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Promoting human rights and democracy through the media since 1993

31 August 2019

**TO: South African Law Reform Commission**  
C/O Ms D. Clark  
E-mail: [dclark@justive.gov.za](mailto:dclark@justive.gov.za)

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**SUBMISSION BY MEDIA MONITORING AFRICA ON BEHALF OF 32 CHILDREN:  
DISCUSSION PAPER ON SEXUAL OFFENCES (PORNOGRAPHY AND CHILDREN)**

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## 1. Introduction

Media Monitoring Africa (MMA) thanks the South African Law Reform Commission (SALRC) for inviting members of the public to make submissions on the above mentioned discussion paper. Please accept this submission on behalf of the 32 children, who have put forward their views in an effort to respond to the Sexual Offences: Pornography and Children Discussion Paper. MMA's policy Unit have also submitted a separate document in response to this submission. In many ways, both submissions support each other's arguments and highlight a rights based approach when dealing with children's issues, in order to uphold the best interest of the child. We therefore request that they both be read jointly.

This submission is structured as follows:

**First**, an overview of MMA, the profile of the children, and the methodology used to gather their feedback.

**Second**, a summary of key discussion areas that the children have given feedback on.

**Third**, a detailed section outlining the children's feedback, complete with direct quotes from the children.

**Fourth**, recommendations proposed by the children for possible inclusion by the SALRC.

**Fifth**, concluding remarks.

The above mentioned structure is found below.

### 1.1. About MMA

MMA was established in 1993 in Johannesburg, South Africa and, since then, has evolved from a pure monitoring-based project to an innovative organisation that implements successful media strategies for change. We use technology, social media and data tools to make our work more efficient and effective.

MMA acts as a watchdog, taking on a role to promote ethical and fair journalism, which supports human rights. We promote democracy and a culture where the media and the powerful respect human rights to encourage a just and fair society.

Our vision is to create a responsible, quality media that enables an engaged and informed citizenry in Africa and the world. We aim to promote the development of a free, fair, ethical and critical media culture across the continent and to achieve our vision there are three key areas we seek to address from a human rights-based perspective:

- Media ethics
- Media quality
- Media freedom

In line with our vision to promote an informed and engaged citizenry, MMA has over 16 years of experience working with children and the media. Bona Bana is one of MMA's most comprehensive and successful programmes that aims to improve the portrayal, participation and safety of children in the media including social media and also empower journalists to report ethically on children.

Bona Bana is Sesotho for "see children". For MMA, the term signifies the need for media and powerful to focus and prioritise children's issues and their best interests through child participation.

Through the Bona Bana programme, MMA ensures that children are empowered to participate in all forms of media as well as forming critical contributions towards policies that guarantee their participation in the new media environment. This strategy is in line with Section 28.2 of the South African Bill of Rights, which states that:

**“A child’s best interests are of paramount importance in every matter concerning the child.”**

### 1.2. Profile of the children

The children selected to participate in this submission are from schools around Johannesburg and form part of the Web Rangers project under the Bona Bana umbrella. The Web Rangers project is a digital and media literacy project aimed at empowering young people between the ages of 12-17 years old with skills and knowledge on how to stay safe online and become a responsible digital citizen. As MMA, it was important for this particular submission to give a voice to children who have received training and also participated in a range of activities that equipped them with the relevant knowledge to be able to comment on some of the themes covered in the discussion paper, especially those relating to children, the internet (social media) and online safety.

### 1.3. Methodology

The following methodology was followed to ensure that MMA did not guide the children in their responses and that all child participants understood the discussion paper and were able to unpack issues, terms, definitions, and what they mean for children.

The workshop structure (a workshop outline is provided under Annexure A) followed a child rights driven participatory method.

The workshop started with an introductory session by MMA’s internal social worker, who provided an overview of the discussion paper, giving reasons why it was drafted. She also outlined the workshop ground rules and emphasized that due to the sensitive nature of the topic, all participants would remain anonymous. She ended her session by encouraging all participants to feel free to express themselves, and should they feel uncomfortable at any point during the discussion, they have the right to be excused, and would receive support if necessary.

