IDENTIFYING CHILDREN IN THE MEDIA: A GUIDE FOR THE MEDIA

PUBLISHED BY
MEDIA MONITORING AFRICA

IDENTIFYING CHILDREN IN THE MEDIA: A GUIDE FOR THE MEDIA

INTRODUCTION

Children account for 34% of our population yet only appear in very few news stories.[1] If we accept that one element of the role of the media is to "give comfort to the afflicted and afflict the comfortable" it is not only essential that children are covered but that they are covered in a manner that respects their rights.[2] Further, as the most marginalised members of our society, it is imperative that they too are treated with dignity and respect. The media can have a significant impact on how society views children and how children view themselves. Importantly, how children are identified, portrayed, and reported on in the media can have an empowering and positive impact on children. There are, however, risks involved when reporting on children, particularly when such reporting does not safeguard their rights, and instead perpetuates harm, stifles their development and diminishes their self-worth. Telling stories that sensationalise a child's experiences, undermine, or ignore a child's responses, or expose children to further risk or harm increases the vulnerability of children and can have a detrimental effect on their development.

Over the last 17 years, Media Monitoring Africa (MMA) has been monitoring and analysing media coverage of children and through our Make Abuse Disappear Online Accountability Tool (MADOAT) Project, we ensure ongoing engagement with editors, producers and journalists on how children are portrayed.[3] There is little doubt that our media have improved in a number of respects in their coverage of children. At the same time, significant shortcomings remain. Reporting on children, whilst extremely rewarding, is, however, challenging both from a legal perspective and because it requires a nuanced application of ethics.

This guideline forms part of a series of discussion documents published by MMA. It seeks to support and capacitate the media with the relevant tools and knowledge so that the media can fulfil its role in informing the public, whilst ensuring the rights of children are respected and protected.

[1] Children's Institute. 'Child Gauge : Child and Adolescent Health' (2019).
[2] The well-known saying of Finley Peter Dunne, Chicago Evening Post journalist and humourist.
[3] See Media Monitoring Africa, 'Make Abuse Disappear Online Accountability Tool'.

This guide is made up of two parts:

- **Legal position**: This guide provides an overview of different rights at play, recent legal developments, and the practical implications of when children should and should not be identified in the media.
- **Editorial considerations**: Given the wide-ranging implications of identifying children in the media, this guide offers an overview of the importance of understanding what informed consent means when reporting on children, obtaining that informed consent, and further seeks to highlight contemporary understandings of the terminology used when reporting on children.

This guide should be read together with MMA's discussion document on Children, Media, and the Law, which sets out the legal positions that inform how children are reported on in the media, with a particular focus on the issue of identification.

The discussion document provides an overview of the principle of the best interests of children and the right to freedom of expression and unpacks the recent judgment of the Constitutional Court in the *Centre for Child Law and Others v Media 24 Limited and Others* and its implications for the media.[4] The discussion document ultimately demonstrates that striking an appropriate balance between the rights and interests of children and those of the media has and continues to present challenges and tensions. However, it is possible – and ultimately imperative – for the media to fulfil its role in advancing freedom of expression, whilst simultaneously ensuring the rights of children are respected and promoted.

[4] *Centre for Child Law and Others v Media 24 Limited and Others* [2019] ZACC 46.

MEDIAMONITORING AFRICA

OUTLINE OF THE CURRENT LEGAL POSITION

The Constitutional Court recently grappled with the appropriate "balance between protecting children, promoting agency and ensuring freedom of expression and open justice are not unduly curbed".[5] Below is an overview of:

- The best interest of the children.
- Freedom of expression.
- The principle of open justice.

The best interests of the child

The concept of "the best interests of the child" has been described as "[a] golden thread which runs throughout the whole fabric of our law relating to children".[6] The Convention on the Rights of the Child (CRC),[7] the African Charter on the Rights and Welfare of the Child,[8] our Constitution[9] and the Children's Act[10] all entrench the principle of the best interests of the child.

The Constitutional Court has made some important pronouncements on this principle. For example:

> "Individually and collectively all children have the right to express themselves as independent social beings, to have their own laughter as well as sorrow, to play, imagine and explore in their own way, to themselves get to understand their bodies, minds and emotions, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood. And foundational to the enjoyment of the right to childhood is the promotion of the right as far as possible to live in a secure and nurturing environment free from violence, fear, want and avoidable trauma."[11]

> "What must be stressed here is that every child is unique and has his or her own individual dignity, special needs and interests. And a child has a right to be treated with dignity and compassion. This means that the child must 'be treated in a

[5] Id at para 125.
[6] *Kaiser v Chambers* 1969 (4) SA 224 (C).
[7] Convention on the Rights of the Child, 1990 at article 3.
[8] African Charter on the Rights and Welfare of the Child, 1990 at article 4.
[9] Constitution of the Republic of South Africa, 1996 at section 28(2).
[10] Children's Act 38 of 2005 at section 7.
[11] *S v M (Centre for Child Law as Amicus Curiae)* [2007] ZACC 18 at para 19.

caring and sensitive manner.' This requires 'taking into account [the child's] personal situation, and immediate needs, age, gender, disability and level of maturity'."[12]

"The contemporary foundations of children's rights and the best-interests principle encapsulate the idea that the child is a developing being, capable of change and in need of appropriate nurturing to enable her to determine herself to the fullest extent and to develop her moral compass."[13]

It is therefore well-established that the best interest of the child is a primary consideration and of paramount importance in every matter concerning the child.

Freedom of expression

Freedom of expression is protected in both the International Convention of Civil and Political Rights[14] and the African Charter on Human and People's Rights.[15] Section 16 of the Constitution provides that "[e]everyone has the right to freedom of expression", this includes the "freedom of the press and other media" and the "freedom to receive or impart information or ideas".

The right to freedom of expression has gained significant attention from our courts. For example, the Constitutional Court has held that the right "lies at the heart of a democracy",[16] and that the media are "key agents" in ensuring every citizen has the right to freedom of the press and the media and the right to receive information and ideas.[17] Similarly, the Constitutional Court has held that:

"The importance of the right to freedom of expression cannot be gainsaid. Freedom of expression is an important instrument to a democratic government. It is especially important to our constitutional democracy, which is both representative and participatory. As the Preamble of the Constitution makes plain, ours is "a democratic and open society in which government is based on

[12] *Director of Public Prosecutions, Transvaal v Minister for Justice and Constitutional Development and Others* [2009] ZACC 8 at para 123.
[13] *J v National Director of Public Prosecutions and Another* [2014] ZACC 13 at para 36.
[14] International Convention of Civil and Political Rights, 1976.
[15] African Charter on Human and People's Rights, 1986.
[16] *South African National Defence Union v Minister of Defence* [1999] ZACC 7 at para 7.
[17] *Khumalo and Others v Holomisa* [2002] ZACC 12 at para 22.

the will of the people". Free expression of opinion, including critical opinion, is essential to the proper functioning of our constitutional democracy."[18]

The principle of open justice

This principle is aptly captured by the adage "justice should both be done and manifestly seen to be done"[19] The Constitutional Court has explained this principle as follows:

