

Kidfluencers in Africa: an emerging opportunity or an emerging concern for the evolving capacities of the African child?

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ABSTRACT: This article considers the phenomenon of 'kidfluencing' and the way in which it is regulated in Africa. More specifically, the article considers whether the 'evolving capacities of the child' are protected and, more importantly, realised under the existing African regional regulatory framework. To this end, the African region's regulatory framework is considered and critiqued. The article focuses on both direct and indirect regulation, as well as contributions by multi-stakeholder bodies. Thereafter, the implications of kidfluencing for the child's evolving capacities is determined by engaging with whether, and to what extent, the existing regulatory framework gives effect to these evolving capacities. The article finds that much of the regulatory framework is very general in design. Where the framework is specific, the focus is placed on the prevention of sexual exploitation of children within the digital environment, but fails to appropriately deal with 'kidfluencing'. As a result, there is no assured process to give the 'kidfluencer' the opportunity to consent to participate in the practice nor is there an assured process whereby children are protected if they cannot consent. Moreover, the article finds that the implications of 'kidfluencing' can last in perpetuity, making appropriate and specific regulation a necessity. The article concludes that the nuances of the practice require an alignment with the policy goals as set out by the African Union, in the form of more robust regulation of and across various sectors. In so doing, such regulation will give better effect to the evolving capacities of the child.

TITRE ET RÉSUMÉ EN FRANÇAIS

Les 'kidfluencers' en Afrique: opportunité émergente ou source de préoccupations pour les capacités évolutives de l'enfant africain?

RÉSUMÉ: Cet article examine le phénomène du 'kidfluencing' et sa réglementation en Afrique. Plus précisément, il examine si les 'capacités évolutives de l'enfant' sont protégées et, surtout, mises en œuvre dans le cadre réglementaire régional africain existant. À cette fin, le cadre réglementaire de la région africaine est examiné et critiqué. L'article se concentre sur la réglementation directe et dérivée, ainsi que sur les contributions des organismes multipartites. Ensuite, les implications du 'kidfluencing' sur les capacités évolutives de l'enfant sont déterminées en examinant si, et dans quelle mesure, le cadre réglementaire existant prend en compte ces capacités évolutives. L'article constate qu'une grande partie du cadre réglementaire est de conception très générale. Lorsqu'il est spécifique, il met l'accent sur la prévention de l'exploitation sexuelle des enfants dans l'environnement numérique, mais ne traite pas correctement du 'kidfluencing'. Par conséquent, il n'existe aucun processus garantissant au 'kidfluencing' de consentir à participer à la pratique,

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ni de processus garanti permettant de protéger les enfants s'ils ne peuvent pas consentir. De plus, l'étude constate que les conséquences du 'kidfluencing' peuvent perdurer indéfiniment, rendant nécessaire une réglementation appropriée et spécifique. L'étude conclut que les nuances de cette pratique nécessitent un alignement sur les objectifs politiques définis par l'Union africaine, sous la forme d'une réglementation plus rigoureuse dans divers secteurs. Ce faisant, une telle réglementation permettra de mieux prendre en compte le développement des capacités de l'enfant.

TÍTULO E RESUMO EM PORTUGUÊS

Kidfluencers em África: uma oportunidade ou uma preocupação emergente com as capacidades em evolução da criança africana?

RESUMO: Este artigo analisa o fenômeno dos 'kidfluencing' e a forma como este fenômeno é regulamentado em África. Mais especificamente, o artigo analisa se as 'capacidades em evolução da criança' são salvaguardadas e concretizadas no âmbito do enquadramento jurídico africano existente. Para tal, será feita uma análise crítica a este mesmo enquadramento, centrando-se o artigo na regulamentação direta e indireta, bem como nas contribuições de organismos multilaterais. Posteriormente, as implicações do 'kidfluencing' para as capacidades em evolução da criança são determinadas através da análise se, e em que medida, o quadro regulamentar existente dá efeito a essas capacidades em evolução. O artigo conclui que o enquadramento normativo regulador destas matérias é bastante geral na sua conceção. Nos casos em que este é específico, o foco é colocado na prevenção da exploração sexual de crianças no ambiente digital, mas não consegue lidar adequadamente com o. Deste modo, não existe, por exemplo, um mecanismo de consentimento na prática do 'kidfluencing', nem garantias de que as crianças sejam protegidas se não puderem dar o seu consentimento. Além disso, o artigo conclui que as implicações do 'kidfluencing' podem ter efeitos duradouros, tornando necessária uma regulamentação adequada e específica. O artigo conclui que as nuances da prática exigem um alinhamento com os objetivos políticos estabelecidos pela União Africana, sob a forma de uma regulamentação mais robusta em vários setores. Ao fazê-lo, essa regulamentação dará melhor efeito às capacidades em evolução da criança.

