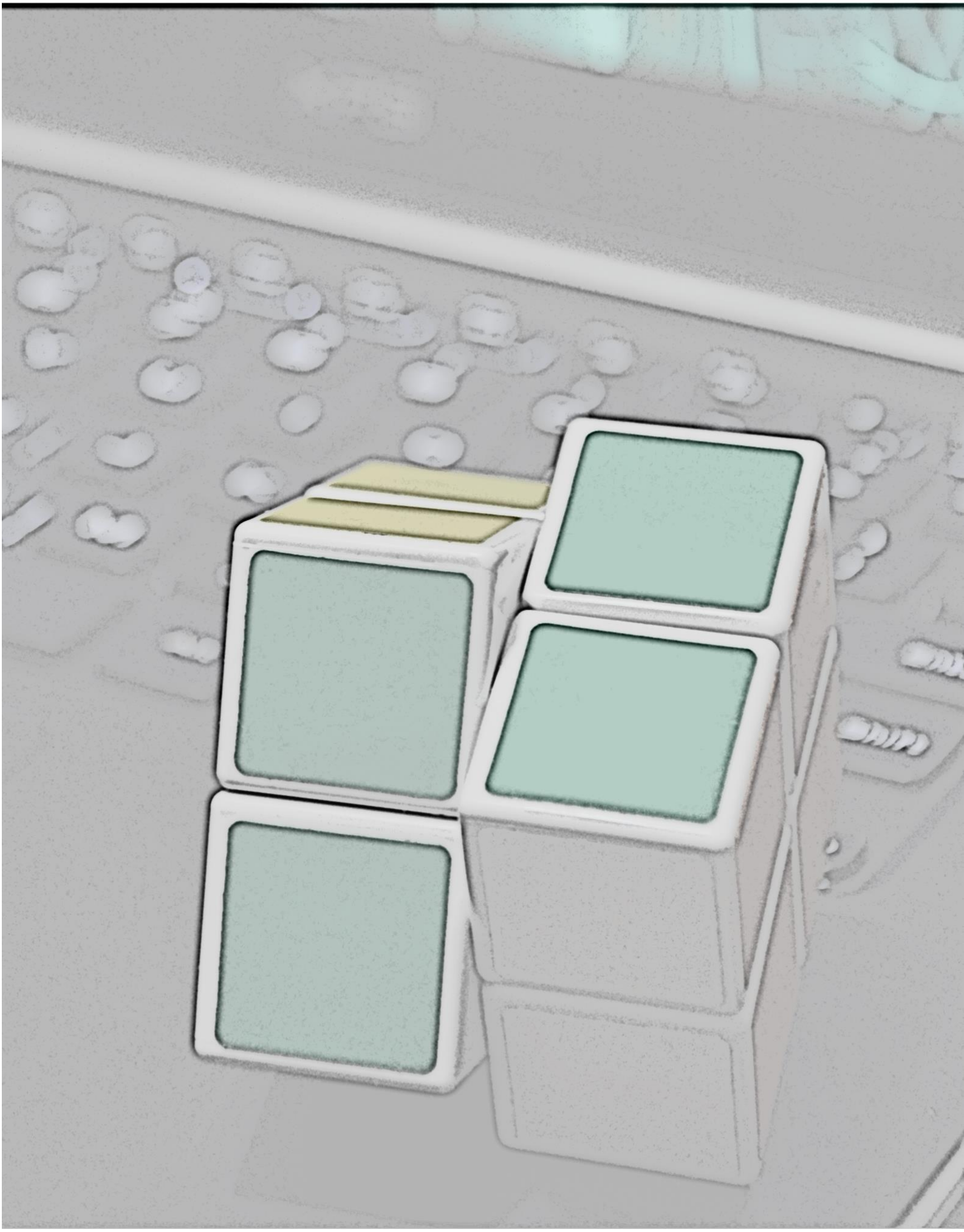
From the tables above, it is apparent that the same rights that children have offline must also be protected online. Issues pertaining to children and the internet should not be viewed as binary, and legislative, policy and other responses, need to "recognise online and offline experiences cannot be separated".[21]

In light of the above, and for purposes of this discussion document, and as we work with children to develop a Digital Rights Charter, we have merged these principles, rights and responsibilities into three core buckets which collectively have the potential to create a strong foundation for children's rights online.

[21] Souter, 'Inside the Information Society: Growing up Online' (2017) *APC* (accessible at https://www.apc.org/en/blog/inside-information-society-growing-online).


ACCESS
PARTICIPATION
SAFETY

MEDIAMONITORING AFRICA



// ACCESS TO THE INTERNET

Access, or rather a lack thereof, is arguably the primary challenge when it comes to children meaningfully participating in the digital world. Without access, children cannot unlock the full array of opportunities offered by the internet, and cannot use the internet as a tool for realising human rights, fighting inequality and enhancing development and human progress.[22]

According to UNICEF, "[i]n a world where digital access and digital skills increasingly influence children's futures, the contours of global connectivity are troubling."[23] Over 29%, roughly 346 million of the world's youth aged between 15-24, do not use the internet, with Africa being the region with the highest proportion of non-users.[24] While there are no exact figures regarding the number of children using the internet,[25] the general indications of the levels of access in South Africa are as follows:

- As of January 2020, approximately 63% of people in South Africa were part of the digital population as internet users; however, the latest General Household Survey revealed that only 10.4% of South African households had access to the internet at home, with the figure sitting at 1.7% in rural areas.[26]
- Access through mobile devices appears to be the most common source of access, with 60.1% of people using mobile devices to access the internet, 10.4% from home, 16.2% at work and 10.1% from elsewhere.[27]
- According to the most recent estimates from the Department of Basic Education (DBE), 63.5% of public schools do not have computer centres, and only 18.5% of schools have internet connectivity for teaching and learning.[28]

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[22] UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2011) (accessible at https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).
[23] UNICEF above n 16 at 34.
[24] Id at 45.
[25] Available reports show that it currently not possible to calculate with precision the proportion of internet users that are children, but estimates indicate that one in three children are internet users. See Livingstone, et al, 'One in Three: Internet Governance and Children's Rights (2016) *UNICEF Innocenti Discussion Paper* (accessible at https://www.unicef-irc.org/publications/795-one-in-three-internet-governance-and-childrens-rights.html) and Burton, et al 'South African Kids Online: A glimpse into children's internet use and online activities' (2016) *The Centre for Justice and Crime Prevention* (accessible at http://www.cjcp.org.za/uploads/2/7/8/4/27845461/south_africa_kids_online_full_report.pdf).
[26] Statista, 'Digital population in South Africa as of January 2020' (2020) https://www.statista.com/statistics/685134/south-africa-digital-population/ and Statistics South Africa, 'General Household Survey' (2018) (accessible at http://www.statssa.gov.za/publications/P0318/P03182018.pdf).
[27] Statistics South Africa, 'General Household Survey' (2018) at 58 (accessible at http://www.statssa.gov.za/publications/P0318/P03182018.pdf).
[28] Department of Basic Education, 'National Education Infrastructure Management System Standard Report' (2019) (accessible at https://www.education.gov.za/Portals/0/Documents/Reports/NEIMS%20standard%20reports%202019.pdf?ver=2019-09-27-150623-250).

- A 2016 study revealed that, of the children who were interviewed, 70.4% used the internet, while 29.6% did not. Nearly half of those who used it could do so whenever they wanted, and those who could not, recorded high data costs, expensive devices and adult interventions as key barriers to their access.[29]

Capturing the context

Violence Prevention Through Urban Upgrading have explained:

"In the case of South Africa, the unequal distribution of these [technological] advances intensify a stark digital divide. It doesn't take much to see that internet access, education, skilled-employment and technological innovation are stratified along class and racial lines, thus reinforcing apartheid-era inequality. . .

As one of the most unequal societies in the world, many historically disadvantaged South Africans still experience an overwhelming lack of access to basic services, skills training, and employment opportunities. Moreover, a digital divide exists not just between those people with and without internet access. A divide also exists between those with digital literacy skills, the ability to produce content online, and the financial resources for optimal internet usage, and those without these.

Access to digital skills as well as affordable and quality internet coverage remains unevenly distributed in South Africa. Higher-income young people can get a good education and increase their skills for the digital future. However, each year thousands of lower-income young South Africans leave schools without even basic digital literacy. If predictions of decreasing demand for low-skilled labour are anything to go by, this is a valid cause of concern."[30]

The significant digital divide deprives children of opportunities to learn and grow. However, access alone is not sufficient: it needs to be meaningful access, without which children will not be able to realise their fundamental rights.

Understanding internet access as a rights issue

Access to the internet is fundamentally interlined to the rights access information and freedom of expression. These rights are guaranteed under international, regional and domestic commitments:

[29] Burton above n 25.
[30] Violence Prevention Through Urban Upgrading, 'Bridging the New Digital Divide' (2019) (accessible at http://vpuu.org.za/ict4d/digital-divide-south-africa/).

- Internationally: Article 13 of the CRC gives children the right to freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. Article 17 of the CRC provides that children shall have access to information and material from a diversity of national and international sources. Article 23 references the importance of access to information for children with disabilities, and article 24 acknowledges the need for children, parents and caregivers to have access to basic knowledge of child health and nutrition.
- Regionally: The African Charter on the Rights and Welfare of the Child (ACRWC), while not expressly providing for the right to access information, does through article 7, give children the right to communicate and express, and disseminate their opinions freely.[31] The Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa, which recognises new digital technologies in the realisation of the rights to freedom of expression and access to information, provides that states must provide "affordable access to the internet for children that equips them with digital literacy skills for online education and safety, protects them from online harm and safeguards their privacy and identity."[32]
- Domestically: Our Constitution provides that *everyone* has the right to freedom of expression which includes the right to receive or impart information and ideas.[33]

The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has explained:

> "The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an "enabler" of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights."[34]

Further to this, and particularly in the South African context, access to the internet implicates the right to equality and non-discrimination. A recent report on access to the internet in the context of the right to basic education found:

> "The discriminatory access to the internet further undermines the right to equality and non-discrimination, guaranteed both by the Constitution and under international human rights law. Because access to the internet is critical to [children's rights], it should therefore follow that all [children] have the right to equal access to the internet. However, due to the current digital divide, this is not borne out in practice, and serves to entrench the existing socio-economic divides in the country."[35]

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[31] ACRWC above n 7.
[32] Revised Declaration above n 13 at principle 37(5).
[33] Section 16 of the Constitution above n 7.
[34] United Nations General Assembly, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' A/HRC/17/27 (2011) at para 22 (accessible at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/27).
[35] Global Human Rights Clinic of the University of Chicago Law School; ALT Advisory, Acacia Economic and MMA, 'Access Denied: Internet access and the right to education in South Africa' (2020) at 17 (accessible at https://internetaccess.africa/wp-content/uploads/2020/09/Access-Denied-Report-2020-FINAL-min.pdf).

Equality and non-discrimination find application in the CRC,[36] the Draft General Comment,[37] the ACRWC,[38] the Revised Declaration,[39] the South African Constitution,[40] and the Promotion of Equality and Prevention of Unfair Discrimination Act.[41]

Steps towards achieving universal and meaningful access to the internet

For children to reach their full developmental potential, universal and meaningful access to the internet is paramount.[42] This allows children – from urban, remote and marginalised communities – to receive and impart information and to learn, associate, educate and innovate.[43] Access to the internet entails two interrelated dimensions: the first is about accessing the physical infrastructure that enables access to online content; and the second is about the ability to access and disseminate content online.[44] This requires a holistic and inclusive process, where both dimensions need to be realised in order for access to be meaningful. In other words, the first dimension is non-existent without the second, and the second is meaningless without the first.

Access to the internet is mired by multiple barriers and inequalities that deter, inhibit or impede children's meaningful participation in the digital world, and many children are likely to encounter a combination of hurdles when accessing the internet.[45] Accordingly, when MMA discusses access to the internet, it must be understood as requiring the following elements:[46]

Affordable if not free

Appropriate in terms of connection speeds

Advancement of digital literacy and media and information literacy skills

Enabling environment for equality, free from discrimination

Inclusive of children's needs, abilities and reflective of their experiences and realities

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[36] CRC above n 1 at article 2.
[37] Draft General Comment above n 4 at para 10.
[38] ACRWC above n 7 at article 3.
[39] Revised Declaration above n 13 at principle 7.
[40] Constitution above n 7 at section 9.
[41] 4 of 2000 (accessible at https://www.justice.gov.za/legislation/acts/2000-004.pdf).
[42] MMA NYP Submission above n 19.
[43] Id.
[44] Universal Access to the Internet and Free Public Access in South Africa (2019) (Universal Access) (accessible at https://internetaccess.africa/universal-access/).
[45] UNICEF, 'Access to the Internet and Digital Literacy' (2017) *Discussion Paper Series: Children's Rights and Business in a Digital World* at 7 (accessed at https://www.unicef.org/csr/css/UNICEF_CRB_Digital_World_Series_ACCESS.pdf), and UNICEF, 'Growing up in a connected world' (2019) *UNICEF Office of Research – Innocenti* (accessed at https://www.unicef-irc.org/publications/pdf/GKO%20Summary%20Report.pdf).
[46] Id.