> "There exists a cluster or, if you will, umbrella of related constitutional rights which include, in particular, freedom of expression and the right to a public trial, and which may be termed the right to open justice. The constitutional imperative of dispensing justice in the open is captured in several provisions of the Bill of Rights. First, section 16(1)(a) and (b) provides in relevant part that everyone has the right to freedom of expression, which includes freedom of the press and other media as well as freedom to receive and impart information or ideas. Section 34 does not only protect the right of access to courts but also commands that courts deliberate in a public hearing. This guarantee of openness in judicial proceedings is again found in section 35(3)(c) which entitles every accused person to a public trial before an ordinary court."[20]

The importance of freedom of expression and the principle of open justice cannot be denied. However, certain trade-offs need to be made when dealing with children. In this regard, the media must always ensure that the best interests of the child involved are safeguarded: this should be seen as the overarching consideration and should outweigh other considerations ranging from generating a profit, telling an important story about children, or even advocating for children's issues. When reporting on children, the media must:

- Ensure that the children involved in the story are not harmed because of the publication of a story (this is a subjective test).
- Ensure that children (meaning a group or class) are not harmed as a result of the publication of a story.
- Treat all children with dignity, care, and respect.
- Not reinforce negative or harmful stereotypes about children or groups of children.

---

[18] *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] ZACC 11 at para 141.
[19] *R v Sussex Justices, Ex parte McCarthy* [1923] All ER 233 (KB) at 234.
[20] *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services (Freedom of Expression Institute as Amicus Curiae) In re: Masetlha v President of the Republic of South Africa and Another* [2008] ZACC 6 at para 39.

- Allow children to have their opinions heard and to participate in decisions affecting them, taking into account the age and maturity of the child.
- Play an empowering role, where possible, to enforce positive attitudes about children and their rights.
- Understand that when reporting on children, your role as gatekeeper is enhanced and your responsibilities to act in the best interests of the children involved are elevated.

Constitutional Court ruling on identifying children in the media

Identifying children in the media can put a child at risk and, in certain instances, it is not in the best interest of the child to publicly reveal their identity. Our law has recognised the various harms that can flow from identification and prescribed situations in which the identity of children cannot be published:

- Children's Act: section 74 prohibits the publication of the identity of children who are a party or witness in proceedings in the Children's Court.
- Child Justice Act: section 54 prohibits the publication of information that reveals or may reveal the identity of a child or a witness under the age of 18 years.[21]
- Criminal Procedure Act: section 154(3) prohibits the publication of any information that revealed the identity of a child who is an accused or is a [victim] or witness in criminal proceedings.[22]

These protections, more specifically, the protections provided by the Criminal Procedure Act, have recently been in the spotlight for failing to sufficiently safeguard the rights of children.

[21] Child Justice Act 75 of 2008.
[22] Criminal Procedure Act 51 of 1977

Constitutional Court ruling on the identity of children in the media

This issue was brought to the fore in 2019 in the *Centre for Child Law v Media24* case. The facts of this case began when a two-day-old baby was abducted from Groote Schuur Hospital in 1997. The story of 'Zephany Nurse' and her abduction was widely publicised. Seventeen years later, she was found by her biological parents. Her abductor, the woman she had understood to be her mother, was criminally charged and prosecuted. The story generated significant media attention and the soon to be 18-year-old girl, who was a potential, but unconfirmed witness, in the criminal proceeding, grew increasingly concerned that her identity would be revealed. She approached the Centre for Child Law who assisted in protecting her identity from being revealed in the media. The matter evolved into a significant legal battle that highlighted the tensions between the best interests of the child and their rights to equality, dignity, and privacy, and the media's right to freedom of expression and the principle of open justice.

The matter was heard in the High Court, appealed to the Supreme Court of Appeal, and ended up before the Constitutional Court. The Constitutional Court considered the constitutionality of section 154(3) of the Criminal Procedure Act.

The Centre for Child Law, the National Institute for Crime Prevention and the Reintegration of Offenders and Media Monitoring Africa supported the young woman in her fight to have her identity and the identity of other children protected.

There were two key questions the Constitutional Court engaged with:

- Victim protection: Whether children who are victims and survivors of crime should receive the same anonymity protection as children who witness crime and children who are in conflict with the law; and

- Ongoing protection: Whether children – as witnesses, in conflict with the law, and victims – should receive anonymity protection beyond the age of 18.

The applicants argued in favour of these questions and sought a declaration that section 154(3) was unconstitutional. Media24, Independent Newspapers, and the Times Group opposed the application and argued that the proposed changes to the law were neither required nor appropriate and would have a drastic impact on the open justice principle and the right to freedom of expression.

On the first issue, the Constitutional Court unanimously declared that children who are victims and survivors of crimes are entitled to the same protections as child witnesses and children in conflict with the law. It went on to find that excluding child victims or survivors breaches a child's right to equality, the principle of the best interests of the child, and the privacy and dignity of the child.

The second issue proved to be more complicated and resulted in a divided Court. The majority of the Court found that a person who was a child victim or survivor, witness or child in conflict with the law does not forfeit the identity protections once they turn 18, but may consent to their identity being revealed, alternatively, a competent court can declare that their identity may be published. In reaching this decision the majority considered the effect of future media exposure on children whilst they are still children and found that the fear of identification is harmful to a child and therefore contrary to their best interests. The majority also found that allowing an adult who was a child participant – if and when they are ready – to disclose their identity is an approach that encourages agency, mitigates stigma, and enforces notions of restorative justice. The first minority judgment differed on this issue and raised concerns that a default protection into adulthood could fuel stigma, shame, and silence in society. The second minority judgment found that the section is only applicable to children and a child's best interests cannot be extended into adulthood.

While the majority of the Court accepted the importance of freedom of expression and recognised the important role of media freedom and the principle of open justice, it ultimately found it necessary to ensure the protection of child victims and survivors and to provide children with ongoing identity protection.

The Constitutional Court gave Parliament until December 2021 to ensure that the Criminal Procedure Act is constitutionally compliant and provided changes to the legislation in the interim to ensure that children are protected.

Implications for the media

The ruling of the Constitutional Court has changed the way in which the media can identify children, as well as adults in certain circumstances. It is important for the media to understand what is permissible and what is not, as well as the consequences of non-compliance.

The media cannot publish:

The identity of the following groups of children:

- × Victims and survivors of criminal acts
- × Witnesses of criminal acts
- × Children in conflict with the law

The identity of an adult who as a child was:

- × A victim or survivor of a criminal act
- × A witness of a criminal act
- × In conflict with the law

The identity of a child should be understood to include any identifying features or information, such as their name, school, where they live, or any other features that are likely to lead members of the public to identify the child involved. In other words, the media cannot include any indirect means of identification such as a description of the child or adult in a way in which they would be easily recognisable by readers.

The media can publish:

- ✓ The story. This can include the facts of the case and the outcome of the case, provided it does not allow for the child to be easily recognised.