KEY WORDS: Kidfluencing; African regional regulatory framework; children's digital footprint; regulation

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1 INTRODUCTION

From communication and marketing to beauty trends and even activism. Social media has changed society in several ways: Recent decades have shown a steady rise in social media being used as a marketing tool using social media influencers.¹ Social media influencers (influencers) can be defined as individuals who 'have built a network of followers and are identified as trusted tastemakers in one or several niches'.² This article will place its focus on the African region specifically, and will consider and critique the regulation of the phenomenon of 'kidfluencing' in Africa. This will be done to determine whether, and to what extent, the regional regulatory framework protects the evolving capacities of these children. To begin, I will provide a brief contextualisation of the nature of influencing and why this has become such a prominent part of digital technologies discourse.

Social media influencers can be both established celebrities or 'ordinary' people.³ Established celebrities such as reality television star Kylie Jenner, and actress and singer Selena Gomez use Instagram as a platform to advertise their own beauty products.⁴ Celebrities such as these use social media to market their products to an audience they would not ordinarily have had access to through traditional methods of advertising.⁵

'Ordinary' people, or individuals that are not established celebrities prior to becoming influencers, also use social media for the purpose of influencing. The number of social media platforms that are prominent has also increased alongside the growth of technology generally.⁶ These platforms include Facebook, Instagram, and, more recently, TikTok.⁷ One of the areas that has grown, in particular, is the way in which social media has been used as a marketing tool.

1 A Blum-Ross & S Livingstone 'Sharenting', parent blogging, and the boundaries of the digital self' (2017) 15(2) *Popular Communication* 110-125.

2 M De Veirman, L Hudders & MR Nelson 'What is influencer marketing and how does it target children? a review and direction for future research' (2019) 10 *Frontiers in Psychology* 1-2.

3 M Nouri 'The power of influence: traditional celebrity v social media influencer' (2018) 32 *Advanced Writing: Pop Culture Intersections* 20.

4 K Jenner 'Kylie Jenner' (no date) *Instagram* <https://www.instagram.com/kyliejenner/?hl=en> (accessed 06-04-2023); S Gomez 'Selena Gomez' (no date) *Instagram* <https://www.instagram.com/selenagomez/> (accessed 6 April 2023).

5 Nouri (n 3) 125.

6 A Fox & M Hoy 'Smart devices, smart decisions? Implications of parents' sharenting for children's online privacy: an investigation of mothers' (2019) 38 *Journal of Public Policy and Marketing* 432.

7 Blum-Ross & Livingstone (n 1) 125.

Social media marketing, otherwise known as 'digital advertising', is characterised by companies paying to place targeted advertisements on social media platforms such as Facebook, Instagram or TikTok, amongst others.⁸ The choice of the platform used depends on various factors including the nature of the product, the target audience and the form of the advertisement itself.⁹

Influencers have become central to the execution of digital advertising as companies have also embraced using influencers as digital advertising tools instead of placing these advertisements on social media themselves.¹⁰ Influencers then post content on behalf of companies in order to achieve the latter's advertising aims in exchange for remuneration.¹¹ The content posted can take the form of footage of the influencer using the product or speaking about the product to encourage their followers to buy the product or use the service offered by the company.¹²

Since influencers have very large followings of between hundreds of thousands and billions of followers, companies are able to market their products to audiences they would not have ordinarily had access to, all at once.¹³ This strategy has proven to be very successful for companies as is evidenced by the shift towards the use of influencers by companies of various sizes.¹⁴ This has led to an increase in social media marketing opportunities which has also incentivised social media users to try to reach influencer status.¹⁵ Companies find value in using influencers to market their products as social media makes it easier for companies to monitor 'the return on their investment' as they are able to track engagement with the content and the product being advertised.¹⁶

Income generation opportunities on social media do not only consist of advertising on behalf of companies; influencers can also be paid by the social media platforms themselves to post content which increases traffic by consumers to these platforms.¹⁷ Both TikTok and YouTube's incentivisation schemes are examples of ways in which

8 S Kay, R Mulcahy & J Parkinson 'When less is more: the impact of macro and micro social media influencers' disclosure' (2020) 36 *Journal of Marketing Management* 278.

9 S McCorquodale *Influence* (2021) 19 -20.

10 McCorquodale (n 10) 19 -21.

11 Kay and others (n 8) 278.

12 R Neate 'Ryan Kaji, 9, earns \$29.5m as this year's highest-paid YouTuber' 18 December 2020, <https://www.theguardian.com/technology/2020/dec/18/ryan-kaji-9-earns-30m-as-this-years-highest-paid-youtuber> (accessed 24 July 2025).