Affordability

Affordability – the ability to pay for access to infrastructure, networks, devices and services – is a commonly cited barrier to accessing the internet.[47] Molapo explains that "[t]he reality is, many children still grow up in areas where there is no electric power, and many families (and schools) still cannot afford Internet connection costs, or desktop/tablet computers."[48] For children, particularly those in low-income countries, high data costs remain a significant barrier to access.[49]

In South Africa, there is a dual challenge of excessive data prices, coupled with high levels of unemployment. Child participants in the South African Kids Online study noted "that the cost of data was a significant barrier to their internet access overall, and that it limited the amount of time they could spend online."[50] Since 2016 there have been calls for #DataMustFall given that millions of people in South Africa could not afford data.[51]

Towards an affordable internet

In 2019, following prolonged concerns regarding high data prices and the need for data affordability in South Africa, the Competition Commission conducted a Data Services Market Inquiry which found, among other things, that (i) data prices in South Africa were too high; (ii) pricing structures are anti-poor and lacked transparency; (iii) there is a lack of spectrum and access to cost-based facilities which increases costs; and (iv) there is a need for alternative infrastructure for data to reduce data prices.[52]

Following the recommendations of the Competition Commission, mobile telecommunications companies have one-by-one begun amending their data prices.[53] While the findings of the Competition Commission and the responses from mobile telecommunications companies are welcomed, access is not yet universal, and concerted efforts towards the implementation and enforcement of the Competition Commission's recommendations along with appropriate coordination among the different state functions is much needed.[54]

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[47] Universal Access above n 44. See further UNICEF above n 16 at 125.
[48] Molapo, 'Local Games, Local Content, Local Applications On Mobile: ICTs for Informal Learning in Rural Africa' in Cortesi and Gasser (eds) *Digitally Connected: Global Perspectives on Youth and Digital Media* (2015) (accessible at https://dash.harvard.edu/handle/1/16145970).
[49] UNICEF above n 16 at 45.
[50] Burton above n 25 at 13 and 42.
[51] See Alliance for Affordable Internet (A4AI), 'Submission to the Competition Commission of South Africa (2017) (accessible at https://1e8q3q16vyc81g8l3h3md6q5f5e-wpengine.netdna-ssl.com/wp-content/uploads/2017/11/A4AI-Submission-to-the-Competition-Commission-of-South-Africa.pdf).
[52] Competition Commission Data Services Market Inquiry, (2019) (accessible at http://www.compcom.co.za/wp-content/uploads/2019/12/DSMI-Non-Confidential-Report-002.pdf.
[53] ICASA, 'Communications & Digital Technologies Ministry and ICASA welcome steps taken by the Competition Commission to facilitate data prices reduction at the retail level of the market' (2020) (accessible at https://www.icasa.org.za/news/2020/communications-digital-technologies-ministry-and-icasa-welcome-steps-taken-by-the-competition-commission-to-facilitate-data-prices-reduction-at-the-retail-level-of-the-market).
[54] Singh, 'Digital discrimination: The need to realise universal access to the internet' (2019) (accessible at https://altadvisory.africa/2019/12/05/digital-discrimination-the-need-to-realize-universal-access-to-the-internet/).

Against this backdrop, it is easy to understand why affordability is such a significant barrier. In overcoming this, MMA, together with a coalition of organisations – the South African National Editors' Forum, the Interactive Advertising Bureau of South Africa and the Association for Progressive Communications – has developed a seven-point plan for achieving universal access to the internet and free public access in South Africa.[55] The seven-point plan proposes the following initiatives:

- Free public access to the internet at government facilities.
- Zero-rated access to government websites.
- Free wi-fi in public spaces.
- Access to the internet as a basic municipal service.
- Digital literacy and skills development programmes.
- Minimum protections in the provision of free access to the internet.
- Oversight and monitoring of the progressive realisation of free access to the internet.

Realising this seven-point plan is key for advancing access to the internet for children.

Connectivity

While "[c]onnectivity can be a game-changer for some of the world's most marginalised children, helping them fulfil their potential and break intergenerational cycles of poverty", it remains a significant barrier to access.[56] According to UNICEF "[t]he risk that connectivity can become a driver of inequity, not an equalizer of opportunity, is both real and immediate."[57] Connectivity relates to communications and electrical infrastructure and quality of service, which are often influenced by socio-economic and geographical factors.[58] Children from low-income households and children in rural areas are often disproportionately affected by connectivity issues due to a lack of infrastructure, electricity challenges and limited available services.[59]

Meaningful connectivity, a standard set by the Alliance for Affordable Internet (A4AI), is a tool to improve the standard of internet access.[60] A4AI has identified four standards for internet access and meaningful connectivity for everyone:

- Getting the right speed: Meaningful connectivity requires that a user's connection be reliable, of sufficient bandwidth, and has a low enough latency to enable them to experience the wealth of the internet's potential. A4AI recommends that access to 4G (or higher) is a measure of meaningful connectivity in a country, explaining that a 4G connection provides the technical minimums that should enable a user to stream videos, share content and participate in the world's discussions, and offers a realistic but substantial threshold for many low- and middle-income countries.

[55] Universal Access above n 44.
[56] UNICEF above n 16 at 1.
[57] Id at 45.
[58] Id at 125.
[59] Chair, 'Internet User Barriers and Use Strategies: Perspectives from Kenya, Nigeria, South Africa and Rwanda' (2017) (accessible at https://www.researchictafrica.net/docs/RIA%202016%20Comparative%20FGD%20study_Final_Web%20version.pdf). See further UNICEF above n 45 at 82.
[60] A4AI, 'Meaningful Connectivity: A New Standards to Raise the Bar for Internet Access' (2020) (accessible at https://a4ai.org/meaningful-connectivity/).

- Having an appropriate device: For connectivity to be meaningful, A4AI found that devices need to be portable, have the ability to use productive apps and be multifunctional. A4AI further noted that appropriate devices are those that cater for people with differing levels of literacy and ability.
- Connecting with enough data: Noting the concerns of the wide data disparity between those with fixed, unlimited connections and those connected only at the margins, A4AI notes that the value of internet access is defined by how much data can be consumed and contributed online, and suggests that meaningful connectivity can be measured as the percentage of a country's population with access to an unlimited broadband connection at home or a place of work or study.
- Using the internet regularly: The frequency with which people connect is considered an important characteristic for meaningful connectivity, with A4AI suggesting that to differentiate between levels of internet use, a minimum threshold of using the internet is at least daily.

There is manifest value in understanding connectivity as a means for children to access their rights both on- and offline. Further to this MMA recommends that connectivity should be enhanced, particularly in schools and local libraries and community learning centres.

Media and information literacy skills

Beyond access and connectivity, children need a set of necessary skills for using the internet. Unfortunately, a lack of digital literacy is emerging as a significant barrier to internet use.[61] Media and information literacy skills include digital literacy, and speaks to the ability of a child to have appropriate digital and technical skills. It further envisages a set of competencies, ranging from finding, evaluating and managing information online; interacting, sharing and collaborating online; developing and creating content; safely using protection features; and knowing how to solve problems and be creative.[62]

Media and information literacy skills facilitate meaningful and active participation with online services.[63] Children need to know how to use and engage with online content, which includes knowing how to be safe, sensible and respectful of others while online. Just as children learn about what is appropriate and safe offline, they equally need to learn how to navigate these issues online. This includes making informed choices regarding the personal content they communicate, understanding the importance of privacy and avoiding risk, all while exercising their right to freedom of expression online.[64] Being digitally literate allows a child to develop an appreciation of the many opportunities of the online world.

According to UNICEF, some key competencies have been identified for children to be digitally literate:[65]

- Access and operate in digital environments safely and effectively.
- Critically evaluate information.
- Communicate safely, responsibly and effectively through digital technology.
- Create digital content.

[61] MMA NYP Submissions above n 19.
[62] UNICEF above n 16 at 128.
[63] MMA NYP Submissions above n 19.
[64] UNICEF, 'Children's online privacy and freedom of expression' (2018) (accessible at https://www.unicef.org/csr/files/UNICEF_Childrens_Online_Privacy_and_Freedom_of_Expression(1).pdf). See also UNICEF above n 45 at 38.
[65] Id.

- Respect others online.
- Patriate online and contribute to online civic engagement.

To reach these competencies, media and information literacy skills must be integrated into the school curriculum at an early stage. Projects must be implemented to teach coding skills to children, including the integration of coding in the national school curriculum, the creation of outside-school coding clubs, or the distribution of low-cost computers with preloaded courses and applications. Furthermore, actions need to be taken to foster other appropriate digital skills, including digital safety, the ability to engage with media content and spot disinformation, and an awareness of how technology, big data and algorithms shape society.

Non-discrimination

In addition to the above, children must be able to access the internet on an equal and non-discriminatory basis. The reality at present, however, is that gender, race, differing abilities, language and socio-economic factors may discourage or prevent children from accessing and using the internet and other information and communication technologies (ICTs).[66] Discrimination in the context of access is captured by the phrase "digital divide", which acknowledges that the benefits of digital transformation are not equally shared, and that there is unequal access, use and ownership of ICTs. These disparities often represent the structural and systemic inequalities that persist offline.[67]

One of the more pervasive digital divides relates to gender inequalities. The UN has described the gender digital divide as the "measurable gap between women and men in their access to, use of and ability to influence, contribute to and benefit from ICTs".[68] The Association for Progressive Communications (APC) has captured some of the core tenants of the gender digital divide:

> "Women's [and girls] ability to gain meaningful internet access is influenced by factors including location, economic power, age, gender, racial or ethnic origin, social and cultural norms, and education, amongst other things. Disparity and discrimination in these areas translate into specific gender-based challenges and barriers to meaningful access. For example, gender literacy gaps – including digital literacy – result in uneven capacity among women to use the internet for their needs. Bridging the gender digital

[66] UNICEF above n 45. See also Gujari, 'UN Committee: Accessible and affordable internet is critical for economic, social and cultural rights in South Africa (2018) (accessible at https://www.apc.org/en/news/un-committee-accessible-and-affordable-internet-critical-economic-social-and-cultural-rights).

[67] See APC, 'Bridging the gender digital divide from a human rights perspective: APC submission to the Office of the High Commissioner for Human Rights' (APC Submissions) (2017) (accessible at https://www.ohchr.org/Documents/Issues/Women/WRGS/GenderDigital/APC.pdf). See further, Mutsvario and Ragnedda, 'Comprehending the Digital Disparities in Africa' In Mutsvario and Ragnedda (eds), *Mapping the Digital Divide in Africa: A Mediated Analysis* (2019) (accessible at https://assets.ctfassets.net/4wrp2um278k7/6eNjNfkQbsLHEEUZMkegdx/66ba7342323fff1250a9552e72fe33fe/9789048538225_ToC_Intro.pdf). Additionally, see Organisation for Economic Co-operation and Development (OECD), Bridging the Digital Gender Divide: Include, Upskill, Innovate (2018) (accessible at http://www.oecd.org/internet/bridging-the-digital-gender-divide.pdf).

[68] It is necessary to note that MMA acknowledges that when considering the gender digital it is important to note that"[g]ender is a broad and fluid social construct that is not limited to the conventional male/female dichotomy that commonly informs gender analysis in ICT." See Sey and Hafkin, 'Taking Stock: Data and Evidence on Gender Equality in Digital Access, Skills and Leadership,' (2019) (accessible at https://www.itu.int/en/action/gender-equality/Documents/EQUALS%20Research%20Report%202019.pdf). See further ACP Submissions above n 67.

> divide requires bridging not just one digital divide, but multiple digital divides. Likewise, it also requires bridging other underlying and more fundamental gender divides, and as such demands an approach that is located within economic, social, political and cultural contexts that recognise existing inequalities".[69]

APC notes further that—

> "The human rights implications of the gender digital divide are that women are excluded from participating fully in public and social life, and as such are unable to fully exercise their human rights, online and offline. The gender digital divide exacerbates existing inequality and perpetuates discrimination as ICTs become indispensable to others in society. Without meaningful internet access, women are not able to fully realise a range of human rights, whether civil and political rights – such as freedom of expression, to seek and impart information, to assemble and associate with others freely – or economic, social and cultural rights – such as to pursue their education online, seek health-related information, or find work and advance their economic well-being.
>
> It is important to note that even when women are able to access the internet affordably and have the skills to do so, they may not be fully able to use it to exercise their rights because of cultural norms, in particular, deeply rooted societal discrimination against women, and the policies and practices of states and the private sector."[70]

More recently, the Gender and Adolescence: Global Evidence (GAGE) programme has noted that the consequences of the digital divide are far-reaching, including affecting education and digital literacy; freedom of (virtual) assembly; right to culture, leisure and play; health and wellbeing; and the protection of privacy, identity and data processing.[71] Additionally, restrictive and discriminatory gender norms have consequences over girls' usage of digital technology, and can put them at higher risk of violence, sexual exploitation and harassment, potentially damaging their wellbeing.[72]

While a lack of data makes it difficult to ascertain the full extent of the gender digital divide in Africa,[73] there are indications that the prevalence of the gender digital divide is a cause for concern. For example, reports indicate that Africa is the only region with a marked increase in the internet user gender gap.[74] Sub-Saharan Africa appears to be in line with the continental trend, with over 300 million unconnected women living in the region.[75] More recent data suggests that women in Sub-Saharan Africa are 14% less likely than men to own a basic mobile phone and 34% less likely to own a smartphone that can connect to the internet.[76]

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[69] Id.
[70] Id.
[71] GAGE above n 5.
[72] Id.
[73] Sey and Hafkin, above n 68. See further, APC Submissions above n 67 who note that "representative and gender-disaggregated data should be gathered in a consistent and rigorous manner to reach a better understanding of the factors shaping women's access to and ability to benefit from meaningful internet access in diverse contexts."
[74] Sey and Hafkin id at 161.
[75] GSMA Connected Women, 'Bridging the gender gap: Mobile access and usage in low and middle-income countries' (2015) (accessible at https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2016/02/Connected-Women-Gender-Gap.pdf).
[76] OECD above n 67.