- ✓ The identity of children in these categories if the judge presiding over the criminal matter is of the view that it is just and equitable and in the interest of the child that their identity be published. This determination cannot be made by the media and can only be made by the judge presiding in the criminal case.

- ✓ The identity of an adult, who as a child was one of the listed categories, provided the adult consents to the publication of their identity. This consent can be instigated by the adult, who can inform the media that they consent to their identity being disclosed. The media can also approach the adult seeking consent, and if the adult agrees, then their identity can be disclosed.

- ✓ The identity of an adult, who as a child was one of the listed categories, if the adult does not consent, but a judge finds it is in the interest of justice to publish their identity.

In short, at this stage, and in the context of criminal proceedings:

Can the media publish:	Yes ✓ No ×
Identity / identifying features of child victims and survivors of criminal acts, children who witness criminal acts, and children in conflict with the law.	×
Identity of an adult who as a child was a victim or survivor of a criminal act, a witness of a criminal act, in conflict with the law.	×
Facts of the case and the outcome of the case, provided the story does not allow for the child to be easily recognised.	✓
The identity of the above-listed children if the judge presiding over the criminal matter is of the view that it is just and equitable and in the interest of the child that their identity be published.	✓
The identity of an adult, who as a child was one of the listed categories, provided the adult consents to the publication of their identity.	✓
The identity of an adult, who as a child was one of the listed categories, if the adult does not consent, but a judge finds it is in the interests of justice to publish their identity.	✓

What are the consequences of non-compliance?

It is important to note that these are not recommendations or guidelines – these are legal obligations. The Criminal Procedure Act provides that a person who publishes information in contravention of this section is liable to a fine or to imprisonment for a period not exceeding five years or to both a fine and imprisonment.

This means that if members of the media fail to adhere to these obligations and publish the identity of children or adults who fall within these categories, they will be in contravention of the law and will be criminally liable to a fine or imprisonment.

Some members of the media might be wary of the changes, but as the Constitutional Court pointed out: "The stories can still be told, the public will remain informed. The identity of the child participant is not essential for advancing freedom of expression and open justice."[23] The notions of protecting the identity of children is not a novel concept and the media have been guided and trained on this for years.[24]

[23] *Centre for Child Law and Others v Media 24 Limited and Others* above n 4 at para 106.

[24] See for example Media Monitoring Africa and Save the Children, 'Editorial Guidelines and Principles for Reporting on Children in the Media'; Children's Media Mentoring Project, 'A Resource Kit for Journalists; UNICEF, 'Guidelines for journalists reporting on children'; and UNICEF, 'Reporting Guidelines'.

Guidance from media regulatory bodies

Notably, the new position is not all that different from the existing position in the Press Code and the Broadcasting Complaints Commission of South Africa (BCCSA) Code of Conduct:

- Press Code: The Press Code deals specifically with the identification of children. It states that the media can "not identify children who have been victims of abuse or exploitation, or who have been charged with or convicted of a crime, without the consent of their legal guardians (or a similarly responsible adult) and the child (taking into consideration the evolving capacity of the child), a public interest is evident and it is in the best interests of the child."[25]

- BCCSA Code of Conduct: The BCCSA Code of Conduct provides that the identity of rape victims and other victims of sexual violence – which would include children who fall within this category – "must not be divulged in any broadcast, whether as part of news or not, without the prior valid consent of the victim concerned."[26]

- SABC Draft Editorial Policies: The current draft Editorial Policies for the SABC do not specifically engage with the issue of identity, however, the Policies acknowledge section 28 of the Constitution, as well as all rights that apply to children and require children to be treated as human beings, with voices and rights. The Policies further require the SABC to recognise the vulnerability of children and consider topics with or about them with the necessary sensitivity. The editorial staff of the SABC "shall ensure that they familiarise themselves with the various laws aimed at protecting children and the regulatory frameworks for broadcasters."[27]

[25] Clause 8 of the Press Code of Ethics and Conduct for South African Print and Online Media.
[26] Clause 10 of the BCCSA Code of Conduct. Clause 6 of the BCCSA Code deals specifically with children but does not provide any guidance on the identification of children in broadcasts.
[27] SABC Editorial Policies (Draft for public comment – July 2018) at 34.

Reporting on children who have been abducted

Notwithstanding the order of the Constitutional Court and the guidelines from media regulatory bodies, the issue of identifying children who have been abducted requires further discussion. UNICEF has acknowledged that there are instances where "using a child's identity (their name and/or recognisable image) is in the child's best interests."[1]

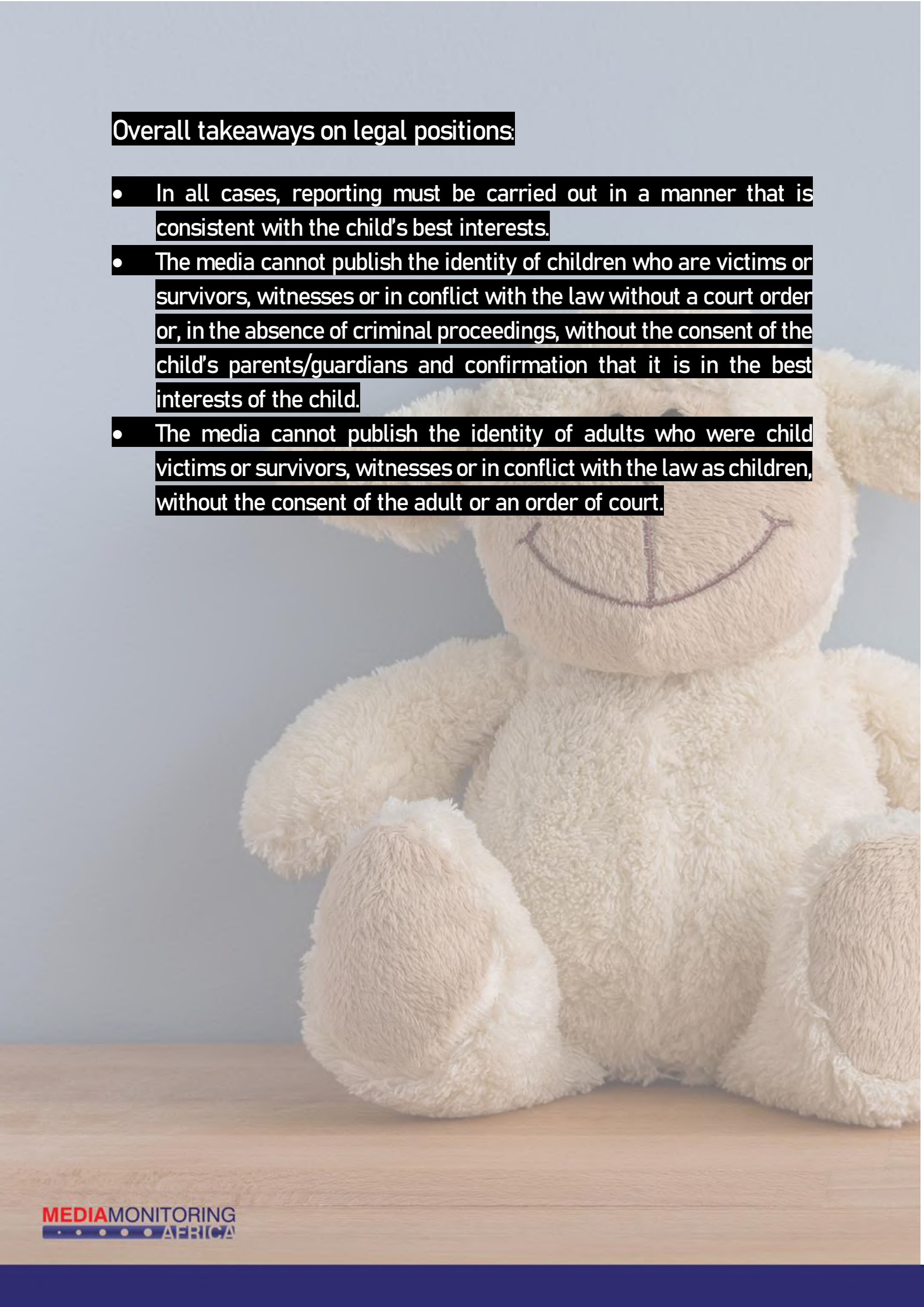
Reporting on children who have been abducted an instance where disclosure of identity is often in the best interest of the missing child. While this was not addressed in the judgment of the Constitutional Court, and the existing legal framework is not inherently clear, MMA is of the opinion that it may be necessary and helpful to the law enforcement efforts to publish the identities of such children in order for the South African Police Service and other social initiatives – such as Missing Children South Africa[1] and Amber Alert on Facebook[1] – to assist in locating the missing children through mass awareness campaigns.