13 McCorquodale (n 10) 19.

14 Kay and others (n 8) 278.

15 This refers to the point at which these individuals have a large enough following to be remunerated for their content. See Kay (n 8) 251.

16 A Lim 'Child's play... or is it?: why child influencers need financial protection laws' (2024) 20 *Ohio State Technology Law Journal* 411.

17 Nouri (n 3) 125.

social media platforms create income generation opportunities for influencers.¹⁸

The more followers an influencer has, the greater the value of the opportunities with which they are presented will be.¹⁹ There is, however, no exact number of followers which constitutes a sufficient number for a career in social media influencing.²⁰ Trends do, however, indicate that a following within the range of between a few hundred thousand and several million can be considered as sufficient to grant a person influencer status.²¹ Due to this link between popularity and the types of opportunities that can be accessed via influencing, influencers are motivated to increase their following as much and as quickly as they possibly can. I will now consider the positioning of children in the practice of social media influencing.²²

1.1 The role of children in social media influencing

The presence of children on social media platforms has increased significantly over the last decade.²³ Parents sharing social media content featuring their children is a fairly common practice and it is not unusual to see photographs or videos of children's milestones or other achievements on social media.²⁴ This phenomenon has become known as 'sharenting'.²⁵ The information shared in this practice commonly takes the form of photographs or video material of children.²⁶ Sharenting behaviours have increased exponentially and have extended

¹⁸ TikTok 'About full-funnel marketing on TikTok' April 2025, <https://ads.tiktok.com/help/article/full-funnel-marketing-tiktok?lang=en> (accessed 22 July 2025); Google 'YouTube partner programme overview and eligibility' April 2025, <https://support.google.com/youtube/answer/72851?hl=en&co=GENIE.Platform%3DAndroid> (accessed 22 July 2025).

¹⁹ Forbes 'Charli D'Amelio' <https://www.forbes.com/profile/charli-damelio/?sh=7f64e25843d6> (accessed 22 July 2025).

²⁰ W Geyser 'What is an influencer' 11 January 2023, *Influencer Marketing Hub* <https://influencermarketinghub.com/what-is-an-influencer/> (accessed 22 July 2025).

²¹ E Tempesta '25-year-old single mother of twins reveals she was left to raise her babies alone after her boyfriend abandoned her at seven-weeks pregnant to get an abortion' 19 January 2022, *Daily Mail.com* <https://www.dailymail.co.uk/femail/article-10419981/25-year-old-left-raise-twins-boyfriend-abandoned-her.html> (accessed 22 July 2025).

²² N Grover 'Kylie Jenner becomes first woman with 300 million Instagram followers' 13 January 2022, *Lifestyle Asia* <https://www.lifestyleasia.com/ind/entertainment/kylie-jenner-first-woman-with-300-million-instagram-followers/> (accessed 22 July 2025).

²³ SC Boerman & EA van Reijmersdal 'Disclosing influencer marketing on YouTube to children: the moderating role of para-social relationship' (2020) 10 *Frontiers in Psychology* 2.

²⁴ Fox & Hoy (n 4) 432.

²⁵ 'Sharenting' can be understood as 'the habitual use of social media to share news and images of one's children. On a general level it is done to share this content with family members or the specific audiences or groups depending on the privacy settings.' See Fox & Hoy (n 6) 432.

²⁶ Fox & Hoy (n 6) 432.

to the realm of social media influencing with the development of 'kidfluencers'.²⁷ A 'kidfluencer' can be defined as a child who is involved in the practice of social media influencing alongside or under the guidance or instruction of the parent as part of the parent's 'brand'.²⁸ The content posted in this practice thus includes or primarily features these children.²⁹

Kidfluencers participate in several different forms of content, depending on the specific niche of the account.³⁰ Examples include prank videos, occurrences in the child's daily life, fashion content or toy reviews.³¹ Vlogging is a particularly successful area of participation for kidfluencers,³² the content of which can also concern more personal areas of the child's life such as their health or any inter-personal challenges that they may face.³³

Accounts featuring children often reach the same number of followers as accounts exclusively featuring adult influencers. In some instances, the number of followers is even higher.³⁴ Africa is not exempt from this trend of kidfluencers and their growing online presence: An example is Kairo Forbes, a young kidfluencer, who has attained such a high level of success that she has worked with large companies such as *Cotton On Kids*³⁵ and *Roblox* in advertising their products on her social media pages.³⁶

Another example is Desmond Koolen, a young boy who has made large amounts of money from the business of social media influencing,³⁷ and whose videos on TikTok generate millions of views per video.³⁸ These are but two examples of a phenomenon that has

27 For the purposes of ease of reference and consistency in this paper, the term 'kidfluencers' will be used to describe these children. See similar use in S Shomai, P Unwin & C Sealey "Kidfluencers" lived experiences of influencer culture: a time for regulation' (2024) 44 *International Journal of Sociology and Social Policy* 1109.