The session that followed included a discussion around definitions and understanding what is meant by pornography, child pornography, and why the discussion paper encouraged the change in terminology from child pornography to CSAM. Participants were also given scenarios that helped them distinguish between these definitions.

The next session was dedicated to discussing sexting and the laws related to sexting as outlined in the discussion paper.

The main and last activity of the workshop involved splitting the group into smaller ones according to different themes as mentioned above. Their comments, and feedback have been collated into this submission by MMA on their behalf. As far as possible, the children’s comments have been quoted verbatim.

## 2. Summary

MMA wishes to submit this document as a formal response to the Sexual Offences: Pornography and Children Discussion Paper 149, following a call made by the South African Law Reform Commission. This submission is undertaken on behalf of 32 children who are members of Web Rangers South Africa, an initiative that is led by MMA as part of our children's Bona Bana programme.

MMA conducted a workshop on 17 August 2019 to discuss some of the terms, definitions and key points that the discussion paper references. The children were then divided into four groups where each group worked through a theme.

The main findings from the workshop were:

### 2.1. Theme 1: Understanding important definitions

The children were all in agreement that the term "child pornography" should be replaced with "Child Sexual Abuse Material" (CSAM). This is also highlighted in MMA's Policy Unit submission on page 9 of the document.

### 2.2. Theme 2: Sexting - consensual self-generated CSAM

The children also agreed that, although context is important when considering sexting, it should still be considered as child sexual abuse material. They also felt that the creation of consensual self-generated sexually explicit material between people under the age of 18 should be regarded and treated as CSAM. Regarding the creation of the image, the group was divided. Others believed that downloading sexually explicit images by way of a digital device should amount to the creation of the image, while others believed that it shouldn't be regarded as the same.

### 2.3. Theme 3: Dealing with children who create, download and are in possession of CSAM

There was also a general consensus that children should never enter the criminal justice system for the above mentioned violation in 2.3. Instead there should be rehabilitative structures and institutions that can support children who are offenders.

### 2.4. Theme 4: Recommendations

The children all suggested that awareness and education were key to addressing the increasing trend of "sexting" amongst children. If children are taught about the dangers of sexting and what it is, then they would be empowered to act to protect themselves and others. 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 CSAM.

### 3. Children's Feedback

This submission is guided by the principle that children are active agents who, if given the opportunity and in accordance with their evolving capacity, have the ability to meaningfully contribute to various and often complex matters that affect their lives. Therefore, given the far reaching implications of the Sexual offences: Pornography and Children Discussion Paper, on the South African public including children, this submission outlines the views of children who engaged its contents and whose feedback has been pulled together and submitted as part of the civic participatory process.

#### 3.1. Theme 1 - Definitions:

The children reviewed the definition of CSAM as outlined in the Sexual Offences and Related Matters Amendment Act 32 of 2007 (SOA) and then responded to the following questions:

- Is the definition of CSAM in the SOA adequate, or should it be amended? If so how?
- Is there a need for one definition?

The children couldn't reach a conclusion on whether the definition of CSAM was adequate in setting out and explaining what it is for the general public. We believe that this was because some of the children had never heard of the term as outlined in the SOA, or other pieces of legislation such as the Films and Publications Amendment Act 65 of 1996 (FPA). They were more familiar with the term child pornography as a form of sexual abuse, due to the Web Rangers training which covers sexting as one of the cyber ills.

This gap in knowledge is of concern to MMA. If legislation is going to be drafted with the aim to protect, in this particular instance, children which we believe the SOA does, then they need to be informed, consulted and empowered so they can defend and exercise their rights. The responsibility to ensure children are empowered lies firmly with the state and in the current instance includes the department of Basic Education and the Department of Justice and Constitutional development as well as other supporting institutions, i.e Department of Social Development. One method suggested by the children is in ensuring that integration of important pieces of legislation into schooling curricula.