Another prevalent ground of discrimination applies to children with disabilities. Evidence suggests that discrimination against children living with disabilities results in lower access levels despite evidence of the positive impact digital engagement and digital tools can have on their wellbeing.[77] Accessible ICTs can assist in levelling the playing field for children with disabilities, can enhance access to education, and can allow children with disabilities to learn, grow, participate and engage alongside their peers. However, the manner in which content is published, the forms of communication used, and the cost of assistive technology can all contribute to whether children with disabilities can access the internet.[78] The Internet Society explains that:

> "For persons with disabilities, accessibility means being able to use a product or service as effectively as a person without a disability. This means using inclusive design principles to make products and services usable by a wider section of the population. In some cases, this is not possible, and assistive technologies may be called upon to fill the gap. If so, mainstream technologies should enable the software or hardware connection of the assistive device seamlessly, in terms of both interoperability and data portability."[79]

The United Nations Human Rights Council has encouraged states to "take appropriate measures to promote, with the participation of persons with disabilities, the design, development, production and distribution of information and communications technology and systems, including assistive and adaptive technologies, that are accessible to persons with disabilities."[80] Indeed, an inclusive internet for children is one that allows them to use and enjoy resources in accessible formats, where differentiated learning materials (videos, pictures, audio, text) are accessible, and one where assistive devices are accessible and affordable.[81] Further to this, open-source applications that enable the use and enjoyment of the internet for children with disabilities should be encouraged and promoted.[82]

While these are some forms of discrimination that hinder access, the reality is that similar to offline experiences, there are many forms of discrimination. The United Nations Inter-Agency Network on Youth Development (IANYD) has recognised the multiple layers of discrimination that contribute towards persisting digital divides. In particular, the IANYD has noted that "disadvantaged and marginalized youth, such as migrant and refugee youth, youth with HIV and AIDS, indigenous youth, youth with disabilities, rural youth, youth experiencing poverty, and those facing discrimination, are often excluded from access to ICTs" and has called for the promotion of universal, non-discriminatory, equitable and affordable access of youth to ICT to facilitate digital and social inclusion and equal opportunity and access.[83]

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[77] GAGE above n 5.
[78] Id.
[79] Internet Society, 'Internet Accessibility – Internet use by persons with disabilities: Moving forwards' (2012) (accessible at https://www.internetsociety.org/wp-content/uploads/2017/08/bp-accessibilitypaper-20121105-en.pdf).
[80] UNCHR, 'Resolution adopted by the Human Rights Council on the promotion, protection and enjoyment of human rights on the Internet' A/HRC/RES/32/13 (2016) (accessible at https://documents-ddsny.un.org/doc/UNDOC/GEN/G16/156/90/PDF/G1615690.pdf?OpenElement).
[81] See further Internet Society above n 79 for discussions on ICT for inclusive development.
[82] See Mor, 'Ownership: The Key for ICT Accessibility and Inclusion for Vulnerable Communities' in Cortesi and Gasser (ed) *Digitally Connected: Global Perspectives on Youth and Digital Media* (2015) (accessible at http://pubdocs.worldbank.org/en/123481461249337484/WDR16-BP-Bridging-the-Disability-Divide-through-Digital-Technology-RAJA.pdf).
[83] United Nations Inter-Agency Network on Youth Development, 'Youth and ICT' (accessible at https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-icts.pdf).

Various measures can be applied to ensure that the internet is an equal and non-discriminatory space for all. As recommended in the African Declaration on Internet Rights and Freedoms (AfDec),[84] the rights of all people should be respected and protected, without discrimination of any kind, to use the internet as a vehicle for the exercise and enjoyment of their human rights, and participation in social and cultural life.[85] Importantly, in all considerations regarding children's access to the internet, the principles of equality and non-discrimination must be at the fore.

Inclusivity and appropriate and relevant content

Inclusivity speaks to the quality of a child's online experience. An inclusive internet for children includes the above elements, but speaks more specifically to practicalities of the designs and user interfaces of ICTs.[86] Meaningful access requires certain accessibility standards and accessibility features, and includes the need for relevant content, as well as local content in local languages.

As noted in the AfDec, individuals and communities have the right to use their own language or any language of their choice to create, share and disseminate information and knowledge through the internet.[87] Furthermore, linguistic and cultural diversity enriches the development of society.[88] Africa's linguistic and cultural diversity, including the presence of all African and minority languages, should be protected, respected and promoted on the internet.[89]

Language and access to local and relevant content can play a significant role in ensuring a child has an inclusive online experience. According to UNICEF, "[s]ome children going online for the first time find themselves in a digital space where their language, culture and concerns are notable by their absence."[90] UNICEF notes further that the absence of relevant content and languages can discourage children from going online and meaningfully engaging with content online. For UNICEF, this raises a bigger concern: "the absence of content that speaks directly to children's diverse cultural contexts and experiences may widen knowledge gaps."[91] Diverse, relevant, relatable and understandable content is hugely important in ensuring meaningful access. As APC puts it "[e]nabling the creation of local content that is adapted to the cultural context and resonates with those in these communities is another essential aspect of promoting meaningful internet access."[92]

Local games and stories should be accessible online, and local applications and online multimedia content should be developed and promoted to ensure that children experience the internet in a way that accords with the language, culture and everyday experiences.[93] Such information should be age-appropriate and relevant to the child, including information regarding issues of personal health, identity, sex and sexuality

[84] The African Declaration on Internet Rights and Freedoms (AfDec) (accessible at https://africaninternetrights.org/).
[85] Id at principle 10.
[86] UNICEF above n 45.
[87] AfDec above n 84 at principle 6.
[88] Id.
[89] Id.
[90] UNICEF above n 16 at 43.
[91] Id at 57.
[92] APC, 'Helping women and non-binary communities gain access: Reflections from the Best Practice Forum on Gender and Access on the potential of alternative models of connectivity' (2019) (accessible https://www.apc.org/en/news/helping-women-and-non-binary-communities-gain-access-reflections-best-practice-forum-gender-and).
[93] Molapo above n 48.

at the appropriate time in the child's life.[94] Such content encourages inclusivity, but also creates an opportunity for children to broaden their understandings of the world and learn about the experiences and cultures of other children.

Further to the need for content to be relatable, content must also be relevant and appropriate. For example, access to relevant and appropriate content relating to sexual and reproductive health should be encouraged and made available to children of varying ages and capacities. MMA has noted elsewhere that "children of an appropriate age may seek to explore content of a sexually explicit nature."[95] Considerations around access must include considerations around "creating a positive and enabling environment for children to explore their curiosity and sexuality."[96] The Feminist Principles of the Internet recognise—

> "children's right to healthy emotional and sexual development, which includes the right to privacy and access to positive information about sex, gender and sexuality at critical times in their lives."[97]

Advancing access to relevant and appropriate content requires nuanced understandings of the evolving capacities of children, as well as some of the risks that may be associated with content that may be inappropriate or harmful. Framing these understanding in child-centric and sex-positive ways, that takes into account the importance of digital literacy, is an important step for ensuring that children have meaningful access to the internet in order to advance an array of fundamental rights.

[94] Feminist Principles of the Internet (FPI), 'Children' (2016) (accessible at https://feministinternet.org/en/about).
[95] MMA, ' Submissions on the Films and Publication Amendment Regulations' (2020) (accessible at https://mediamonitoringafrica.org/wp-content/uploads/2020/08/200817-MMA-Submission-on-the-Films-and-Publications-Amendment-Regulations.pdf).
[96] MMA, on behalf of 32 children, 'Submission on the Discussion Paper on Sexual Offence (Pornography and Children)' (2019) (accessible at https://mediamonitoringafrica.org/wp-content/uploads/2019/12/Sexual-Offences-Discussion-Paper-149_MMAs-Childrens-Sumission_Final_v2.pdf).
[97] FPI above n 94.

Recommendations from the Web Rangers

In line with above understandings of meaningful access, the Web Rangers have expanded on some recommendations regarding the right to meaningful access the internet:

- ELECTRICITY: A sustainable source of electricity is necessary to enable children to have access to the internet. The South African government should, at the basic level, supply solar power to all houses.

- DEVICES: Children should be able to access a free devices at their schools and community centres. The device should be touch screen and must be able to connect with sufficient speed. The devices must be kept at school or at the community centre and should be exclusively used for education purposes.

- DIGITAL LITERACY: Computer literacy skills are an important building block towards digital literacy. Children have the right to access digital and media literacy training at their schools and community centres, to facilitate the safe and responsible use of the internet. There should be a diverse pool of digital literacy curriculum content creators to ensure different skill sets are covered in the curriculum. Digital and media literacy must be expanded to include basic coding from primary schools as a subject, and integration of entrepreneurial skills for practical and real-life application e.g. building a website.

- LANGUAGE: It is important for children to read and understand English, as the device will predominantly operate in English, however, the exposure and access to content in other languages must also be encouraged. Digital literacy skills and teaching should also be expanded to other official languages.

- EQUALITY AND NON-DISCRIMINATION: Inclusive and non-discriminatory content is content that is informative, relevant to children's context, and represents diverse age groups, gender and races. For children with disabilities devices need to be user friendly and accessible. For children with visual impairments devices must have automatic talk back features. For children with hearing impairments, devices must include subtitles for audio and video content.

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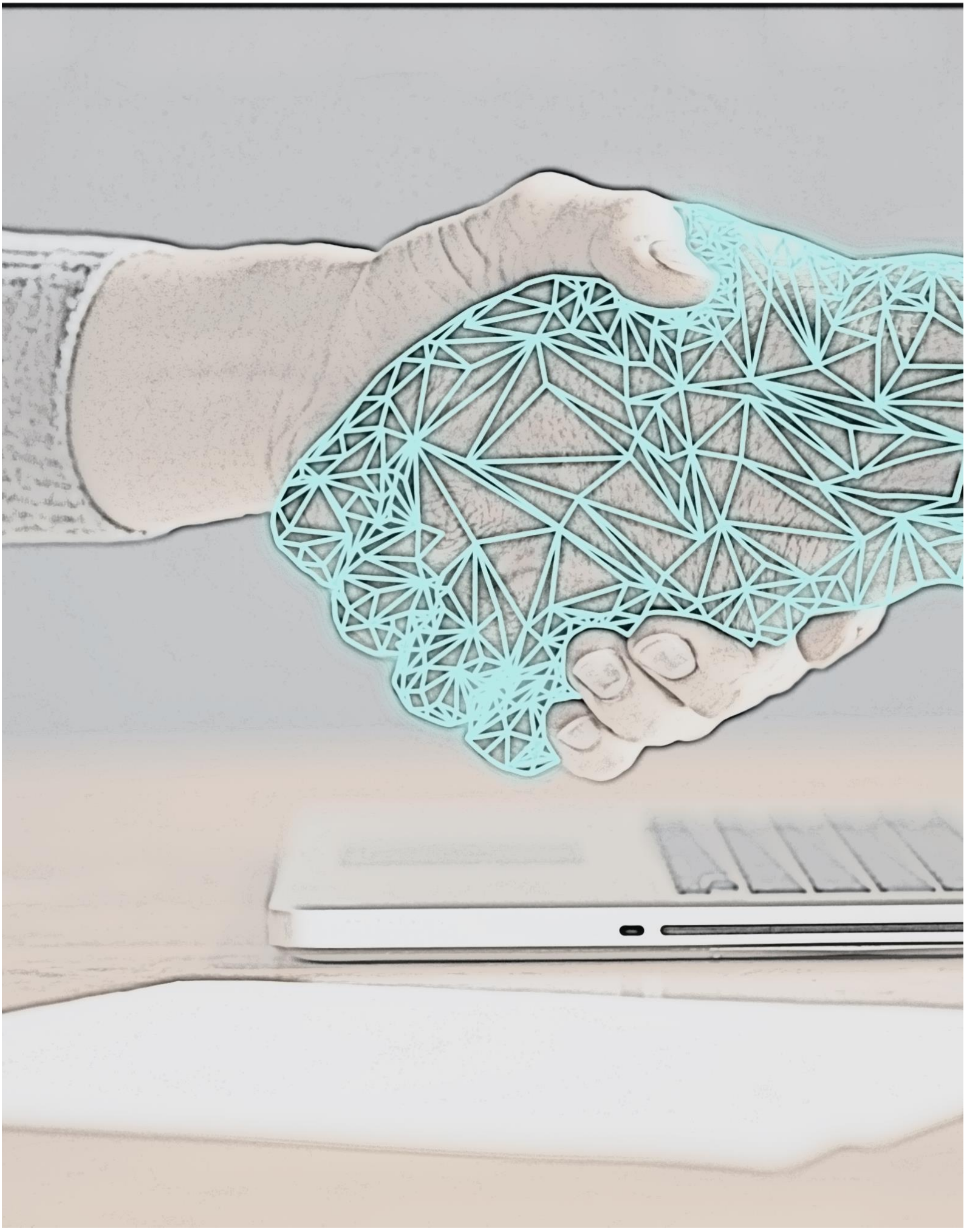

// ONLINE PARTICIPATION

The internet provides children with new opportunities to learn, express themselves and participate in decisions that affect them. The notion of participating online falls squarely within the realm of children's rights. It envisages freedom of expression, being part of associations or assemblies in the digital environment, being part of social, civic, political, religious, environmental and cultural movements, and it enables children to make informed decisions and be involved in decisions that may impact them. The "inclusion of the voices and experiences of young people in the decisions made about safety and security online and promote their safety, privacy, and access to information"[98] is not a novel concept, but is one that is not always recognised, particularly when conservative ideas, and magnified concerns regarding harms outweigh the respect children deserve when it comes to listening to children, and allowing them an opportunity to express their views and opinions. This section considers what participation entails and the ways in which children can participate online.