28 C Archer 'How influencer 'mumpreneur' bloggers and 'everyday' mums frame presenting their children online' (2021) 170 *Media International Australia* 52.

29 Lim (n 16) 407-408.

30 As above.

31 S Mariasih & G Tambunan 'Linking privatised large family domestic space with a public audience: an analysis of housewives who are YouTube vloggers' (2020) 28 *Pertanika Social Sciences and Humanities* 588.

32 K Biggeman 'The hidden depravities of kidfluencing: A children's rights issue' (2025) 17 *Canadian Journal of Family and Youth* 154-155.

33 B Montgomery 'Being sick made them famous and a target for trolls' 18 February 2022, <https://www.thedailybeast.com/chronic-illness-influencers-say-being-sick-made-them-famous-and-a-target-of-trolls> (accessed 22 July 2025).

34 Lim (n 16) 411.

35 K Forbes 'KairoForbes and CottonOnKids' 2 December 2022, https://www.instagram.com/p/ClptaImoTgx/?utm_source=ig_web_copy_link (accessed 22 July 2025).

36 K Forbes 'Kairo.Forbes' 25 August 2022, https://www.instagram.com/reel/ChrWJ9yg5f4/?utm_source=ig_web_copy_link (accessed 07-12-2022).

37 G Gifford 'Kidfluencers are coining it' 10 November 2024, <https://www.timeslive.co.za/sunday-times/news/2024-11-10-kidfluencers-are-coining-it/> (accessed 8 December 2024).

38 Biggeman (n 32) 154-155.

grown rapidly across the African continent. International television network *Nickelodeon* has a ‘Best African Kidfluencer’ category as part of its annual Kids Choice Awards.³⁹ This indicates not only the extent to which social media influencing has grown, but also indicates how relevant it has become on the African continent. Although social media influencing is a fairly new phenomenon, it has numerous established ‘benefits’. This article will first consider the effect of social media influencing as a route to celebrity status.

1.2 Practical effects of social media influencing

Social media influencing, including participation by children in the practice, provides an opportunity for anyone to become a celebrity and also enables established celebrities to expand their platforms.⁴⁰ Popularity is a core feature of social media influencing.⁴¹ If a social media user is not popular, it is impossible for them to reach influencer status and derive the benefits from such status.⁴² The more popular an influencer becomes, the more opportunities they are able to access, which then further increases their following.⁴³ It is also for this reason that established celebrities turn to social media influencing as a means to expand their platforms.⁴⁴ For example, Kim Kardashian⁴⁵ has created a joint TikTok account with her young daughter and because of this, is able to access a new audience to whom her products can be marketed.⁴⁶ This path to celebrity is achieved by publishing content that is highly curated, often involving aspects of the influencer’s personal life.⁴⁷ Such sharing of information allows the audience to feel closer to the influencer, which then further increases viewership and, by extension, increases the influencer’s popularity.⁴⁸ This increase in popularity and path to fame is not, however, free of consequences of its own.

³⁹ M Zuma ‘Meet the Nickelodeon African Kidfluencer nominees’ 24 March 2022, <https://sundayworld.co.za/celebrity-news/entertainment/meet-the-nickelodeon-african-kidfluencer-nominees/> (accessed 22 July 2025).

⁴⁰ Nouri (n 3) 121.

⁴¹ I Rotimi, S Yap & B Wooliscroft ‘Unboxing child influencer paradoxes: A research agenda’ (2024) 40 *Journal of Marketing Management* 1030.

⁴² Nouri (n 3) 21.

⁴³ As above.

⁴⁴ As above.

⁴⁵ Kim Kardashian is a popular influencer who started out as a reality television star on the E! Network. See <https://www.imdb.com/name/nm2578007/bio> (accessed 22 July 2025).

⁴⁶ A Norwin 24 December 2022, <https://hollywoodlife.com/2022/12/24/north-west-mocks-kim-kardashian-skims-promotion-tiktok-video/> (23 July 2025).

⁴⁷ C Abidin “Aren’t these just young, rich women doing vain things online?”: Influencer selfies as subversive frivolity’ (2016) 2 *Social Media + Society* 3.

⁴⁸ C Abidin ‘Victim, rival, bully: Influencers’ narrative cultures around cyberbullying’ (2019) *Narratives in research and interventions on cyberbullying among young people* 199–212.