The learners were concerned with the use of the word "explicit" found in the definition of CSAM, which they believed might be problematic, because people from different cultures might have a different interpretation of "explicit images". They cited the reed dance as an example that takes place at a cultural event. Context becomes important and relevant because there needs to be clear parameters of what CSAM is, without infringing on cultural norms. (In MMA's submission the issue of intention may help address some of these challenges)

They also understood that not everyone understands or respects each other's cultures. In this case some people might exploit the images of topless young girls at a reed dance and that very same image could then fall under the definition of SCAM. They didn't know how to overcome this challenge and looked to the institutions like the SALRC and Centre for child law among others to guide such discussions.

**"The term child pornography should not be used anymore as the word pornography is no longer a taboo like in the olden days as it is now a cool way of getting publicity as some people trend and**

**become famous through pornography but child sexual abuse material sounds forced and involuntary.”**

When it came to the terms, child pornography and CSAM, the children said that they preferred the term CSAM because child pornography is often viewed as another sub-genre of pornography, which misleads people into thinking that it should be made or created for commercial purposes and for peoples’ enjoyment. They also felt that the word pornography itself should not be associated with children. The term “child sexual abuse material” sounds better as the word “abuse” often highlights that someone’s rights have been violated, whether the person being violated acknowledges that or not.

**3.2. Theme 2: consensual self-generated CSAM by children – generally known as “sexting”**

The children reviewed parts of chapter 3 of the discussion paper and responded to the following questions:

- When does or should consensual self-generated sexually explicit material by certain children (sexting) amount to CSAM?
- Should photographs or images in family photo albums, which are capable of being used as CSAM be treated differently from those available on or through an electronic device?
- Should downloading an image on or by way of a digital device amount to “creation” thereof?

The group started by contextualizing the concept of sexting within the digital world. They stated that with the increase in access to the internet and digital devices, more young people use the internet and social media as tools to discover themselves and satisfy their curiosity whereby they might explore their sexuality. Therefore, within this context, creating, downloading and possessing explicit sexual material of yourself and others becomes dangerous and can be used to harm them and others. Using this argument, they concluded that whether consensual or otherwise, sexting between children should always be regarded as CSAM.

During the discussion, some of the children did acknowledge that the above conclusion was very much influenced by the fact that they had received training as Web Rangers and are aware of the real dangerous that sexting has for young people. They also referred to real life examples of situations where consensual self-generated images of a sexual nature by children became viral and the impact that it has on the child or children involved.

They also raised a concern around creating a positive and enabling environment for children to explore their curiosity and sexuality. For many children who do not possess critical digital literacy skills, they might not be able to draw boundaries between a healthy exploration of their curiosity as a growing child and opening up a door for a violation of their rights.

**“I’m not saying that its right for children to have access to pornography or engage in CSAM, but when adults hide it from us and don’t even explain what it is, we become interested in it and just want to know. When we busy hunting for this material to see what they hiding from us, we don’t know about our responsibility, because for us, responsibility comes after the experience.”**

The facilitators moderating this discussion got a sense that even though these learners have gone through training on digital literacy, they are still children who are curious and sometimes that curiosity overrides their responsibility to stay safe. It is then imperative that children have access to informative and engaging sex education in schools, clinics, and on social media platforms etc, that is in line with the ever changing digital world that we find ourselves in, so that children are protected

from potential harm without being restricted on certain subjects that might play a fundamental role in their growth.

### 3.3. Theme 3: How should the law deal with children who generate child sexual abuse material?

The children reviewed parts of chapter 3 of the discussion paper and responded to the following questions:

- How should the taking and distributing of sexual self-images by children dealt with?

The children felt that the justice system should initiate a first offence/ offender basis where if found to be guilty, children are not sent to jail/juvenile the first time, but are given a warning and sent to a diversion/rehabilitative programmes. They want government to rely on remedial rather than punitive action. They also noted that names of children who have generated, distributed or stored child sexual abuse material knowingly or unknowingly should not appear on the sexual offenders' register. The minimum age for a person to be listed on the register should be 19 years old. Lastly in the case of repeated behaviour, then stricter measures should be taken in line with the child's age, but outside of the justice system.