Participating in decision making processes

Despite the inclusion of the concept of children's participation in the CRC,[99] which indeed marked a "radical and profound challenge to traditional attitudes", there are still many instances where children's participation appears to be a tick box, or be done at a more tokenistic level.[100] Therefore, and similar to our understandings of meaningful access and connectivity, we need to adopt nuanced understandings of meaningful participation. There are some core tenants to participation that need to be realised for it to be genuine and meaningful. Below is an overview of some of the key elements that relate to children participating in decisions that affect them:[101]

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[98] Id.

[99] CRC above n 1 at article 12.

[100] See Kellet, 'Children and young people's participation' in Montgomery, Heather and Kellett, Mary (eds) *Children and young people's worlds: Developing frameworks for integrated practice* (2009) at 56 (accessible at https://www.open.edu/openlearn/ocw/pluginfile.php/617769/mod_resource/content/1/e807_reading_chpt3_childrenandyoungpeoplesparticipation.pdf). See further, Ombudsman for Children's Office, 'Participation in Decisions-making' (accessible at https://www.oco.ie/app/uploads/2018/12/OCO_Participation-Guidelines_English_WEB.pdf). For various participation models, see Nonformality, 'Participation Model: Citizens, Youth, Online' (2011) (accessible at https://www.nonformality.org/wp-content/uploads/2011/07/Participation-Models-20110703.pdf).

[101] Id. These key elements have been adapted from the various sources listed above as well as MMA's own experiences with engagements with children.

- Creating time and space for children to formulate their opinion: this requires adequate, age-appropriate, accurate prior information, including possible outcomes or consequences of a decision they make take. Further to this, participatory spaces must be safe spaces, where children feel comfortable and secure. This includes informing children that they are not forced to participate, and they do not need to continue to participate if they no longer feel safe.

- Ensuring inclusivity: building on the general principle of non-discrimination, it is important that participation is inclusive and allows for equal participation by all children involved in the process, or who are being affected by the decision.

- Allowing children to share and express their views before a decision is made: this involves allowing children to be part of conversations, to the extent that it is appropriate, and to the extent they feel comfortable participating.

- Accepting the evolving capacities of children: children develop at different paces, and have had different life experiences which may impact the way in which they feel comfortable participating, it is therefore important to be aware of the differing capacities and backgrounds that children come from.

- Considering the views raised by children: often adults are quick to dismiss a child's viewpoint, however, in order for there to be genuine and meaningful participation, decision-makers need to take the views of children seriously and not merely consider them at face value.

- Informing children of decisions that have been taken: once a decision has been made children should be informed of the decision, and where appropriate be afforded the opportunity to ask questions and possibly appeal a decision.

It is necessary to note that in an online context, children's participation may take place in terms of the more conventional notions of decision-making processes and internet governance, but it may also take place in new ways, particularly around how children give their consent online.

Tease and Seize Apply

It is common knowledge that digital citizens, prominently social media users, rarely engage with the terms and conditions presented by social networking sites and online service providers. This places them in an unempowered position, whereby they are ignorant of the fact that continued use of a site often forms the basis of an enforceable contract between user and service provider. There is a concern that such lack of engagement may result in users relinquishing or compromising certain rights.[102]

MMA is currently in the process of reviewing an array of terms and conditions, community standards and privacy policies of various social media platforms.[103] Through this exercise it is becoming

[102] See, Tease&Seize (accessible at http://teaseandseizeapply.co.za/).
[103] Id.

increasingly apparent that adults let alone children understand the terms and conditions they are agreeing to. The convenience of ticking a box in order to access a service coupled with often complex, vague or misleading language results in many online users forfeiting their rights, and handing over unfettered power to social media companies.

These concerns are even more pressing when it comes to children, and pose interesting questions around children's online participation and their ability to consent. Agreeing to unruly and incomprehensible terms and conditions and consenting to accessing certain content due to age restrictions impact the ability of children to participate online.

Most social media platforms have some reference to the age of consent, usually in the resources of their respective Help Centers:

- "Facebook requires everyone to be at least 13 years old before they can create an account (in some jurisdictions, this age limit may be higher). Creating an account with false info is a violation of our terms. This includes accounts registered on the behalf of someone under 13."[104]

- "Twitter requires all users be at least 13 years old in order to create an account. In addition, some countries require users be over 13 to consent to the processing of their personal data. In such cases, we require that a parent or legal guardian consent on a child's behalf before allowing the child to use our services. Please provide the following information so we may verify your consent for your child to use our services."[105]

- "Instagram requires everyone to be at least 13 years old before they can create an account (in some jurisdictions, this age limit may be higher). Accounts that represent someone under the age of 13 must clearly state in the account's bio that the account is managed by a parent or manager. If your child is younger than 13 and has an account that isn't managed by you or a manager, you can show them how to delete their account."[106]

While these age restrictions appear to be an attempt at taking the evolving capacities of children into account, and appear to be an attempt at protecting children in these online spaces, the policies themselves, the terms of service, community standards, and privacy policies are not drafted with children in mind. Which, arguably erodes the children's right to meaningfully participate:

> "[T]he idea of consenting to online privacy terms and conditions does not involve reciprocity; it forms a one-way relationship allowing the monitoring of the consent-giver who has no other option but to agree or be refused the benefit. These one-way relationships are purely instrumental, do not involve a process of negotiation, and jeopardise autonomy when the online environment allows the instrumental and commercial invasion of privacy."[107]

It is apparent that by in large, the acceptance of terms and conditions by children, falls short of the underpinnings of meaningful participation.

[104] Facebook, 'Help Center: How do I report a child under the age of 13 on Facebook?' (accessible at https://www.facebook.com/help/157793540954833).
[105] Twitter, 'Help Center' (accessible at https://help.twitter.com/forms/parental_consent).
[106] Instagram, 'Help Center – Privacy and Safety Center' (accessible at https://help.instagram.com/517920941588885).
[107] Livingston, Stoilova and Nandagiri, 'Children's data and privacy online Growing up in a digital age An evidence review' (2018) at 11 (accessible at https://www.lse.ac.uk/media-and-communications/assets/documents/research/projects/childrens-privacy-online/Evidence-review-final.pdf).

Participation in relation to consent similarly has significant implications for the protection, or lack thereof of children's personal information. While this will be addressed in more detail below, it is necessary to note the following:

> "The available evidence also suggests that children are not fully aware of the threats coming from commercial entities that collect, record and aggregate data on their platforms, and nor do they fully understand how their data is used for economic profit by targeting ads or customising content."[108]

MMA's recent submissions

On 15 November 2020, MMA filed submissions with the Committee on the Rights of the Child on the Draft General Comment.[109] Below is an overview of some of our recommendations:

- We noted that the business sector remains the "key driver of the digital revolution. As providers of internet access, producers and providers of content and other digital goods, and purveyors of online goods and services, businesses are increasingly integrated into children's lives."[110] Online platforms and social media companies, in particular, wield significant power over how rights are respected, protected and promoted online.[111]
- We submitted that terms and conditions that fail to sufficiently inform children of the impact of their participation and their decisions, impede children's participatory rights. Accordingly, we suggested that it is imperative that child-friendly terms and conditions need to be made accessible for children in the digital world in order for children who can consent, to do so in a prior free and informed manner.
- We proposed that the General Comment reflect the import of genuine and meaningful participation for the advancement of an array of children's rights in the digital environment. We further proposed that the General Comment note that the business sector must be responsible for ensuring that terms and conditions, and associated policies of social media platforms and other online spaces that are used by children, must be accompanied by child-friendly versions taking into account the evolving capacities of children. Such policies and standards must be drafted in a manner that enables children to make informed decisions online.

We are of the view that this should be applied internationally, regionally, and domestically.

[108] Id at 35.
[109] MMA. 'Draft General Comment on Children's Rights in Relation to the Digital Environment' (2020) (accessible at https://mediamonitoringafrica.org/submission/).
[110] UNICEF, 'Why businesses should invest digital child safety' (accessible at https://www.bsr.org/en/our-insights/blog-view/childrens-rights-online-a-conversation-with-unicef).
[111] UNHCR above n 2.

To summarise, children should participate in decisions that affect them, and such participation should be meaningful. Decisions around internet governance, or terms and conditions that fail to sufficiently inform children of the impact of their participation and their decisions, impede children's participatory rights.

Children participating on their own terms

Beyond participation in relation to decision making, children themselves can facilitate participation. As a point of departure, it is necessary to gauge how children are presently using the internet. In 2019, UNICEF and Global Kids Online published a study in which they unpacked children's online participation.[112] The findings for South Africa are captured in the table below:

Table 3: South African children's online participation

Online activities practised at least weekly	Age group (N=1000)			
	9-11	12-14	15-17	ALL
Involved in campaign or protest	4	2	6	3
Searched for resources about their neighbourhood	6	11	25	16
Discussed politics online	7	10	26	17
Created a blog, story or website	2	10	31	18
Looked for health information	10	20	43	29
Created video or music	15	29	43	33
Used website for interests or hobbies	11	22	50	33
Looked for news online	12	21	54	35
Talked to people who are different	16	36	61	44
Looked for work or study opportunities	25	32	64	45
Watched video clips	25	44	69	52
Posted photos or comments online	19	52	79	58
Played online games	64	59	63	61
Listened to music	44	61	72	63
Talked to distant family or friends	34	58	80	64
Visited social networking sites	26	56	86	64
Use the internet for schoolwork	63	63	78	70
Learned by searching online	59	73	86	76
Used instant messaging	68	82	96	86

Note: Percentage of children who do each activity at least weekly, by age, ranked by frequency. The coloured cells mark the activities practised by roughly half the age group or more.

This table provides a useful overview of the ways in which children in South Africa are engaging with online opportunities and accessing and sharing information. It is also clear from the table that there are multiple ways in which children can express themselves, access information and learn and play, and be active members of their society. Using some of the activities listed above the following sections links the activities to rights and discuss how best children can be participating in the digital environment.

[112] UNICEF and Global Kids Online, 'Is there a ladder of children's online participation? Findings from three Global Kids Online countries' (2019) (accessible at https://www.unicef-irc.org/publications/pdf/IRB_2019-02%2013-2-19.pdf.)

Freedom of expression and access to information

Article 13 of the CRC provides:

> "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

As has been discussed, the online world presents endless opportunities for children to express themselves and offers an abundance of information. Realising article 13 online means that children should be able to access information from a variety of sources that allow them to contemplate their own perspectives, think critically and make informed decisions.[113] It means that children should be exposed to information that will stimulate their imagination, encourage them to question convention and to explore new horizons. Children should be encouraged to express themselves online and to engage with different resources, even if it may be objectionable to some.

It appears that children, across the age groups in South Africa, are advancing their freedom of expression and information rights online, and it is likely that with advanced access and improved digital literacy these numbers will increase. On average, 33% of children participants use the internet every week, 26% of the group aged between 15-17 discussed politics online, and 18% on average looked for health information.[114]

There are however existing debates about freedom of expression and the protection of children, with concerns about the content children view as well as the content that they post. There are ways to ensure that children's rights are not unnecessarily limited in the name of protection. UNICEF lists four principles that should be in place for children to exercise their rights to freedom of expression and access to information online:[115]

Children have reliable and affordable access to digital technology, accounting for differences in language, literacy and capacity.

Children can freely and confidently use technology without disproportionate monitoring by governments or parents, unnecessarily strict moderation or policing of user-generated content, or unwarranted limitations on anonymity.

Children can explore the digital world without encountering overly restrictive filters, whether at a network or device level, or other systems or mechanisms that restrict access to potentially beneficial content.

[113] Child Rights International Network, 'Towards a charter for children's rights in the digital context' (accessible at https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2014/CRIN.pdf).
[114] UNICEF and Global Kids Online above n 111.
[115] UNICEF above n 64.

Children can access information from a diversity of sources that is adapted to their interests and levels of understanding, noting that requirements to provide payment or supply personal data may act as a barrier to accessing online content.

There may certainly be instances where protective measures are necessary, and where children's freedom of expression and access to information may need to be curtailed. For example, this includes instances where access to specific content will be harmful and is contrary to the best interests of the child, or where the content being published by the child is subject to a justifiable limitation on the right to freedom of expression.[116] However, efforts towards advancing digital literacy is a preferable means of protecting children rather than excessive restrictions and content moderation.[117]

Learning and playing

Article 28 of the CRC recognises the right of the child to education, and article 31 recognises the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. The internet provides various platforms where children can explore innovative and engaging ways of learning and playing, and where children can discover creative and communicative opportunities and form cross-cultural bonds with other children.[118] The internet gives children the opportunity to engage with creative content, and in turn allows them to create content they can share with others, fostering their right to expression.[119] Important learning and developmental skills are enhanced while children are using ICTs.