One of the natural consequences of fame is being deprived of a level of privacy that one can ordinarily expect.⁴⁹ The exact nature of this deprivation depends on the individual in question and the reasons for their fame, but influencers who do not have a commercial objective or specialisation often ‘rely on developments in their personal lives to connect with their followers and establish their self-branding’.⁵⁰ This sacrifice in privacy allows followers to feel a connection with the influencer and to engage to a greater extent with their content.⁵¹

There have been examples of influencers who have been negatively impacted by this decrease in privacy, given what their followers have done with the information obtained. For example, popular influencers ‘The ACE Family’, who shared lifestyle content, had to relocate due to their home address being released to the public after it was seen in the background of one of their videos.⁵² Being a celebrity does not only result in a loss of privacy, but could also result in a loss of control over how one’s privacy is managed and maintained.⁵³ This is particularly prevalent in the context of the internet as studies have shown that the internet has transformed into a space in which content is not only shared, but also reshared to a very significant extent.⁵⁴ TikTok, a social media platform that is particularly popular with influencers, provides an example of the way in which content is able to easily resurface even where it was initially deleted by the initial poster.⁵⁵ This can also deprive the influencer of a level of autonomy that they would have ordinarily had over themselves and their information.⁵⁶

However, many influencers accept, and are even willing, to ‘abandon’ their autonomy in this way, as fame can generate significant wealth.⁵⁷ Becoming a celebrity can create various streams of income to the influencer. These streams can take the form of sponsorships, paid posts or appearance opportunities.⁵⁸ An example of a very successful

49 Abidin (n 48) 200.

50 Abidin (n 47) 3.

51 Nouri (n 3) 9.

52 The ACE Family ‘The ACE Family’ <https://www.youtube.com/c/TheACEFamily> (accessed 27 July 2025).

53 Once content is placed in the public domain, this content can be shared more widely or used as contextual clues to gain access to other information which could amount to a further loss in privacy. See T de Beer & E Sadleir *Don't film yourself having sex and other legal advice for the age of social media* (2014) 154.

54 Y Wang ‘Humor and camera view on mobile short-form video apps influence user experience and technology-adoption intent, an example of TikTok (*DuoYin*)’ (2020) 110 *Computers in Human Behavior* 1.

55 As above.

56 De Beer & Sadleir (n 53) 154.

57 Abidin (n 47) 3.

58 S Steinberg ‘Sharenting: children’s privacy in the age of social media’ (2017) 66 *Emory Law Journal* 884; J Smith 4.9 billion likes and counting: TikTok icon Addison Rae is GLAMOUR’s February digital cover star, opening up on mental health, beauty and cracking Hollywood’ 15 February 2021, <https://www.glamourmagazine.co.uk/article/addison-rae-tiktok-glamour-cover-interview-2021> (accessed 23 July 2025).

child social media influencer is Charli D'Amelio,⁵⁹ who was able to earn millions of dollars per year from her social media influencing career.⁶⁰ Large amounts of money are often paid for a single post in cases in which the influencer is particularly popular.⁶¹ Social media and the development of influencing has not only changed marketing strategies and opportunities, but has had an effect that extends beyond the online community and impacts society at large.

Given the increasing presence of social media and social media marketing involving children as a marketing strategy, it is necessary to consider how the child is impacted by this practice and how such impact affects these children's rights.⁶²

This burden to protect and secure the child's best interests applies in all matters concerning the child.⁶³ Thus, the burden does not cease to exist within the digital environment.⁶⁴ This article will now consider the relevant regulatory frameworks pertaining to the digital environment.

2 AFRICAN REGION'S REGULATORY FRAMEWORK

As a point of departure, this paper will sketch the relevant international law context. To do so, reference will be made to the CRC and the work of the Committee on the Rights of the Child (CRC Committee). The CRC Committee recognises that the digital world is in a state of constant evolution and expansion while becoming increasingly important for day-to-day functioning.⁶⁵ The CRC Committee begins by explaining that there are four lenses through which to view the implementation of CRC rights, and that these four lenses should be used when considering the implementation of the CRC rights within the digital environment. These lenses include the child's right to non-discrimination, the protection of the child's best interests, the protection of the child's right to life, survival and development and, finally, respect for the child's

59 Charli D'Amelio reached influencer status as a teenager by posting short dance videos on TikTok and was able to reach a following of a few billion. See C George 'How Charli D'Amelio became the face of TikTok' 5 September 2022, <https://www.newyorker.com/culture/cultural-comment/how-charli-damelio-became-the-face-of-tiktok> (accessed 23 July 2025).

60 R Jennings 'The D'Amelio kids are not alright' 14 September 2021, <https://www.vox.com/the-goods/22672582/charli-damelio-show-hulu-dixie> (accessed 23 July 2025).