In such circumstances, a charge may be laid that triggers the commencement of criminal proceedings, but the matter may not yet be before a presiding judge or judicial officer to authorise the publication of information about the kidnapping or abduction. In such cases, a parent or caregiver should be permitted to consent to the disclosure of the identity of the child to locate the child's whereabouts.

This authorisation to publish the identity of the child should automatically cease on the notification that the child has been found, or on the withdrawal of consent by the parent or caregiver. MMA believes that this position would be in the public interest and interests of justice, as well as the best interests of the child, and would serve to facilitate the location of children in vulnerable or compromised positions that have been kidnapped or abducted.

Overall takeaways on legal positions:

- In all cases, reporting must be carried out in a manner that is consistent with the child's best interests.
- The media cannot publish the identity of children who are victims or survivors, witnesses or in conflict with the law without a court order or, in the absence of criminal proceedings, without the consent of the child's parents/guardians and confirmation that it is in the best interests of the child.
- The media cannot publish the identity of adults who were child victims or survivors, witnesses or in conflict with the law as children, without the consent of the adult or an order of court.



KEY EDITORIAL CONSIDERATIONS

Informed consent

Notwithstanding the above restrictions, it is important for the media to obtain informed consent from the child (taking into consideration the evolving capacity of the child) and their caregivers. This is in line with the best interests of the child principle.

When considering the issue of informed consent, it is important to bear in mind the principle of the "evolving capacity of the child", a principle captured in the CRC and expanded on by UNICEF as a developmental, participatory, and protective concept that recognises children as "active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth."[28]

This principle requires us to adjust our direction and guidance to enable children to exercise increasing agency over their lives. The effect of this is that whilst a small child of 3 or 5 is arguably unable to exercise informed consent, most would agree that a 16-year-old may have sufficient agency over their life to be able to understand and confirm the concept of informed consent and therefore participate meaningfully and hold an opinion in a published story. It is, therefore, necessary for journalists to view informed consent on a sliding scale when dealing with consent from caregivers and children. The younger the child, the less value their consent holds, the older the child, the more important it is for the journalist to take their wishes and directions into consideration when deciding whether there is informed consent.

Informed consent extends past the interview itself to the inclusion of all videos and documentary photographs. When possible and appropriate, this permission should be in writing, and must be explained to the child and caregivers to ensure an appropriate understanding of the purpose of the publication, where and how it will be disseminated, and who is likely to see it. In essence – informed consent is necessary.[29]

[28] See article 5 of the CRC (above n 7) and UNICEF "The Evolving Capacities of the Child" (2005).
[29] See Editorial Guidelines and Principles for Reporting on Children in the Media and A Resource Kit for Journalists above n 24.

What this means:

- The caregiver and child (taking into account their evolving capacity) must have full knowledge of all relevant facts and risks involved in having the identity of the child published. This includes explaining the following:
    - Where the information will be published or aired and who is likely to receive the information.
    - Whether the story is about the child, or if the child's comments are being sought.
    - That the caregiver can choose to have their child's story told and similarly the child can refuse to have their story told.
    - The journalist will take out information about the child that the caregiver does not want disclosed.
    - The caregiver can withdraw their child from the process at any point.
- The journalist should also provide the child and caregiver with available alternatives as well, including:
    - Not using the child's name or other identifying features.
    - Assigning a pseudonym to the child.
- The journalist must disclose which publication they are from.
- The journalist must explain what the topic of the publication is.
- The journalist must indicate if they would like to interview the child and the caregiver.
- The journalist must take reasonable steps to show the article to the caregiver before it is published.
- The journalist must, to the extent possible, provide the caregiver with a consent form to ensure that they fully understand:
    - Why the interview is being conducted.
    - Why it is necessary to reveal the identity of the child.
    - What the consequences are of granting an interview.

Example of a consent form for caregivers of children to give permission for articles to be written and published[30]

Topic of the article(s)_____

This consent form will be explained verbally. A copy will also be given to the caregiver to keep. This form will only be used for children who will feature in the article.

JOURNALIST

I am _____

I work as a journalist at _____publication. I am working on an article about _____ _____ is to be published on _____(date).

I would like to write an article that includes_____ (name of child)'s comments and/or story.

I would also like to interview you and include your words in the story.

The article will go into a newspaper/be published online and many people may read it, maybe even people who know you or your child, go to school with your child or live near you.

It is important to know that the law in South Africa prevents me from publishing the name of your child if they are victim/survivor, or a witness of a crime or accused of a crime.

If your child does not fall into these groups, you can choose if you want their name or information about them like the school they go to be in the article.

If you do not want the article to include your name you or your child, I will not use your or your child's name.

If there is anything you say that you decide you do not want to be published, I will take it out of the article.

You can choose to be interviewed or not. You also have a choice to allow or disallow your child's story to be told in the newspaper article.

[30] This template has been adapted from the Editorial Guidelines and Principles for Reporting on Children in the Media' and A Resource Kit for Journalists.

If your child is part of a support programme, it will not make any difference to your child's participation in the support programme if you choose not to allow your child's story to be told.

Just to make sure you understand and agree that it is acceptable for me to write a newspaper article about your child, and to interview you, I will ask you to sign a form. You can decide to withdraw your child at any point.

Remember, you can choose to allow or disallow your child's story to be told in the newspaper article.

You can contact me at _____ if you have any questions about this form or about the newspaper article.