The table above illustrates that children rely on the internet for fun and leisure, 61% use the internet for games, 63% listen to music and 52% watched videos. The table further evidences the importance of the internet from a learning perspective, with 33% using the website for hobbies and interests, 70% using the internet for schoolwork, and 76% learned by searching online.

With regard to online gaming, present evidence suggests that in South Africa 58% of boys and 46% of girls enjoy playing games online.[120] Educational tools, and positive messaging around gaming can be used to address existing digital divides, and build communities that are inclusive and welcoming. While present views on the value of online gaming remain divided, and there are concerns regarding the safety of children who game, there is evidence to suggest that age-appropriate online gaming can be beneficial to children, particularly where there are strong levels of digital literacy to ensure that children can be safe while exercising their right to leisure, play and culture online.[121]

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[116] CRC above n 1 at article 13(2)

[117] The Child Rights International Network, 'Briefing: Children's rights in the digital age (accessible at https://home.crin.org/briefing-childrens-rights-in-the-digital-age) submits that:

> "Except where limiting access to content is unambiguously required by law, and that law meets the children's rights standards set out above, educating children in digital literacy is a preferable means of safeguarding them from harm. State and corporate agendas – such as ideological views about the legitimacy of LGBTQ information or aggressive corporate marketing – should not be allowed to interfere with children's legal right of access."

[118] UNICEF, 'Child Rights and Online Gaming: Opportunities and Challenges for Children and the Industry' (2019) (accessible at https://www.unicef-irc.org/article/1926-the-online-gaming-industry-and-child-rights.html).

[119] Amanda, et al., 'Children's Rights in the Digital Age: A Download from Children Around the World', Young and Well Cooperative Research Centre, (2014) (accessible at http://aeema.net/WordPress/wp-content/uploads/2014/10/Childrens-Rights-in-the-Digital-Age.pdf).

[120] UNICEF above n 45.

[121] UNICEF above n 117..

The internet should be a safe space for children to learn and play. With appropriate safeguards that are not unduly restrictive, coupled with appropriate media and information literacy skills, the internet can advance children's rights in a healthy and productive way.

Becoming active citizens

The internet has the potential to create spaces for children to be informed members of society and participate meaningfully in their communities.[122] The CRC acknowledges children's participation in different ways: article 12 acknowledges that children are capable of forming their own views and are should be encouraged to express those views freely in all matters that affect them; article 13 provides for the right to freedom of expression; article 14 respects the right of the child to freedom of thought, conscience and religion; article 15 recognises the rights of the child to freedom of association and freedom of peaceful assembly; article 23 requires that children with disabilities should be an active participant in their communities; and article 31 recognises children' rights to participate in freely and fully in the cultural and artistic life of their community. The collective reading of these articles clearly demonstrates an understanding that children can and must be active participants in their communities.

Lucio and L'Anson capture the uniqueness of children's participation as follows:

> "The acknowledgement of children's right to participate is indelibly connected not only to an acknowledgement of their ability and willingness to do so, but also to their recognition as actors in their own right – authors of their own social and cultural actions, whether through play and/or their language(s) and forms of self- and hetero-governance. Acknowledging children as citizens involves not only a recognition of the ways in which they conform to more or less standardised ways of relating to the world, of participating at the civic and political level and consuming cultural products, on the one hand, but also, on the other, recognizing their innovations, their creativity and even their negation – or subversion – of traditional models of participation and citizenship. The legitimacy of their status necessarily means a change in the scope of the concept of citizen participation, so as to integrate children's behaviours and attitudes, and validate their perceptions about the functioning of communities."[123]

These considerations and understandings, which must apply both on and offline, are not novel, and need to be understood in the context of power dynamics and existing inequalities. In 1979, Hart observed the following:

> "Young people's participation cannot be discussed without considering power relations and the struggle for equal rights. It is important that all young people have the opportunity to learn to participate in programmes which directly affect their lives. This is especially so for disadvantaged children for through participation with others such children learn

[122] Amanda above n 118.

[123] Lucio and l'Anson, 'Children as members of a community: Citizenship, participation and educational development – an introduction to the special issue' (2015) *European Educational Research Journal* at 131 (accessible at https://journals.sagepub.com/doi/pdf/10.1177/1474904115571794).

that to struggle against discrimination and repression, and to fight for their equal rights in solidarity with others is itself a fundamental democratic right."[124]

Hart goes on to recognise that different children at different times might prefer to perform with varying degrees of involvement or responsibility, but the notion of choice should always be at the fore, and all programmes should be designed in a way which maximises the opportunity for any child to choose to participate at the highest level of their ability.[125]

Global trends indicate that civic engagement of children online continues to increase, and "[g]reater online connectivity has opened new avenues for civic engagement, social inclusion and other opportunities, with the potential to break cycles of poverty and disadvantage."[126] Encouraging and facilitating participation also forms and important part of keeping children safe and understanding their needs and experiences. It is imperative that children are involved in the discussions about how to protect themselves from harmful content and exposure to risk, as well as to be empowered to make safe and informed decisions about their online behaviour.[127]

Web Rangers – active participants

As indicated above, MMA works directly with young digital citizens who are empowered to use the internet responsibly and encourage their peers to do the same, and encourages the development of digital literacy skills that "allow young people to gain critical skills and knowledge around online safety that they use to create innovative campaigns that promote safe internet usage and champion their rights in the digital world."[128]

The primary objectives of the Web Rangers programme are to:

- Improve participants digital literacy skills.
- Create and promote awareness around safe and responsible internet usage.
- Empower participants to take ownership of their digital footprint.
- Empower participants to be in a position to take full advantage of the opportunities that the digital world has to offer in order to make South Africa a better place.

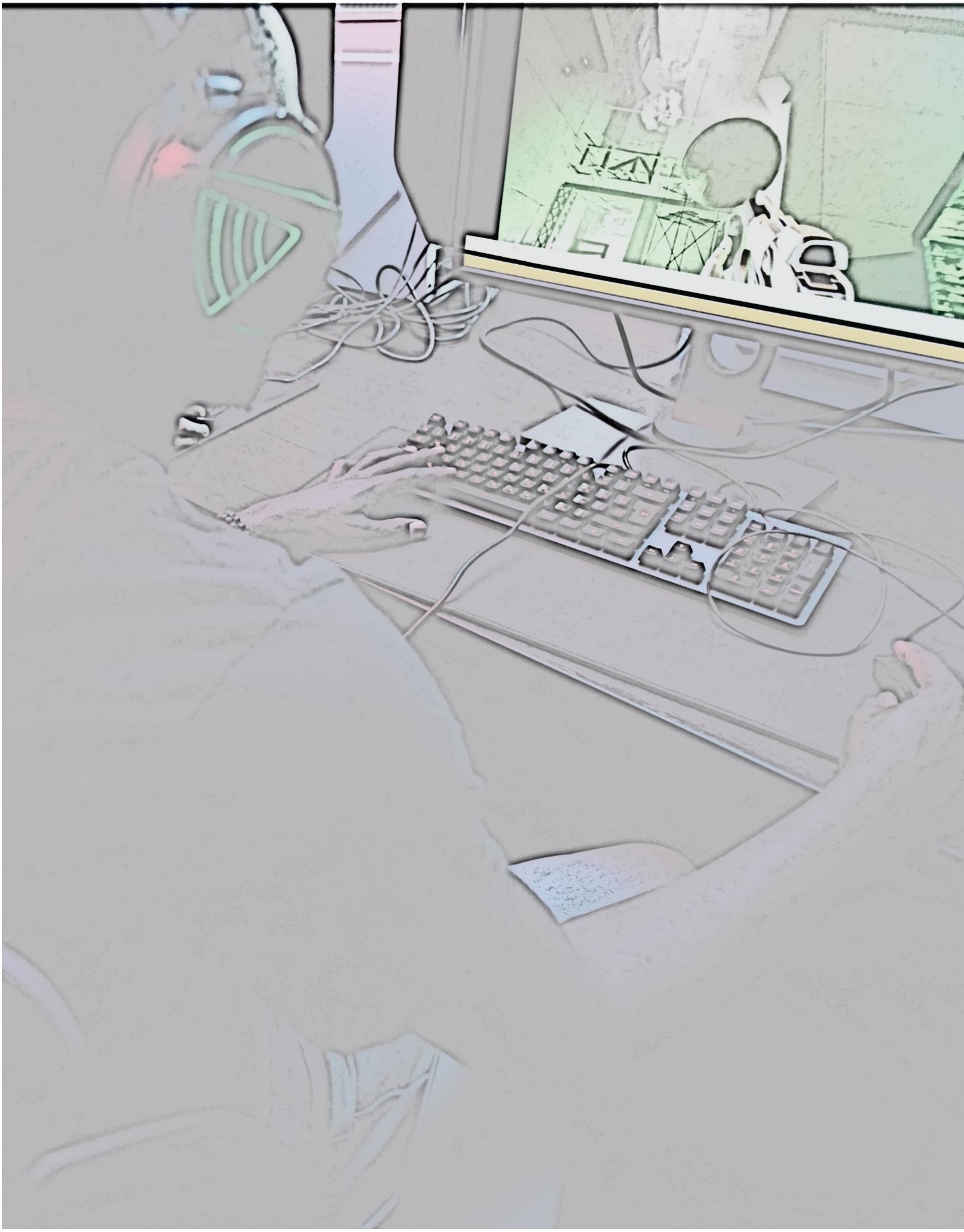
[124] Hart, 'Children's Participation: From Tokenism to Citizenship' (1979) *UNICEF Innocenti Research Essay* at 6 (accessible at https://www.unicef-irc.org/publications/100-childrens-participation-from-tokenism-to-citizenship.html)
[125] Id at 11.
[126] UNICEF above n 16 at 13.
[127] UNICEF and Save the Children, 'Every Child's Right to be Heard' (2011) at 36 (accessible at https://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf).
[128] For more information see Web rangers (accessible at https://webrangers.co.za/).

Recommendations from the Web Rangers

The Web Rangers promote values of kindness, integrity and inclusivity when participating online. Their ideal online world includes the following:

- No cyber bullying
- No pressure to be cool. Less judgment online. Just be yourself
- Less materialism expressed online
- Popularity used for good
- No hate speech
- No body shaming
- Being understood by peers online and being understanding
- Encouraging open-mindedness

MEDIAMONITORING AFRICA



// ONLINE SAFETY

While the discussion document thus far has grappled with the more positive and empowering elements of the digital environment, we would be remiss not to engage with the different threats that may jeopardise children's safety online. It is however important to note, that discussions around online safety should be viewed through an empowering lens whereby children, parents and caregivers, can through enhancing their digital literacy skills, be both empowered and safe online. That being said, we accept that children need appropriate care, safeguards and legal protections,[129] as they are "less able to protect themselves, more needful of protection, and less resourceful in self-maintenance than adults."[130] Therefore, it is important that children are protected against harms, not only because they are vulnerable, but because they need safe spaces to develop and participate in society.

This section deals with two primary issues that can threaten a child's online experience. The first relates to online harms looking particularly at cyberbullying and online sexual abuse and exploitation. The second relates to children's privacy online, with a focus on issues around data protection. It is important for young people to gain critical skills and knowledge around online safety, and in turn promote safe internet usage, in order to champion their rights in the digital world.[131]

Online harms

> "The online world did not create crimes of child sexual abuse and exploitation, but it has changed them in two significant ways: It has facilitated existing 'common' forms and created wholly new forms."[132]

Online sexual exploitation and abuse of children are acts that are committed, abetted or aggravated, in part or fully, by the use of ICTs, including cyberbullying, grooming, child sexual abuse material, live streaming of child sexual abuse, and coercing and blackmailing children for sexual purposes.[133]

[129] CRC above n 1.
[130] *Centre for Child Law and Others v Media 24 Limited and Others* [2019] ZACC 46 (*Centre for Child Law v Media 24*) at para 26 (accessible at http://www.saflii.org/za/cases/ZACC/2019/46.html).
[131] Web Rangers above n 128.
[132] UNICEF above n 16 at 76.
[133] See United Nations Office on Drugs and Crime (UNODC), 'Interpersonal Cybercrime: Online child sexual exploitation and abuse' (2020) (accessible at https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html) and ECPAT International, Online child sexual exploitation' (accessible at https://www.ecpat.org/what-we-do/online-child-sexual-exploitation/). See also APC Submissions above n 67.