61 T Spillerman 'TikTok babies are a dilemma with no clear answer' 6 April 2022, <https://pittnews.com/article/172744/opinions/opinion-tiktok-babies-are-a-dilemma-with-no-clear-answer/> (accessed 23 July 2025).

62 African Charter on the Rights and Welfare of the Child (adopted 1990, entered into force on 29 November 1999) AHG/ST.4 Rev. 1 (African Children's Charter).

63 CRC art 3; African Children's Charter art 4.

64 United Nations Committee on the Rights of the Child *General Comment 25 on children's rights in the digital environment*, (2 March 2021), CRC/C/GC/25 (UNCRC General Comment 25) para 4.

65 UNCRC General Comment 25 (n 64) para 3.

views.⁶⁶ Respecting the child's views,⁶⁷ as one of the four lenses in the digital environment, also entails that the digital environment and access thereto should not act to inhibit the child's participatory rights.⁶⁸ General Comment 12⁶⁹ provides that the child's right to participate in matters which concern them operates in 'all relevant contexts' – including the digital environment.⁷⁰

The children consulted in the drafting of General Comment 25 reported that the digital environment has afforded them multiple opportunities to participate in matters which affect them and to do so at various legislative levels.⁷¹ The CRC Committee emphasises that processes which concern the regulation of the digital environment in relation to children, such as policymaking, should also engage the child's views and give them due weight.⁷² The CRC Committee further acknowledges that particularly vulnerable children are entitled to special protections.⁷³

In addition to the above, the CRC Committee makes strong reference to the child's evolving capacities within this General Comment. The CRC Committee states that the child's evolving capacities are of 'particular significance' within the digital environment.⁷⁴ Other protections imposed by the CRC Committee include the general, overarching obligations placed on state parties. These include the drafting and implementation of legislation as well as administrative and precautionary measures necessary to realise the child's rights and to protect children in the digital environment.⁷⁵ While the aforementioned discussion places emphasis on how the child should be protected, the General Comment also recognises that there are elements of freedom that children have within the digital environment, and that states are under an obligation to ensure these freedoms. UNESCO has also drafted a more recent policy document on the issue of children and social media – namely, the 'UNESCO Guidelines for the Governance of Digital Platforms'.⁷⁶ These guidelines set out principles for the way in which the internet should be

66 UNCRC General Comment 25 (n 64) para 8.

67 Art 12 of the CRC.

68 UNCRC General Comment 25 (n 64) para 16.

69 United Nations Committee on the Rights of the Child *General Comment 12: "The right of the child to be heard"* (2009) CRC/C/GC/12/ UNCRC General Comment 12).

70 UNCRC General Comment 12 (n 69) para 89.

71 UNCRC General Comment 25 (n 64) para 16.

72 UNCRC General Comment 25 (n 64) para 17.

73 UNCRC General Comment 12 (n 69) para 89.

74 UNCRC General Comment 25 (n 64) para 19.

75 UNCRC General Comment 25 (n 64) para 22.

76 UNESCO *UNESCO Guidelines for the Governance of Digital Platforms: Safeguarding freedom of expression and access to information through a multistakeholder approach* (2023) (UNESCO Guidelines).

governed.⁷⁷ While it admittedly discusses the internet in broad terms and does not specifically deal with social media, it notably reflects the stance taken by the CRC Committee in General Comment 25. For instance, it provides that children should be protected as a vulnerable group within the digital environment, but also be given access and participation opportunities.⁷⁸ This too places emphasis on child participation. This emphasis on participation links to the child's evolving capacities as participation is a component of giving effect to the evolving capacities of the child.⁷⁹

What can be ascertained from the above is that, firstly, the international framework has engaged with the digital environment both in terms of its opportunities and potential concerns. Secondly, there is strong emphasis placed on the child's evolving capacities within this international framework. It is this international law framework against which the regional instruments, which will be considered in this article, operate.

I now turn to consider the general regulatory and policy framework pertaining to kidfluencers in Africa, the primary focus of my paper. First the distinction between 'direct' and 'indirect' regulation is addressed. Thereafter other guidelines from treaty monitoring bodies are considered. Finally, the African Union's (AU) Online Safety and Empowerment Policy is considered.

2.1 Direct regulation

The African regional framework encompasses both 'direct' and what can be referred to as 'indirect' forms of regulation of the digital environment. For the purpose of this article, direct regulation refers to general comments and treaties which directly deal with social media. Indirect forms of regulation will refer to conventions and general comments which do not directly regulate the digital environment but can be interpreted to apply to the digital environment. The most direct form of social media regulation generally in Africa is the AU Convention on Cyber Security and Personal Data Protection (Malabo Convention).⁸⁰ Adopted in June 2014, the Convention aims to establish a cyber security regulatory framework in the African context.⁸¹ The Malabo Convention addresses various areas of cyber regulation,

⁷⁷ These principles include that platforms must conduct human rights due diligence, adhere to international human rights standards, platforms must be transparent, platforms should make information and tools available to its users and platforms must remain accountable to the relevant stakeholders. See UNESCO Guidelines.