**“Punishment is avoiding the issues; you need to find the root cause of why children produce child sexual abuse material. You don't just wake up one day and decide to create child sexual abuse material, children are either exposed to this through abuse or they might get into pornography because they don't have a happy family life or they are feeling unappreciated.”**

## 4. Recommendations

Following engagement and feedback on the discussion paper, the following recommendations have been proposed by the children:

- 4.1. They suggested the creation of television programmes to educate the public, more especially children, about CSAM. Programmes starring children and centered on their issues, similar to Soul Buddies and Soul City.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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.
- 4.5. 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.
- 4.6. 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.”**

4.7. 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.

Questions posed by the children:

During the workshop, several questions were asked by the children that we couldn’t answer. We are seeing clarification from the SALRC on the legal matters raised below:

- Why does the law condone sex between minors who have an age difference of two years?
- Why is the law inconsistent in defining parameters relating to age of consent for sex among children, abortion but seems stringent [punitive] when comes to children watching [adult] pornography?

## **5. Concluding Remarks**

MMA on behalf of the children would like to thank the SALRC for the opportunity to put forward this submission. From the discussion workshop that was carried out with the children, it was evident that the children believed that there were several issues at play that contributed to children creating, distributing and possessing CSAM and feel strongly about government and relevant institutions employing a child centered approach when dealing with children offenders. They also believe that implementing educational programmes focused on empowering children to know their rights, stay safe online, whilst encouraging a healthy exploration of their sexuality, is key to decrease CSAM.

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Should you wish to require additional information on this submission, please don’t hesitate to contact the relevant people outlined on the cover page. Kindly confirm receipt of this submission.

**MEDIA MONITORING AFRICA  
Johannesburg, 31 August 2019**

ANNEXURE A – WORKSHOP OUTLINE

Time & Duration	Activity	Description	Objective	Facilitator
09:00am -10:00am	Breakfast	Web Rangers arrive and breakfast is served		MMA team members
10:00am-10:30am	<b>INTRODUCTION (Icebreaker)</b>	<ul style="list-style-type: none"> <li>• Why are we here?</li> <li>• Why is it important for Web Rangers to submit their views in this discussion paper?</li> <li>• How will be views be captured and put forth in the discussion paper as a submission (mentioned that no one learner will be singled out, but rather their views and opinion will be captured as a group and they will remain anonymous.</li> <li>• Highlight the sensitive nature of the topic and should at any point feel uncomfortable and not want to continue to participate, they are free to excuse themselves.</li> <li>• Introduce yourself as our formal social worker should anyone want to chat to you.</li> </ul>	<ul style="list-style-type: none"> <li>• To create a safe space for the Web Rangers so that they will be free to participate during the session.</li> <li>• To give them a background on the discussion paper</li> <li>• To inform them about the importance of their contribution to the submission</li> </ul>	Girlie
Time & Duration	Activity	Description	Objective	Facilitator

<p>10:30am-11:15am (45mins)</p>	<p><b>DISCUSSION PAPER DEFINITIONS</b></p>	<ul style="list-style-type: none"> <li>• What is pornography? (adult to adult)</li> <li>• What is child pornography and why has the discussion paper changed the term to child sexual abuse material?</li> <li>• Outline definitions put forward by SOA</li> <li>• Define child according to SA law</li> </ul>	<ul style="list-style-type: none"> <li>• To help learners understand the meaning of major terms</li> <li>• To help learners understand the reason for change of the term child pornography to child sexual abuse material</li> </ul>	<p>Phakamile</p>
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<p>11:20am-12:00pm (40mins)</p>	<p><b>THE INTERNET,SEXTING AND THE LAWS THAT ARE IMPORTANT FOR YOUNG PEOPLE</b></p>	<ul style="list-style-type: none"> <li>• Outline how the internet has changed the way we interact, and how others can use it to harm others</li> <li>• Define sexting and the laws around it</li> <li>• Sexting and child sexual abuse material</li> <li>• Outline how young people can get in trouble with the law when sexting according to the discussion paper (the issue of age, consensual and non-consensual sharing of child sexual abuse material among children, self-generated child sexual abuse material by children, etc)</li> </ul>	<ul style="list-style-type: none"> <li>• To help Web Rangers understand the impact that the easy access to the internet has had on the creation and access of child sexual abuse material</li> <li>• Help Web Rangers understand the meaning of sexting, child sexual abuse material and the laws that govern it.</li> <li>• To Inform them about the dangers of sexting according to the discussion paper.</li> </ul>	<p>Lister</p>
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12:00 pm – 12:30 pm (30mins) LUNCH  
MMA staff preps for breakaway groups.  
Notes for facilitators:

\*Web Rangers will now be put into 4 groups to discuss in more detail the different themes spoken about in the previous session. They will do this by answering several questions posed to them.

\*All group facilitators will be assigned a rapporteur to assist with note taking during group discussions. Please make sure that as the lead facilitator, you brief your rapporteur in order for them to capture the children’s voices, ask follow up questions in order to truly capture the meaning of what is being said.

**GROUP BREAKAWAY SESSIONS:**

**Description:** The Web Rangers are put into four group with an equal number each and equal presentation of boys and girls for each group

**Objective of group work:** To encourage all Web Ranger participants to express their comments and feedback on the discussion paper. These comments will then be added as part of the children’s submission on the discussion paper.

Time & Duration	Activity	Facilitator
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12:30 pm –14:00pm

**Group 1**

**Theme: understanding what child sexual abuse material is:**

Web Rangers will respond to the following questions:

- Define child sexual abuse material according to SOA (explain in detail the different parts of the definition)
- Is the definition of child sexual abuse material in the SOA adequate, or should it be amended? If so how?
- Is there a need for one definition?

**Group 2**

**Theme: Is sexting child sexual abuse material or is more complex?**

- Define Sexting
- When does or should consensual self-generated child sexual abuse material by certain children (sexting) amount to child sexual abuse material.
- Should photographs or images in family photo albums, which are capable of being used as child sexual abuse material (child pornography) be treated differently from those available on or through an electronic device?
- Should downloading an image on or by way of a digital device amount to „creation“ thereof?

**Group 3**

**Theme: Should children enter the criminal justice system for engaging in child sexual abuse material?**

- How should the taking and distributing of sexual self-images by children dealt with?

**Group 4**

**Theme: solutions**

- Can the government offer children other remedies for those that break the law?
- What can parents do to protect their children
- Should children take responsibility to ensure they are safe
- How can government create awareness around such dangers?

- Girlie and Rapporteur
- Phakamile and Rapporteur
- Lister & George
- Musa & Azola

14:15pm – 14:30pm	Closing remarks  Web Rangers head home	<ul style="list-style-type: none"><li>• MMA team</li></ul>
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Annexure B – SIGN IN SHEET

*\*Disclaimer: Due to the high sensitivity of the topic it was agreed that confidentiality will be upheld and no child would be named in the submission.*

List of schools and pupil's age and gender:

<b>Thaba Jabula Secondary School</b>	
<b>Sex</b>	<b>Age</b>
Girl	16
Girl	14
Girl	14
Boy	15
Boy	16
Boy	16
Boy	16
<b>Zitikeni Secondary School</b>	
Girl	15

Girl	15
Boy	15
Boy	15
Boy	16
<b>Immaculata Secondary School</b>	
Girl	15
Girl	16
Girl	16
Boy	16
Girl	15
Girl	16
<b>McAuley House School</b>	
Girl	15

Girl	14
Girl	15
Girl	16
Girl	17
<b>Altmont Technical High School</b>	
Girl	16
Girl	16
Girl	16
Boy	17
Girl	17
Boy	18
Boy	18
Girl	16

Boy	16
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