Online/Cyber Bullying

Online/cyber bullying appears to be one of the more prevalent online harms, which extends traditional forms of bullying to the digital realm. It is often complicated and difficult to address because perpetrators can hide behind screen names with perceived anonymity, and it "enables participation by an infinite audience of bystanders and cyber-voyeurs in posting demeaning insults, uttering lewd threats, spreading false rumours, posting jokes and embarrassing videotapes on social networking sites."[134]

In response to the pervasiveness of bullying online, the UN General Assembly adopted a resolution recognising "that bullying, including cyberbullying, can be expressed through violence and aggression and that bullying in any form can have a negative impact on the rights of children and their well-being" and that which can have "potential long-term impact on the enjoyment of the human rights of children and negative effects on children affected by or involved in bullying".[135] The General Assembly further noted that the—

> "risks associated with the misuse of new information and communication technologies and applications, including increased vulnerability to bullying, while stressing that these can create new ways to enhance education and, inter alia, learn and teach about the rights of the child, and can be useful tools to promote children's protection."[136]

In 2016, Special Representative of the Secretary-General on Violence against Children explained cyberbullying as follows:

> "Cyberbullying may be defined 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. It is typically carried out repeatedly and over time and is often characterized by an imbalance of power.
>
> It does not require the physical presence of the victim; indeed, it can be facilitated by anonymity. A single act online can be observed and disseminated by a large number of people, making it very difficult to assess how the victim will experience or re-experience it.
>
> A variety of media and platforms, including online social networks, e-mail, chat rooms, blogs, instant messaging and text messaging, are used in cyberbullying."[137]

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[134] Shariff, 'Defining the Lines on Cyberbullying: Navigating a balance between child protection, privacy, autonomy and informed policy' (accessible at https://www.unicef-irc.org/article/839-defining-the-lines-on-cyberbullying-navigating-a-balance-between-child-protection.html).

[135] United Nations General Assembly, 'Resolution 69/158: Protecting children from bullying' (2015) (accessible at https://undocs.org/A/RES/69/158).

[136] Id.

[137] United Nations General Assembly, 'Annual report of the Special Representative of the Secretary-General on Violence against Children' A/HRC/31/20 (2016) at paras 60-62 (accessible at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A_HRC_31_20_E.doc).

In line with MMA's emphasise on digital literacy and participation and agency and, the Special Representative suggested that prevention is intrinsically linked to awareness-raising and children's empowerment, noting:

> "Preventing cyberbullying is a priority for children and adults. Often occurring on a continuum, it needs to be tackled in schools and in the home. Initiatives in this area encompass awareness-raising and understanding what constitutes cyberbullying and its associated risks and consequences, both intended and unintended. In this process it is important to promote an ethical approach to cyberspace communication, strengthening the values of respect and concern for others among children and their sense of responsibility to prevent discrimination and promote online safety; it is equally essential that children learn ways of ensuring their own protection, including by learning how to identify the types of online risks, ways of coping with the distress online abuse causes, ways to enhance their resilience and ways to avoid situations in which their image, honour and reputation may be compromised."[138]

More recently, the Draft General Comment, which includes several references to cyberbullying records that children should be protected from the risk and threat to their right to life, survival and development in the digital environment, which include content, contact and conduct risks, and threats such as bullying.[139] The Draft General Comment notes that the tensions between anonymity as enhancing privacy rights on the one hand, and the use of anonymous practices to hide harmful or hurtful behaviour, such as bullying on the other.[140]

The Draft General Comment raises issues around discrimination noting that "children with disabilities can be more exposed to online risks, including bullying in the digital environment."[141] Finally, and in line with the theme of empowerment, the Draft General Comments calls on states to "promote awareness of the risks of children's exposure to potentially harmful content, contact and conduct, including cyberbullying and other forms of violence, and coping strategies to reduce harm and build children's resilience."[142]

Addressing the scourge of cyberbullying requires a multi-stakeholder effort, the state, the private sector, the schooling system and family structures can play a significant role in supporting children both as victims and survivors and as perpetrators. However, and as we move towards a Digital Rights Charter, designed for children, by children, it is necessary to emphasise the role children must play in respecting one another and ensuring that the online world is safe and inclusive.

[138] Id at para 91.
[139] Draft General Comment above n 4 at para 16.
[140] Id at para 78.
[141] Id at para 100.
[142] Id at para 113.

Online sexual abuse and exploitation

Evidence suggests that this is a widespread and growing problem, with new crimes emerging as technology advances and offenders having access to children around the clock.[143] Reports indicate that children in South Africa are also exposed to these issues. The South African Kids Online Report records:

- 51.2% of child participants reported seen any sexual images online in the past year.
- 30.5% had received a sexual message.
- 20.5% of child participants had been sent a message they did not want with advertisements for or links to X-rated websites.
- 19.2% opened a message or a link in a message that showed pictures of naked people or of people having sex that they did not want.
- 20.3% had seen or received a sexual message, image or video about someone else that they did not want.
- More boys than girls experienced this kind of unwanted sexual contact.
- More girls than boys had been asked unwanted sexual questions about themselves.[144]

In the context of COVID-19, UNICEF warned that:

> "In South Africa, the current lockdown may put children's privacy in danger as they spend more time online. They may be more likely to encounter online risks, including being exposed to child sexual abuse material, or child sexual abuse and exploitation. And while sharing images and stories of lockdown and its challenges through social media is a way to stay connected, children's rights to privacy and protection should not be compromised."[145]

There is an increasing acceptance that "internet rights and freedoms are more important now than ever before,"[146] particularly considering lockdown, social distancing, and reconfigurations to education systems and economic activity. For children, digital solutions are becoming central to their learning, socialization and play.[147] As result of COVID-19 many aspects of our daily lives are moving online, and it is becoming increasingly imperative that children, parents and caregivers are aware of the various threat that exist online, as well as what steps to take in being both proactive and reactive.

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[143] Id. See further International Centre for Missing & Exploited Children, 'Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review' (2017) (accessible at https://www.icmec.org/wp-content/uploads/2017/09/Online-Grooming-of-Children_FINAL_9-18-17.pdf).

[144] Burton above n 25.

[145] UNICEF, 'Children at increased risk of harm online during global COVID-19 pandemic' (2020) (accessible at https://www.unicef.org/southafrica/press-releases/children-increased-risk-harm-online-during-global-covid-19-pandemic-unicef).

[146] African Declaration on Internet Rights and Freedoms Coalition, 'Position Paper in response to the COVID-19 pandemic' (2020) (accessible at https://www.apc.org/sites/default/files/AfDecPositionPaperCOVID19_EN.pdf).

[147] UNICEF, 'COVID-19 and its implications for protecting children online' (2020) (accessible at https://www.unicef.org/media/67396/file/COVID-19%20and%20Its%20Implications%20for%20Protecting%20Children%20Online.pdf).

In order to be informed, it is necessary to understand what type of conduct falls under the category of online sexual abuse and exploitation. The table below, drawing from resources from the United Nations Office on Drugs and Crime (UNODC) and ECPAT International, seeks to give some guidance in this regards[148]:

CONDUCT	DESCRIPTION
Online child sexual abuse and online child sexual exploitation	The use of information and communication technology as a means of sexually abusing and/or sexually exploit children
Grooming of children for sexual purposes	This is a practice by means of which an adult 'befriends' or develops a relationship with a child (often online) with the intention of sexually abusing them. ECPAT International notes that the "proliferation of social media, messaging and live-streaming apps in recent years have seen a dramatic increase in reports of this crime."
Child sexual abuse/exploitation material	The representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes.
Live streaming of child sexual abuse	This the live-streaming, or real-time broadcasting sexual abuse of children whereby online video applications are used to view, and sometimes interact with the sexual abuse of children.
Coercing and blackmailing children for sexual purposes	Producing and/or utilizing sexual images and/or videos depicting a child, for the purposes of sexual, financial or other personal gains.

Towards protective frameworks

Existing protections

Existing legal frameworks that recognise the evolving capacities of children, equally provide protection from harm and apply to children's rights online.[149] Several articles of the CRC are applicable in this regard:[150]

- Article 17(e) encourages the development of appropriate guidelines for the protection of the child from information and material injurious to their well-being.

[148] UNODC, ' Interpersonal crimes' (2020) (accessible at https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html); and ECPAT, 'Online sexual child sexual exploitation' (accessible at https://www.ecpat.org/what-we-do/online-child-sexual-exploitation/).

[149] See Livingstone, 'Children's digital rights: a priority' (2014) (accessible at http://eprints.lse.ac.uk/60727/1/__lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Livingstone%2C%20S_Childrens%20digital%20rights_Livingstone_Childrens%20digital%20rights_2015.pdf). See also Bulger et al, 'Where policy and practice collide: Comparing United States, South African and European Union approaches to protecting children online' News Media and Society (2017) at 6 (accessible at https://www.saferspaces.org.za/uploads/files/Burger_et_al_Where_Policy_and_Practice_Collide_2016.pdf). For an overview of existing protections see Newell, 'Legal Framework for combatting sexual exploitation of children' (2008) *UNICEF Innocenti Research Centre* (accessible at https://www.unicef-irc.org/files/documents/d-3743-Legal-frameworks-for-comb.pdf).

[150] CRC above n 1.

- Article 19 provides for the protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.
- Article 34 requires states parties to protect the child from all forms of sexual exploitation and sexual abuse, and prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and the exploitative use of children in pornographic performances and materials.
- Article 36 envisages the protection of the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

The ACRWC provides that state parties must protect the child from all forms of sexual exploitation and sexual abuse, in particular, the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices or the use of children in pornographic activities, performances and materials.[151]

While the CRC and ACRWC do not explicitly address online harms, it reasonable to view these protections as equally existing online

International instruments

There are also international instruments that require states to address harms that occur through the use of ICTs:

- In 2002 the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Optional Convention) was developed in response to a need to extend the measures states parties should take to guarantee the protection of the child from the sale of children, child prostitution and child pornography.[152] Notably, the Optional Protocol expressed concern about the "growing availability of child pornography on the Internet and other evolving technologies" and restated the call for "the worldwide criminalisation of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry."[153]

- The Budapest Convention on Cybercrime (Budapest Convention), signed by South Africa in 2001, defines child pornography to include pornographic material that visually depicts "a minor engaged in sexually explicit conduct, "a person appearing to be a minor engaged in sexually explicit conduct" or "realistic images representing a minor engaged in sexually explicit conduct."[154] State parties to the Budapest Convention are required to adopt legislative and other measures to criminalise the producing child pornography for the purpose of its distribution

[151] ACRWC above n 7.
[152] Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2002) (accessible at https://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf). South Africa assented to the Optional Protocol in 2003 (accessible at https://indicators.ohchr.org/).
[153] Id.
[154] Budapest Convention on Cybercrime (2001) (accessible at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185).

through a computer system; offering or making available child pornography through a computer system; distributing or transmitting child pornography through a computer system; procuring child pornography through a computer system for oneself or for another person; possessing child pornography in a computer system or on a computer-data storage medium.

- In 2007 the Council of Europe signed the Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, commonly known as the Lanzarote Convention.[155] The preamble notes that the sexual exploitation and sexual abuse of children have grown to worrying proportions, noting with particular concern the increased use of ICTs in this regard. The Lanzarote Convention provides that state parties should the act of "knowingly obtaining access, through information and communication technologies, to child pornography" should be criminalised.[156]

International developments

Despite these existing protections, there have been recent developments that have stressed the need for a better response to the challenge's children face online. The Committee on the Rights of the Child (Committee) is drafting a general comment on children's rights in relation to the digital environment. In the call for submissions, the Committee explained the purpose of the general comment is to "clarify how this rapidly evolving environment impacts on the full range of children's rights in positive and negative ways", and to "strengthen the case for greater action and elaborate what measures are required by States to meet their obligations to promote and protect children's rights in and through the digital environment, and to ensure that other actors, including business enterprises, meet their responsibilities."[157]

States, regional organisations, and civil society organisations have made submissions on this. Below are some of the notable submissions on protection from violence, sexual exploitation and other harm:

- Children's perspectives are key: efforts to understand what children find upsetting, and what children feel is unwanted content is necessary to understand the difference between experiences that children find harmful, and experiences that adults believe are harmful for children.[158]
- Increased efforts to collect reliable data and evidence: while it is common cause that these harms are experienced on a wide scale, there is need for better and more reliable research to assist in informing decision-makers' understanding of the true nature and scope of this widespread form of child sexual exploitation.[159] This can include more evidence on interventions that have proven to be effective in informing children and caregivers on the online risks and measures that clearly delineates the distinction between risks and harms.[160]

[155] Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (2007) (accessible at https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201).
[156] Id at article 20.
[157] Committee Concept Note above n 3.
[158] UNICEF Submission to Committee Concept Note (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).
[159] ECPACT International Submission to Committee Concept Note https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).
[160] UNICEF Submission above n 158.

- Implementation of appropriate support services to ensure a victim/survivor-centred approach: Appropriate support services and accessible reporting mechanisms need to be established and the needs and rights of child victims/survivors must be prioritised during investigations.[161]
- Accountability of the tech industry: private actors in the ICT field play a role facilitating, enabling and propagating the sexual exploitation of children through the misuse of their online platforms, systems and services. The tech industry can also play a key role in creating systems and platforms that can help identify and remove illegal content mitigating the dissemination of child sexual exploitation and abuse material.[162] Accountability of the tech industry can be global in nature and should include the adoption of stringent policies, and adequate adequate guidelines and measures to protect children from online sexual exploitation, including grooming.[163]
- Development and harmonisation of national legal frameworks: few countries have national laws aligned with international standards on issues related to child sexual abuse materials.[164] This should include effective reporting measures, development of awareness-raising and education programs, prosecution of internet platforms that knowingly facilitate sex trafficking and sexual exploitation.[165]
- International cooperation: Given the global nature of the threat, international cooperation is essential.[166]

This is a welcome development, particularly the request of the Committee to understand how children's views and experiences can be expressed and taken into account when formulating policies and practices which affect their access to, and use of, digital technologies.[167] The "inclusion of the voices and experiences of young people in the decisions made about safety and security online" is key to realising children's digital rights.[168]

South African developments

Closer to home, section 28 of the Constitution, which requires that the best interests of the child are of paramount importance in every matter concerning the child, also provides that every child has the right to be protected from abuse and to be protected from exploitative labour practices.