⁷⁸ UNCRC General Comment 25 (n 64) para 16.

⁷⁹ UNCRC General Comment 12 (n 69) para 69.

⁸⁰ African Union 'African Union Convention on Cybersecurity and Personal Data Protection' (adopted 27 June 2014, entered into force 8 June 2023) (Malabo Convention).

⁸¹ Preamble of the Malabo Convention.

including security, advertising, electronic contracts and electronic transactions.⁸²

The Malabo Convention defines 'child pornography' in article 1 thereof, and includes it as one of the offences subject to criminal prosecution. However, this is the only specific mention of children throughout the entirety of the Convention, and it does not provide any other regulatory guidance on the issue of children and social media, nor even the internet more generally. This must be regarded as an oversight given the vulnerability of children and their need for special protection.⁸³ This oversight is exacerbated in the Personal Data Protection Guidelines for Africa,⁸⁴ pertaining to the Malabo Convention, which also does not provide any specific guidelines pertaining to children.

The African Children's Committee, in its General Comment 7,⁸⁵ makes specific mention of protecting children in the digital environment,⁸⁶ albeit again merely in the context of the prevention of child pornography and sexual exploitation. General Comment 7 interprets this protection to extend to cyberspace and provides that the protections afforded to the child under regional law do not only apply to offline activities – particularly with the growth of the internet making child online sexual exploitation a pressing matter.⁸⁷ Additionally, General Comment 7 acknowledges the difficulties with regulating digital environments resulting from the internet's transnational nature.⁸⁸ It advocates for transnational cooperation between member states to ensure that children are protected from being sexually exploited.⁸⁹ States are also encouraged to analyse the behaviour of children online to determine where and how children should be protected in this space.⁹⁰ However, while doing so, states should ensure that, in their analysis, the privacy of children is still protected.⁹¹ Therefore, I contend that while General Comment 7 does provide and advocate for the regulation of the digital environment, it does so in a specific, limited context. It does not extend to all aspects of social media and children, particularly not social media influencing.⁹²

⁸² As above.

⁸³ OM Sibanda 'Towards a more effective and coordinated response by the African Union on children's privacy online in Africa' (2022) 6 *African Human Rights Yearbook* 165.

⁸⁴ AU & Internet Society *Personal Data Protection Guidelines for Africa* (2014).

⁸⁵ African Committee of Experts on the Rights and Welfare of the Child *General Comment No 7 on Article 27 of the African Children's Charter 'Sexual Exploitation'* (July 2021) (General Comment 7).

⁸⁶ General Comment 7 (n 85) paras 88–90.

⁸⁷ General Comment 7 (n 85) para 55.

⁸⁸ As above.

⁸⁹ General Comment 7 (n 85) para 91.

⁹⁰ General Comment 7 (n 85) para 166.

⁹¹ As above.

⁹² Sibanda (n 83) 168.

The Economic Community of West African States (ECOWAS), as a sub-regional body, has also enacted a binding data protection regimen for its member states.⁹³ Regrettably, despite its binding nature, ECOWAS's Supplementary Act on Personal Data Protection⁹⁴ also does not provide any detailed guidance on the protection of personal information of children.⁹⁵

2.2 Indirect regulation

While direct regulation of the digital environment by the regional regulatory framework is evidently lacking, there have been arguments in favour of interpreting regional laws in such a way as to encompass the digital environment within their ambit, and thereby to make up for this oversight.⁹⁶ For instance, the right to privacy can be interpreted to extend to the digital environment and, in doing so, to create obligations for states, as well as parents or guardians.⁹⁷ The wording of article 10 of the African Children's Charter, the privacy provision, also uses language that can encompass the digital environment. For example, the use of 'correspondence' can apply to the digital environment because of it being used as a medium to facilitate communication.⁹⁸ Arguably, this indicates that the right to privacy can be interpreted in such a way as to give protection to the child in the digital environment. Nevertheless, the fact remains that this protection is merely implied and is neither discussed at length nor even explicitly mentioned.⁹⁹

General Comment 7 takes a similar approach to deriving protection from another right and thus provides that the child's right to be protected against sexual exploitation also extends to the digital environment.¹⁰⁰ This is notable given that there is no specific mention of the digital environment within the wording of article 27 of the African Children's Charter itself. However, the African Children's Committee refers to new and emerging forms of sexual extortion online, and recognises that legislation should be developed to protect children from these emergent forms of sexual exploitation.¹⁰¹ This can be seen as yet another example of how the interpretation of rights in a particular way can be used to provide the child with protection in the digital environment – even where there is no dedicated section nor any specific mention thereof in the original wording.