Signature: _____ Date: _____

CAREGIVER:

I am the caregiver of _____ (child's name).

The above has been read out to me and explained to me in a language that I understand.

I understand the content of this information as well as the topic of the article and who is likely to read it.

I agree to allow my child's story to be told in the article.

I agree to be interviewed for the article.

Signature: _____ Date: _____

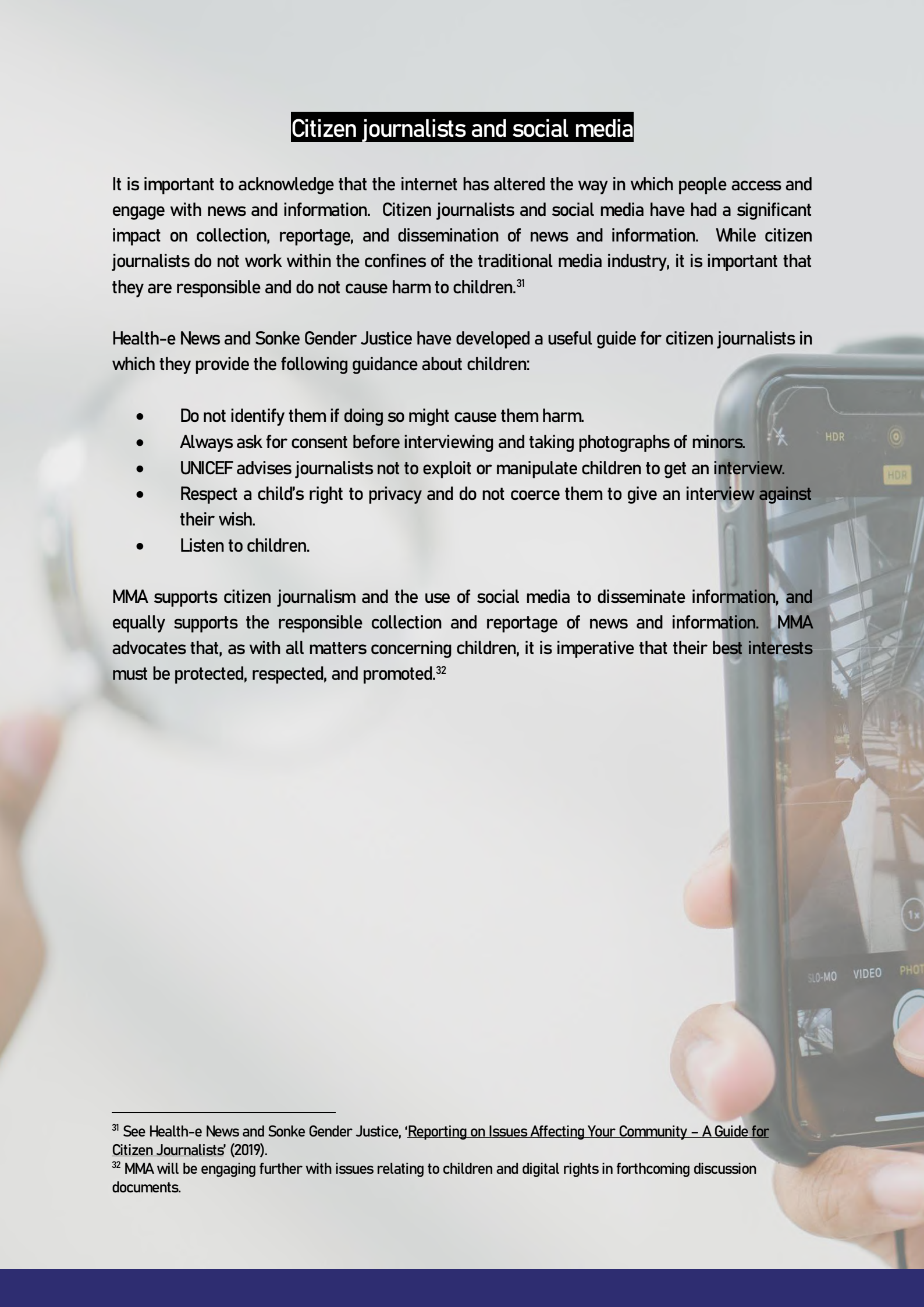
Citizen journalists and social media

It is important to acknowledge that the internet has altered the way in which people access and engage with news and information. Citizen journalists and social media have had a significant impact on collection, reportage, and dissemination of news and information. While citizen journalists do not work within the confines of the traditional media industry, it is important that they are responsible and do not cause harm to children.[31]

Health-e News and Sonke Gender Justice have developed a useful guide for citizen journalists in which they provide the following guidance about children:

- Do not identify them if doing so might cause them harm.
- Always ask for consent before interviewing and taking photographs of minors.
- UNICEF advises journalists not to exploit or manipulate children to get an interview.
- Respect a child's right to privacy and do not coerce them to give an interview against their wish.
- Listen to children.

MMA supports citizen journalism and the use of social media to disseminate information, and equally supports the responsible collection and reportage of news and information. MMA advocates that, as with all matters concerning children, it is imperative that their best interests must be protected, respected, and promoted.[32]

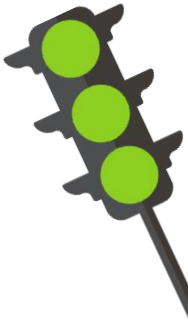


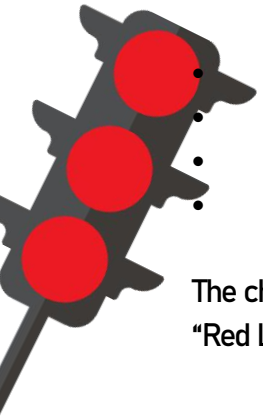
[31] See Health-e News and Sonke Gender Justice, 'Reporting on Issues Affecting Your Community – A Guide for Citizen Journalists' (2019).

[32] MMA will be engaging further with issues relating to children and digital rights in forthcoming discussion documents.

What if you cannot obtain consent?