Recently, the South African Law Reform Commission (SALRC) began reviewing the legislative framework that currently applies to children in respect of exposure to pornography and child sexual abuse material.[169] The Discussion Paper and Draft Amendment Bill, released in April 2019 identified five areas of concern:

Access to or exposure of a child to pornography

Creation and distribution of child sexual abuse material

[161] ECPACT submission above n 159.
[162] Id.
[163] UNICEF above n 158 and Equality Now submission on Committee Concept Note (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx).
[164] UNICEF id.
[165] Equality Now submission above n 163.
[166] ECPACT submission above n 150.
[167] Committee Concept Note above n 3.
[168] FPI above n 97.
[169] South African Law Reform Commission (SALRC), 'Call for comment on discussion paper on sexual offences (pornography and children) and an accompanying draft bill' (2019) (accessible at https://pmg.org.za/call-for-comment/835/).

Investigation, procedural matters and sentencing

Explicit self-images created and distributed by a child

Grooming of a child and other sexual contact crimes associated with or which are facilitated by child sexual abuse material.

The SALRC acknowledges that these issues need to be considered in the context of present-day technologies such as the internet, webcams, and mobile phones, as well as technology yet to be developed.[170]

MMA made a submission to the SALRC,[171] and facilitated the drafting of a separate submission prepared by children.[172] Below are is an outline of some of the recommendations made by MMA:

- Scope of child sexual abuse material: MMA supports of the use "child sexual abuse material" (CSAM). However, it is important to ensure that the definition is appropriately circumscribed to make clear precisely what would fall within this definition. It is also necessary to have regard to the importance of freedom of expression both on and offline, the sexual development of children, and the provision of relevant and appropriate materials to enable to children to self-actualise. Regard must also be had to the rehabilitative and restorative considerations of children who are affected by CSAM.
- Reconciliation of different legislation: MMA suggests that the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 be the primary legal instrument that deals with CSAM.
- Alignment of definitions: MMA notes concerns that removing the requirement of intention in the definition of CSAM is untenable and needs to be remedied as the intended outcome and effect of the display or distribution of the image is what is relevant. Further to this, MMS emphasises that it is necessary to distinguish between pornography and other forms of sexual content, noting the importance of children seeking relevant sexual material to understand their sexuality, identity and personality. MMA recommends that relevant definitions include an understanding of the educational value of certain material.
- Consensual self-generated child sexual abuse material: MMA submits that consensual self-generated CSAM should not be an offence. In order for it to be consensual, the consent must be freely given, in a manner that is specific, informed and unambiguous. When grappling with consent SALRC must be mindful of the immaturity, vulnerability and ease of influence regarding children.
- Multi-stakeholder approach: There is a need to ensure that there is appropriate coordination across government, as well as engagement with relevant private sector actors – particularly social media platforms – to seek a common approach and a framework for cooperation.
- Education and awareness-raising campaigns: Learners at schools, at the appropriate ages should be engaging with the topics and developing understandings of the legal framework, the consequences of certain acts, including digital literacy training to equip them to identify threats and harm and make informed and responsible decisions online.

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[170] Id.

[171] MMA, 'Submission by Media Monitoring Africa on behalf of 32 children: discussion paper on sexual offences (pornography and children' (2019) (accessible at http://mediamonitoringafrica.org/wp-content/uploads/2019/12/Sexual-Offences-Discussion-Paper-149_MMAs-Childrens-Sumission_Final_v2.pdf).

[172] MMA, 'Submission by Media Monitoring Africa: discussion paper on sexual offences (pornography and children) (2019) (accessible at http://mediamonitoringafrica.org/wp-content/uploads/2019/12/190831-MMA-Submission-to-the-SALRC-FINAL.pdf).

Below are the recommendations made by 32 children, who have put forward their views in an effort to respond to Discussion Paper:

- They suggested the creation of television programmes to educate the public, more especially children, about CSAM. Programmes starring children and centred on their issues, similar to Soul Buddies and Soul City.
- The children also mentioned that the Web Rangers programme initiated by MMA could also be of great assistance in raising awareness and promoting online safety against child sexual abuse material.
- Initiate youth-led organisations that assist in raising awareness, especially at schools, which can also work hand in hand with workshops for parents to educate them about child sexual abuse material and online safety.
- The group also asked if more can be done to restrict the number of pop-up cookies (usually advertising porn and scams) on popular, educational and government websites.
- The definition of CSAM should reflect that child pornography is a crime that will always have a victim. The law should mention that as much as CSAM is about children engaging in a sexual act it should also mention that child pornography affects all children who watch it.
- Some children came up with controversial suggestions, stating that parents should watch porn with their children and explain to them what it is.
- "Parents don't talk to us about these things, so we go out and we want to see it [porn] for ourselves. If parents showed us and talked to us about porn, we would be more confident approaching them." The above statement was challenged by others who said that showing pornography to children in an effort to educate them defeated the whole purpose. They suggested that positive sex education done appropriately in line with children's' age groups, can assist in decreasing CSAM generated by children.

APC and the Research ICT Africa also made submissions to the SALRC, which recorded that "[t]he SALRC arguably adopts an overly protectionist approach to providing a safe environment online while neglecting the need to promote children's rights and the empowering potential of technology."[173] They further submitted that online and offline experiences are closely related and interlinked, and that the SALRC should interrogate the binary distinction it makes between 'offline' and 'online' harms. They emphasised that there is need to differentiate between risk and harm given that the potential existence of online risks does not necessarily lead to experiences of harm. They also advocated for the use of official languages when it comes to warning messages, and terms and conditions for consent.[174]

It is clear and locally and internationally efforts are being made to address online harms and ensure the safety of children online. Adult understandings often dominate these discussions, and children are often

[173] APC and the Research ICT Africa, 'Submission to the South African Law Reform Commission Discussion Paper 149 on Sexual Offences: Pornography and Children' (2019) (accessible at https://researchictafrica.net/wp/wp-content/uploads/2019/07/2019_Submission-SALC_APCRIA.pdf).
[174] Id.

ignored.[175] As the efforts continue, children's views, understandings and experiences must necessarily be considered as a central and integral part of the process.

Data protection

> "Children's right to privacy is multifaceted, and the physical, communications, informational and decisional aspects of children's privacy are all relevant in the digital world. Children's physical privacy is affected by technologies that track, monitor and broadcast children's live images, behaviour or locations. Children's communications privacy is threatened where their posts, chats, messages or calls are intercepted by governments or other actors, and children's informational privacy can be put at risk when children's personal data are collected, stored or processed. Children's decisional privacy may be affected by measures that restrict access to beneficial information, inhibiting children's ability to make independent decisions in line with their developing capacities."[176]

The above passage captures the privacy concerns that exist while children are online, demonstrating the need to balance protecting children and their privacy rights, whilst ensuring there is not excessive limitations on their ability to express themselves and access information. Similarly, to the online harms discusses above there are existing frameworks that safeguard children's privacy, and there are specific and emergent frameworks that address children's privacy online.

Existing protections and lessons from other jurisdictions

Article 16 of the CRC requires that "no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation" and the "the child has the right to the protection of the law against such interference or attacks."[177] Article 10 of the ACRWC provides:

> "No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks."[178]

[175] Bulgar et al ' Where policy and practice collide: Comparing United States, South African and European Union approaches to protecting children online' (2017) *New Media and Society* at 10 (accessible ay https://www.saferspaces.org.za/uploads/files/Burger_et_al_Where_Policy_and_Practice_Collide_2016.pdf) at 10.
[176] UNICEF above n 64.
[177] CRC above n 1.
[178] ACRWC above n 7.

The draft general comment being developed by the Committee on the Rights of the Child has included the protection of privacy, identity and data processing as key groups of rights to be realised in a digital world.[179] But before turning to the submissions on this, it is necessary to unpack some of the existing protections available in other jurisdictions, namely the European Union and India.

The European Union's General Data Protection Regulation (GDPR) provides particular protection for children noting that they "may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data".[180] Some of the notable references to children in the GDPR include the requirement privacy notes and information and communication that is addressed to a child must be clear and in plain language so that a child will be able to understand what will happen to their personal data and what rights they have.[181] Children have the same rights as adults when it comes to personal data; request rectification; objecting to processing and having their personal data erased.[182] Beyond the general protections afforded to children the GDRP makes specific provision concerning consent, including, when consent is the ground for data processing and the services are offered directly to a child, data processing shall be lawful when the data subject is at least 16 years old. Where the child is younger than 16 years old, consent must be given or authorised by the holder of parental responsibility, however, member states may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.[183]

In 2018, India published its Personal Data Protection Bill, which applies to the processing of personal data where such data has been collected, disclosed, shared or otherwise processed in India; and by the State, any Indian company, any Indian citizen or any person or body of persons incorporated or created under Indian law.[184] The Bill gives effect to the principle of the best interests of the child by requiring that the processing of personal data of children must protect and advance their rights and best interests.[185] The Bill further requires that there be appropriate mechanisms for age verification and parental consent shall be incorporated when the personal data of children is processed.[186] The profiling, tracking, or behavioural monitoring of, or targeted advertising directed at, children any other processing of personal data that can cause significant harm to the child is prohibited.[187] It appears that the Bill provides more comprehensive protections for children than the GDPR, including a high age threshold, and requiring the verification of a child's age before any processing. Parental consent is needed in terms of all processing of children's data, not just where consent is the legal basis.

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[179] Committee Concept Note above n 3.
[180] General Data Protection Regulation (2016) at para 38 (accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679).
[181] Id at para 58
[182] GDPR, 'Applications: Children and the GDPR' (accessible at https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr-1-0.pdf).
[183] See article 8 and Milkaite and Lievens, 'Children's Rights to Privacy and Data Protection Around the World: Challenges in the Digital Realm' (2019) *European Journal of Law and Technology* (accessible at https://biblio.ugent.be/publication/8618586).
[184] Personal Data Protection Bill (2018) (accessible at https://meity.gov.in/writereaddata/files/Personal_Data_Protection_Bill,2018.pdf).
[185] Id at chapter 5.
[186] Id.
[187] Id.

International developments

Both the GDPR and the Bill indicate a marked shift towards data protection, including the protection of children's personal data. The call from the Committee on the Right of the Child, further illustrate an intention to ensure a unified response to children's privacy online. Below are some notable submissions that addressed privacy, identity and data processing considerations for the drafting of the new general comment on children's rights in the digital environment.

- Expanding on the concrete harms of data processing of children: It is necessary for the general comment to engage with the reasons why data processing is itself a concrete concern for children's rights, in order to understand the current and potential future risks and how these should be addressed.[188]
- Consulting with children: Children should be part of the conversations regarding the development of laws that affect them, and the laws must be understandable and accessible.[189] Their views and experiences should be considered, and active consultations and engagement with children when it comes to drafting privacy and data protection policies.[190]
- Surveillance: There is need to engage with the impact of surveillance, particularly when there should be a distinction between information belonging to adults and children.[191] The best interest's principle should be relied on in the context of mass digital services and technologies.[192]
- Data processing: When processing children's personal information data minimisation should be respected and free, explicit, informed and clear consent should be required and withdrawable.[193]

After incorporating some these submissions, the Draft General Comment has addressed data protection in three overarching ways:

- Commercial advertising and marketing: The digital environment include businesses that rely financially on processing personal data to target advertising, marketing, and revenue-generating or paid content; this intentionally and unintentionally impacts on the digital experience of children. Many of these processes involve multiple commercial partners, creating a supply chain of commercial activity and processing of personal data that may result in violations of children's rights, for example by including in the methods of advertising design features that anticipate and guide a child's action towards more, or more extreme content, or automated notifications that can interrupt sleep, or use a child's personal information or location to target advertisements or other commercially-driven content. Where parental consent is required to process children's personal data, States should require that efforts be made to verify that consent is informed, meaningful and given by the actual parent or caregiver of the child.
- Privacy: Digital technologies are used to collect data about, inter alia, children's identities, activities, location, communication, preferences and relationships. Children's personal data are

[188] UNICEF submissions above n 158.
[189] Human Rights Watch submission on Committee Concept Note (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions_Concept_GC_Digital_Environment.aspx).
[190] Privacy Salon submission on Committee Concept Note (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions_Concept_GC_Digital_Environment.aspx).
[191] Human Rights Watch Submission above n 189.
[192] UNICEF submission above n 158.
[193] Belgian Better Internet Consortium submission on Committee Concept Note (accessible at https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions_Concept_GC_Digital_Environment.aspx).

often processed to offer educational, health and other benefits to children. Certain combinations of personal data, including biometric data can be used to uniquely identify a child. Digital practices such as automated data processing, behavioural targeting, mandatory identity verification, and mass surveillance are becoming routine. Such practices may lead to arbitrary or unlawful interference with children's right to privacy; they are rarely transparent to children or their parents or caregivers, and may have adverse consequences on children, which may extend to later stages of their lives. Children are concerned about their privacy and want to better understand how their data is collected and used.