It is not, however, always possible to obtain written consent from the caregiver and child and in these instances, the journalist must use discretion when proceeding. As an organisation, we are very much in favour of reporting stories for and about children that present a diversity of interests and show children as active citizens and not just framed in the extreme as the most vulnerable. In order to do this, we encourage journalists to utilise the principle of "Green Light" ethics when reporting on children as opposed to "Red Light" Ethics.[33] This means that we encourage journalists to find creative ways of:





- "How to" rather than "ought not."
- Focusing on opportunities rather than limitations.
- Paying more attention to morality and heroes than to inequity and evil.
- Including ideas rather than excluding them.[34]

The challenge with informed consent is that sometimes it can be a way for a journalist practising "Red Light" ethics:

- By highlighting too much caution and restraint.
- Curbing the behaviour of journalists.
- Not publishing or airing continent.
- Prescribing what journalists "ought not" do.[35]

It is therefore vital, when considering issues of informed consent, for the journalist to:

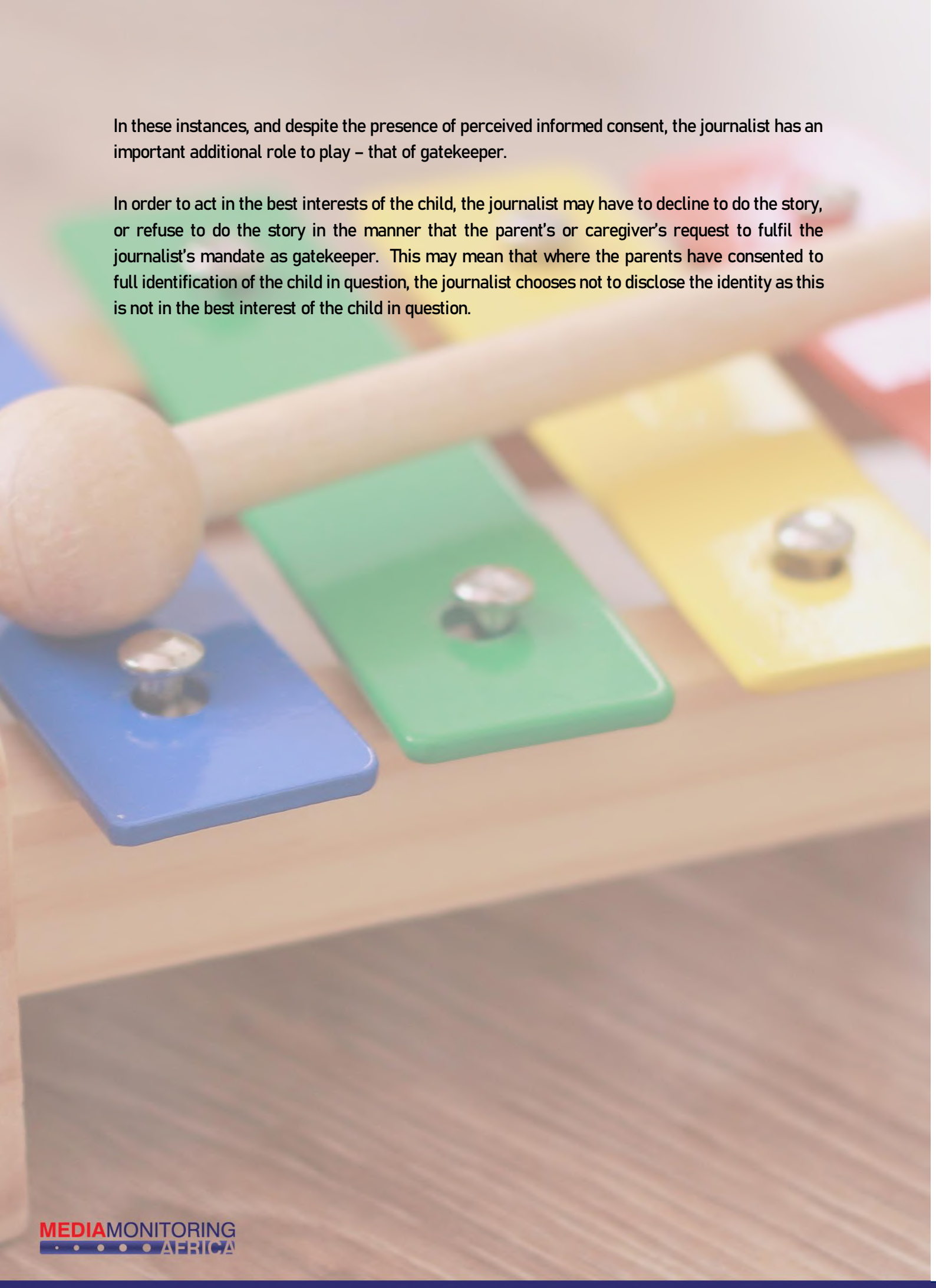
- Clearly assess the risks of the story and ascertain whether it is an inherently positive or negative story.
- Consider the evolving capacity of the child in question when determining how much weight to give to the caregiver's consent as opposed to the child's consent; and where appropriate
- Find interesting ways of telling the story (practising Green Light ethics) without disclosing identity or placing the child at risk of harm whilst still respecting the principle of informed consent.[36]

This is an important exercise to undertake particularly when a caregiver approaches a journalist to report on a story, and the journalist recognises that they are holding the telling of the story out as being their "only saviour" to the extent that they are willing to sacrifice their child on the altar of the perceived greater good to meet a desperate need, get justice, or receive aid and assistance.

[33] Clark, 'Red Light, Green Light: A Plea for Balance in Media Ethics' (2005), Poynter.
[34] Id.
[35] Id.
[36] Id.

In these instances, and despite the presence of perceived informed consent, the journalist has an important additional role to play – that of gatekeeper.

In order to act in the best interests of the child, the journalist may have to decline to do the story, or refuse to do the story in the manner that the parent's or caregiver's request to fulfil the journalist's mandate as gatekeeper. This may mean that where the parents have consented to full identification of the child in question, the journalist chooses not to disclose the identity as this is not in the best interest of the child in question.



Some questions to consider when navigating the complexity of consent and engaging with children about their stories[37]

- How did you learn about the story? Were you approached by the family, parent, caregiver, or child to tell the story? Have you considered why they want the story told?

- Even if consent is provided, have you considered the impact of the story on the child? Are there different ways to tell the story that can mitigate present and future harm?

- Have you considered the expectations that a family, parent, caregiver, or child might have about the story solving their problems? Have you made promises that have created unrealistic expectations? How can you manage such expectations?

- Does asking for consent to tell the story trigger negative responses or result in the child re-experiencing specific moments of a traumatic experience? What are the different ways you can approach a child about wanting to tell their story?

- How old is the child? How much does the child understand about the situation they face? Have you asked the child, in a suitable and understandable way, how they feel about being part of the story?

- Are you able to ask the child what they think about the words used to describe them?

- Have you captured the child's achievements, hopes and understandings, or is the focus on their problems?
- Are you sure that the story will not create a feeling of shame or discomfort for the child? Will the story result in any negative treatment of the child by their peers or adults?

- Is the language and tone of the content patronising or dismissive? Is there a way it can be empowering and sensitive?

- What is the purpose of mentioning specific points about the child (age, race, abilities or disabilities, gender, sexual orientation, nationality, economic background, family structure)? Can you omit certain information without compromising the purpose and meaning of the story? Would being too cautious your approach to the story perpetuate stigma? How does the child feel about the inclusion of these elements?

- How can you craft the story to challenge negative stereotypes about children and conventional roles children occupy in the media?

There are not always clear answers to these questions, but in line with Green Light ethics, these questions seek to generate new or different ways of thinking about a story and about the impact it will have. These are not meant to be prescriptive or limiting, but rather to encourage journalists to find interesting and empowering ways of telling the story.

Alongside these ethical considerations and questions, journalists need to ensure they are cognizant of the contexts, communities and societies that often form integral parts of stories about children. This requires engagement with a community "as an end, rather than as a means".[38] This means journalists should:

- Make continued efforts to understand the needs of the community.
- Endeavour to publish competing perspectives.
- Publish alternative narratives that minimise harm.
- Enable and encourage members of the community to self-inform.[39]

This can have important implications for children, and journalists must engage children as an end not a means, and dedicate their time to reporting on children. The end goal, particularly when reporting on children, is to "make journalism a continuing dialogue in which everyone can responsibly take part and be informed."[40]

Preferred terminology

The media know better than anyone that words matter. Words frame how the public understands various issues, words inform public perception, and words can either empower people or undermine their experiences. Reporting on children and the use of words requires particular consideration. Language used when reporting on children should try to promote the child's perspective so that their experiences are captured and shared. The language should also, where possible, be positive and child-centred, and should be aimed at changing the narrative and combating ignorance. Outdated and harmful words can trivialise and undermine the experience of children and can perpetuate negative perceptions.

The table below provides guidance on different terms that can be used when reporting on children. It is important to note that this table provides guidance, it is not a banned list of words, and the intention is not to restrict journalists and the media or dictate how content should be written. This

[37] Some of these questions have been adapted from UNICEF, 'Children and the Media: A Guidebook on Ethical Reporting" (2018), others have been adapted from the Editorial Guidelines and Principles for Reporting on Children in the Media above n 24.
[38] McBride 'The New Ethics of Journalism: About this blog' (2013) Poynter.
[39] Id.
[40] Id.

table provides suggestions based on contemporary understandings of some of the challenges facing children, as well as some current legal terminology.

AVOID SAYING	INSTEAD TRY	WHY?
Child Accuser	Child victim Child survivor	It is important to use language that distances accountability for abuse or sexual abuse from the perpetrator. The use of "accuser" can invalidate a child's experience. Rather use language that legitimises the experience of the child. There is widespread debate about the use of the term survivor and victim, and this debate can become more complicated when reporting on a child's experience. Where possible, the child should select the terminology they prefer. If this is not appropriate, the media should be mindful of the different connotations and implications that these terms can have for children, and should take into consideration the different contexts, experiences, and responses that stem from violence and sexual violence. The media should avoid imposing definitions, identities, or responses to children.[41]
Abandoned child Street child Abused child Exploited child Neglected child	Child in need of care and protection	A child in need of care and protection is the wording of the Children's Act, and it encompasses a child who has been abandoned or orphaned, or lives of the street or begs for a living; has been exploited or lives in circumstances that expose the child to exploitation; is in a state of physical or mental neglect; is being maltreated, abused, deliberately neglected or degraded by a parent or caregiver. The use of the umbrella term "care and protection" is positive language that recognises the value and vulnerability of a child. If it is necessary to identify the particular way in which a child is in need of care and protection, then a people-first approach is preferred. For example, instead of saying an "abused child", rather try "a child who has been abused".[42]
Custody	Care and contact	This is in line with the language used in the Children's Act, and it is language that recognises children as

[41] In *Centre for Child Law* above n 4, the Constitutional Court adopted this terminology and reasoning. See footnote 1 of the judgment.
[42] See section 150 of the Children's Act for more detail on when a child is in need of care and protection.

Access		people rather than possessions. It is positive language that reinforces positive family interactions.[43]
Born female Born Male Female bodied Male bodied	Assigned female/male at birth	In the context of gender identity, sex reassignment surgery, and transition, Iranti explains: "'Assigned' language accurately depicts the situation of what happens at birth. 'Bodied' language is often interpreted as pressure to medically transition, or invalidation of one's gender identity." This distinction is important from a gender identity perspective as some people do not identify with the sex assigned to them at birth.[44]
Juvenile delinquent Juvenile offender Juvenile justice	Children in conflict with the law Child offender Child accused	Children in conflict with the law has replaced the old and pejorative terms such as juvenile delinquent or juvenile offender. Children in conflict with the law, or child offender are understood to incorporate a child-centred approach that combines the principles of restorative justice with accountability and responsibility.[45]
Disabled child Wheelchair bound Cripple	Child with a disability Wheelchair user	When describing a child with a disability it is preferable to refer to the child first and the disability second. People-first language, rather than identity-first language, is an important way to acknowledge the person regardless of any identifying features. It is necessary to note that this is a complex issue and there is no universal acceptance of this approach. As such, it is advisable to ask the child, their caregiver, or an appropriate organisation about the preferred terminology.[46]
Historic Historical	Non-recent child abuse Abuse which occurred in (date).	While rape, abuse, or other experiences might have occurred years ago, referring to it as historic or historical can be inaccurate as for many victims and survivors the physical and mental consequences are likely to form part of their current reality. The use of historic or historical can also fail to take into account the current experiences of those who have recently

[43] The Children's Act has adopted child centred and rights-based terminology to set out the principles relating to the care and protection of children as well as the rights and responsibilities of caregivers.
[44] For more information see Iranti,' Media Guide' (2019), which seeks to assist journalists and editors to create media content that accurately represents sexual and gender minorities.
[45] Skelton, 'The Mpofu case: Sentencing of child offenders in serious cases' (2013) *Article 40* at 11.
[46] See Association of Health Care Journalists ,'Identity-first vs. person-first language is an important distinction' (2019).

		learned about or understood what had happened to them.[47]
Admits Confesses	Shares Tells Reports	Admissions and confessions can denote a sense of responsibility or shame on the part of a victim or survivor, and for children, these words might be intimidating.[48] Sharing an experience or telling someone about your story denotes an empowering action. Sharing and telling are also encouraging terms that might make other children feel more comfortable about sharing their experiences.
Child porn Kiddie porn Child pornography	Child sexual abuse material Images and videos depicting child sexual abuse Sexually abusive images and videos of children	Using porn or pornography in relation to children can equate it to adult pornography and normalise the offence and can imply consent. This terminology does not describe the crime of sexual abuse and in many ways dilutes the impact of these crimes. The International Centre for Missing and Exploited Children (ICMEC) explains: "While the term 'child pornography' is often still utilised in national legislation, in line with recent global movement and international consensus, the term has been replaced with the term "child sexual abuse material" as it more aptly describes the true nature and extent of sexually exploitive images of child victims to which children can never consent."[49] The Children's Act uses "pornography in relation to commercial sexual exploitation and sexual abuse. However, in line with the explanation from ICMEC, child sexual abuse material, images depicting child sexual abuse and sexually abusive images of children should be used to reflect the abusive and harmful nature of these practices. The preferred terms also capture the full spectrum of the materials available.
Affair	Child sexual exploitation	Flings, scandals, and affairs do not capture the uneven power dynamics, the likelihood of exploitation,

[47] See National Association for People Abused in Childhood (NAPAC), 'Media guidelines for reporting child abuse'.
[48] See Sonke Gender Justice and Health-E News, 'Reporting on Gender-Based Violence: A Guide for Journalists and Editors', (2017).
[49] ICMEC, 'Child Sexual Abuse Material: Model Legislation and Global Review' (2018), see further Interagency Working Group on Sexual Exploitation of Children, 'Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse' (2018).