- Consent: Obtaining consent to process a child's data must reflect consent that informed and freely given by the child or, depending on the child's age and maturity, by the parent or caregiver, and obtained prior to the processing. Further to this, children must be able to withdraw their consent and object to personal data processing, at least in cases where the data controller does not demonstrate legitimate, overriding grounds for the processing.

Data protection in South Africa

The Constitutional Court has acknowledged that the "right to privacy is even more pressing when dealing with children".[194] The Protection of Personal Information Act (POPIA), which has recently come into effect, acknowledges that children are deserving of particular protection when it comes to the processing of their personal data. The personal information of a child may not be processed, unless it is carries out the prior consent of a competent person, it is necessary for the establishment, exercise or defence of a right or obligation in law, is necessary to comply with an obligation of international public law, is for historical, statistical or research purposes, or is personal information that has been made public by the child with the consent of a competent person.[195]

A key component of online safety as it pertains to privacy requires children to be digitally literate. When asked about social networking or gaming sites, 66.1% of child participants indicated that they did not know what privacy settings are.[196] It is therefore clear that significant effort needs to be channelled into advancing digital literacy, with the focus on data privacy.

> "Respecting children's rights to privacy and the protection of personal data in the context of the Internet and digital technologies means, first and foremost, that companies have a legitimate basis for processing children's personal data and do so in a fair and lawful manner. Children's privacy is best protected where children provide free and informed consent for the processing of their personal data or, where they lack the capacity to do so, parents or guardians provide this consent on children's behalf. Children's right to privacy should be considered in the design of websites, platforms, products, services and applications, including devices and toys, and with regard to default privacy settings."[197]

[194] *Centre for child law v Media 24* above n 130.
[195] The Protection of Personal Information Act 4 of 2013 (POPIA) at part C, sections 34-5 (accessible at https://www.gov.za/documents/protection-personal-information-act).
[196] Burton above n 25.
[197] UNICEF above n 64.

MMA's recent submissions

MMA's submissions to the Committee on the Rights of Child further considered the ambit of children's privacy rights online.[198] While these submissions were made in the context of international law, be are of the view that our recommendations could and should be applied in the regional and domestic context. We made three key submissions regarding children's privacy online:

1. Privacy policies and consent: As discussed above, children understand what they are consenting to, this extends to their understandings of how their personal data is collected and used. We recommended that through legislative and other measures, States should ensure that all actors processing the data of children adopt privacy policies for such purposes. Such policies must be user-friendly and accessible for parents and caregivers with diverse digital literacy and literacy skills. All privacy policies must be accompanied by child-friendly versions, taking into account the evolving capacities of children and must be drafted in a manner that enables children to make informed decisions about their personal data.

2. An enabling environment: We noted that the duty rests firmly on States to create an appropriate enabling environment where children can exercise and realise their privacy rights. We recommended that this duty includes ensuring that there are child-specific provisions and safeguards are in place in all privacy and data protection legislation, including surveillance-related legislation.

3. Identity protection and digital footprints: Following engagements with Web Rangers, and prior litigation on issues pertaining to identifying children in the media,[199] we noted that for children who are, or have been involved in the criminal justice system, their digital footprint poses interesting questions in relation to their privacy. We therefore recommended that the General Comment give due consideration to children's identity protection and their digital footprint, and ensure that States take legislative steps to prohibit the publication, in any manner, including via social media or other online platforms, of information which reveals or may reveal the identity of a child who is a survivor, victim, witness, or is in conflict with the law. Such prohibitions may be subject to judicial discretion where a judicial officer deems it just and equitable and in the public interest to authorise publication of such information.

MMA notes, that at the time publication of this Discussion Document, the Portfolio Committee on Social Development called for comment on the Children's Amendment Bill.[200] The Bill aims to amend the Children's Act, 2005, so as to among other things, provide for children's right to privacy and protection of information. The Bill proposes the following section be inserted as section 6A in the Children's Act after section 6:

[198] MMA Submission on Draft General Comment above n 109.
[199] Centre for Child above n 130.
[200] Children's Amendment Bill [B18 – 2020] (accessible at https://pmg.org.za/bill/964/).

> "Children's right to privacy and protection of personal information 6A. (1) A child's right to privacy and the protection of personal information is subject to the Films and Publication Act, 1996 (Act No. 65 of 1996), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), the Promotion of Access to Information Act, 2010 (Act No. 2 of 2010), the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or any other law protecting the privacy and protection of personal information of the child.'"

While it is difficult to determine how the law reform process will unfold, this inclusion is an important recognition of children's privacy and data protection rights. MMA intends to participate in and monitor this law reform process.

Recommendations from the Web Rangers

Online safety is a priority for the Web Rangers, and their goal is to ensure that children of all ages feel safe on the line. The following were important points raised by the Web Rangers regarding online safety:

- Children have the right to be protected from the different types of cyber ills online.
- Children have the right to be protected from CSAM.
- Children, whether victims of perpetrators of CSAM, have the right to have their identity protected and have their dignity respected.
- Children, who are perpetrators of CSAM, have the right to be educated about their crime.
- Children, who are perpetrators of CSAM, have the right to a fair trial.
- Children have the right to privacy online.
- The business sector needs to ensure that the terms of services for social media platforms are short, easy to understand, and informative.
- The business sector must limit the requests for personal information on some platforms, especially for children.

MEDIAMONITORING AFRICA

// CONCLUSION – TOWARDS A DIGITAL RIGHTS CHARTER

We live in a world that exists both on- and offline, and the rights we have offline should be capable of being enjoyed online. Children, in particular, deserve an internet that is accessible, safe and enables their participation in decisions that affect them. As we move towards a nuanced understanding of access, safety and participation, it is important to acknowledge that age, gender, geographical and political contexts, disability, socio-economic backgrounds and differing cultures and ethnicities influence how children access and engage with technology.

As we move towards ensuring that there is affordable, fast and equal access to the internet, and that children are given equal opportunities to develop digital literacy skills on an ongoing basis, the participation of children in these discussions is vital. Furthermore, as we work towards an internet that is inclusive of children's needs, differing abilities and is reflective of their experiences and realities it is imperative we must hear from them and understand how they view access. While we fight for safer spaces online, free from harm, we must listen to what children need, what they have experienced, and what they want.

By way of conclusion, this discussion document includes a proposed Digital Rights Charter, developed along with Web Ranger participants who discussed and debated the type of ideal digital world that they would want. This seeks to give effect to an internet that is accessible, safe and empowering, and that advances the development of children in line with their rights and interests.

// DIGITAL RIGHTS CHARTER

CHILDRENS RIGHTS APPLY ONLINE

1. The same rights that children have offline must be respected, protected and promoted online.

MEANINGFUL ACCESS

1. All children deserve meaningful access to the internet. Schools and community centres should be supported to enable them to provide universal access to the internet, with meaningful connectivity. Where internet access is not free, it must be affordable.

2. Meaningful access must be enabled through a sustainable source of electricity, and the use of solar power should be enabled and encouraged across homes in South Africa.

3. Children should have access to inclusive and appropriate ICT devices that are accessible to children regardless of their differing abilities.

4. Children must be afforded the opportunity, through their schooling, to participate in digital literacy and skills development programmes that equip them with necessary technical, social and critical skills to enable them to safely navigate online spaces. Digital, media and information literacy training should be provided in schools and at community centres. Basic coding, web development and other practical skills should be incorporated in the digital literacy programmes.

5. Children must be able to access a variety of relevant and appropriate content that allows them to advance their knowledge and understanding of various rights and issues, including relevant and appropriate content regarding sexual and reproductive health rights. Content should be available and accessible in various languages.

6. Children must be afforded meaningful access on an equal and equitable basis, and such access must promote equality and inclusion. Children with disabilities must have access to user-friendly and accessible ICT devices.

GENUINE PARTICIPATION

1. Children should be treated – and treat each other – with dignity and respect. All persons should work towards fostering the best interests of children, including by encouraging, uplifting and empowering children.

2. Children must be afforded the opportunity to meaningfully participate in decisions that affect them, and must, where reasonably possible, be included in discussions around internet governance and the development of child-centred programmes, platforms and spaces.

3. Children should be encouraged to use the digital environment as a space to participate in their own right. This includes enabling spaces where children can participate in movement building and online assemblies, and where children can participate in civic projects and freely express themselves in a manner that is respectful to the inherent dignity of others.

4. Terms and conditions, and associated policies of social media platforms and other online spaces that are used by children, must be accompanied by child-friendly versions, taking into account the evolving capacities of children. These should be drafted in a manner that enables children to make informed decisions online.

ONLINE SAFETY

1. Children want an internet free from harm, and accordingly seek support from adults in ensuring the internet is a safe space for everyone. Children have a part to play in contributing to the safety of the online space, and should not act in any way that places the safety of another child or person at risk, or causes another child or person to feel unsafe when online.

2. Children must receive special protection from online sexual abuse and exploitation. Children should be informed about safe spaces online where they can report conduct that makes them feel uncomfortable and unsafe.

3. Children's privacy and personal data must be safeguarded. Where data is collected, children must be informed about how the data is collected and used. Consent to process a child's data must be informed and freely given by the child or, depending on the child's age and maturity, by the parent or caregiver. Children retain the right to withdraw their consent and object to personal data processing, taking into consideration any overarching public interest considerations.

4. Children who are victims, survivors, witnesses or are in conflict with the law have the right to have their identity protected.

5. Children who are alleged to have committed an offence online have the right to a fair hearing, and any punishment must be appropriate and proportionate, taking into consideration the age and maturity of the child.

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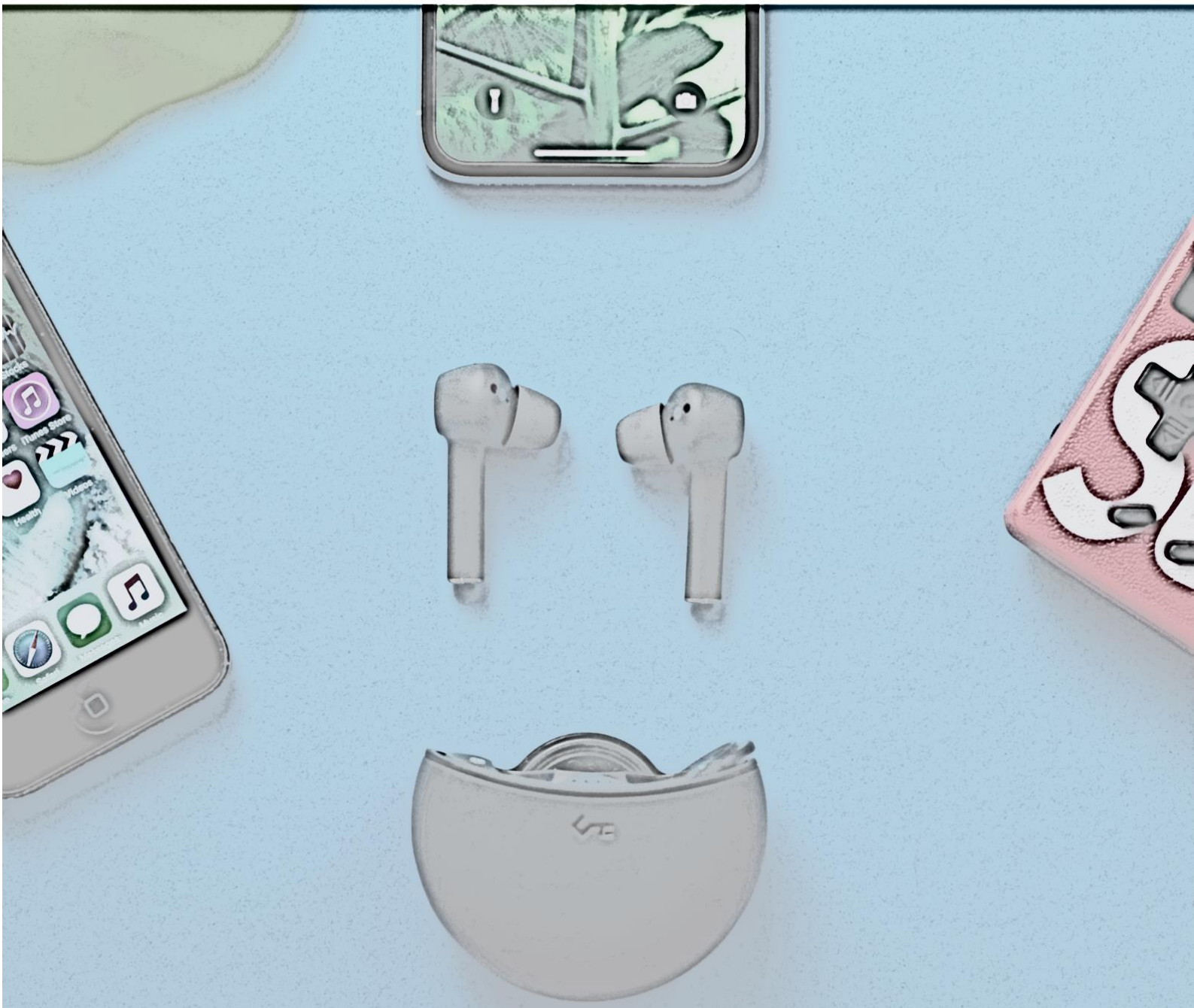

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