Fling Sex scandal		grooming, coercion, or deception that occur when a child is in a sexual relationship with an adult.[50] These terms imply a degree of consent and portray a salacious relationship rather than a sexually exploitative one.
Rent boy Child prostitute Child sex worker	Sexually exploited child Survivors and victims of rape Commercial sexual exploitation	Children who are exploited for purposes of prostitution should not be referred to as child prostitutes or even child sex workers. Sex work for adults is vastly different from the sexual exploitation and rape of children. Child exploitation for prostitution is not a legitimate form of sex work. Child prostitute as a term can imply that a child has consented to engage in some form of sex work, placing a level of responsibility of the child for their exploitation.[51]
Fondled Groped Inappropriate touching	Forcibly touched Touched without consent Sexually assaulted	Fondling and groping could suggest that an act is gentle and does not capture that the act amounts to unwanted sexual contact. These terms are euphemisms that can undermine the seriousness of the offence and can create a belief that these offences are not a big deal.[52]
Poor Child/ren	Child/ren from poor backgrounds	Poor child/ren is disempowering and most coverage where this term is used opens up the potential for stigma, ridicule, and humiliation of the child in the story.

[50] See NAPAC above n 50.

[51] The Children's Act defines commercial sexual exploitation as:

"(a) the procurement of a child to perform sexual activities for financial or other reward, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or care-giver of the child, or any other person; or

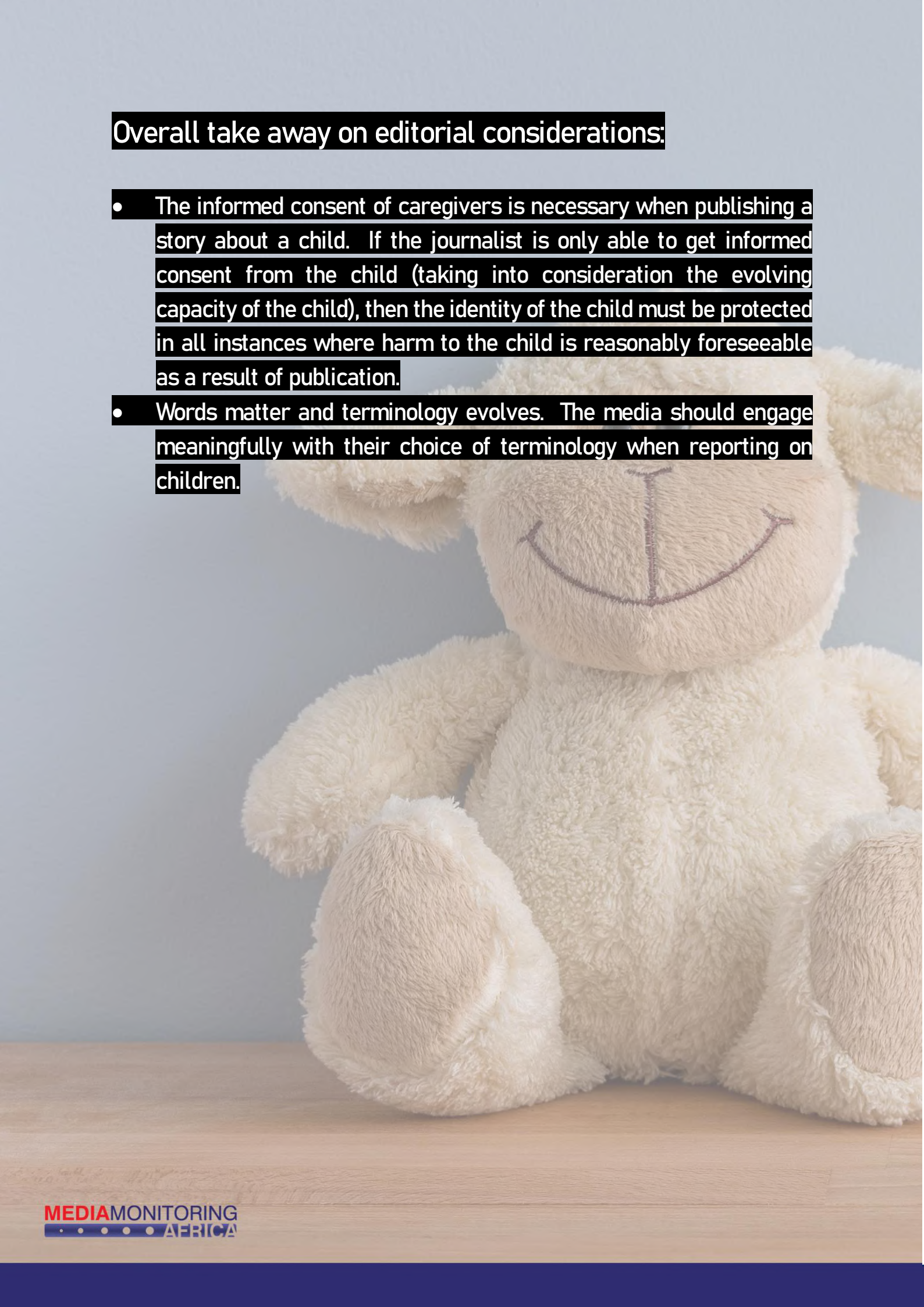
(b) trafficking in a child for use in sexual activities, including prostitution or pornography".

See further Interagency Working Group on Sexual Exploitation of Children above n 52.

[52] See Bates, 'It's not groping or fondling – it is sexual assault' *The Guardian* (2017).

Overall take away on editorial considerations:

- The informed consent of caregivers is necessary when publishing a story about a child. If the journalist is only able to get informed consent from the child (taking into consideration the evolving capacity of the child), then the identity of the child must be protected in all instances where harm to the child is reasonably foreseeable as a result of publication.
- Words matter and terminology evolves. The media should engage meaningfully with their choice of terminology when reporting on children.



CONCLUSION

- The media must:

    - Treat children with respect.
    - Talk to them just as you would an adult whose opinion really matters to you.
    - Not laugh at anything that might offend the child and listen carefully.
    - Remember, a child will have to live with your story long after it has been published.[53]

- Children's experiences including how they are portrayed shapes their development and determines what type of members of society they will be. It is therefore important to acknowledge the significant role of the media when portraying children's experiences.

- The media must shift its approach in reporting, but this should not deter the media, it should encourage the media to meaningfully engage with issues around trauma, rehabilitation, stigma, and agency. This shift presents a new opportunity for the media to encourage debate, change narratives, empower individuals, and ultimately tell stories that ought to be told.

"Stories matter. Many stories matter. Stories have been used to dispossess and to malign. But stories can also be used to empower, and to humanise. Stories can break the dignity of people. But stories can also repair that broken dignity."[54]

[53] Editorial Guidelines and Principles for Reporting on Children in the Media above n 24.
[54] *Centre for Child Law v Media24* at para 1 quoting Chimamanda Ngozi Adichie "The Danger of a Single Story" TEDGlobal (2009).

MEDIAMONITORING AFRICA

PUBLISHED BY MEDIA MONITORING AFRICA