93 T Singh & M Power 'Understanding the privacy rights of the African child in the digital era' (2021) 21 *African Human Rights Law Journal* 110.

94 Economic Community of West African States Supplementary Act A/SA.1/01/10 on Personal Data Protection within ECOWAS (2010).

95 Singh & Power (n 93) 110.

96 As above.

97 Sibanda (n 83) 162.

98 As above; African Children's Charter art 10.

99 Sibanda (n 83) 168.

100 African Children's Committee (n 86) paras 87-89 read together with paras 66 & 78.

101 As above.

2.3 Other regional multi-stakeholder inputs

There are other regional organisations which have also contributed to the policy sphere with regards to the digital environment. These policies, however, are not legally binding or enforceable. For example, Agenda 2040¹⁰² was drafted by the African Children's Committee and sets out those aspirations which the African region aims to achieve by 2040. These aspirations include broadening the child's access to the digital environment, as well as protecting them from sexual exploitation within said environment.¹⁰³

Furthermore, Resolution 17/2022,¹⁰⁴ adopted by the African Children's Committee Working Group on Children's Rights and Business, sets out a host of protections that should be implemented by both states *and* civil society. Promisingly, its focus is specifically on the digital environment. The aim of this resolution is to offer guidance to states, the private sector and civil society on how the digital environment should be regulated.¹⁰⁵ These guidelines include, but are not limited to, calling on states to ratify the Malabo Convention, to enact data protection measures and to create child protection frameworks.¹⁰⁶ The resolution further calls on the private sector to assist with the implementation of these frameworks and to ensure that due diligence practices which place children's online safety at their forefront are enacted.¹⁰⁷ Civil society is also called upon to spread awareness about children's online safety and to cooperate with the private and governmental sectors in doing so.¹⁰⁸

Additionally, the AU Commission's Department of Health, Humanitarian Affairs and Social Affairs implemented a programme to protect children from online sexual exploitation.¹⁰⁹ There are also other policy documents implemented by the African Commission's various departments which focus on the prevention of the sexual exploitation of children online.¹¹⁰ Unfortunately, these policy documents have been met with mixed responses from member states, as not all member states regard these policies as priorities.¹¹¹

¹⁰² African Children's Committee *Child Africa's Agenda for Children 2040* (2015) (adopted 9 November 2016).

¹⁰³ AU (n 85) aspirations 6, 33 & 7.

¹⁰⁴ African Children's Committee *Resolution No. 17/2022 of the African Children's Committee Working Group on Children's Rights and Business on the Protection and Promotion of Children's Rights in the Digital Sphere in Africa* (adopted 17 March 2022).

¹⁰⁵ African Children's Committee (2023) *Day of the African Child 2023: The rights of the child in the digital environment* (16 June 2023) para 15.

¹⁰⁶ African Children's Committee (n 105) para iii.

¹⁰⁷ African Children's Committee (n 105) paras i-iv.

¹⁰⁸ African Children's Committee (n 105) paras i-ii.

¹⁰⁹ African Children's Committee (n 105).

¹¹⁰ African Children's Committee (n 105) paras 18-20.

¹¹¹ Directorate of Information and Communication 'African Union continental consultation on combatting online child sexual exploitation' 6 March 2019, <https://au.int/en/pressreleases/20190306/african-union-continental-consultation-combatting-online-child-sexual-exploitation> (accessed 24 July 2025).

The prevention of child sexual exploitation in the digital environment is evidently an important aspect of these regional policies, even when these policies neglect to mention other forms of online child exploitation.¹¹² Overall, there is thus a lack of a robust or vast body of regional law which regulates the digital environment that specifically mentions children.¹¹³ It also remains concerning that the few policies which do exist tend to have very poor ratification statistics – as illustrated, for example, by the Malabo Convention and the particularly slow ratifications thereof by member states.¹¹⁴ In 2024, the AU took a very specific and pointed step in the drafting of the AU Online Safety and Empowerment Policy (AU Online Safety Policy).

2.4 African Union's Online Safety and Empowerment Policy

The Policy acknowledges and advocates for the access to opportunities presented by the online environment for children.¹¹⁵ In addition, it also advocates for measures to be taken to protect children from the potential harms.¹¹⁶

The Policy highlights that many of the existing regulatory frameworks do not deal with the digital environment and children's relationship thereto in a dynamic and specific enough way. Moreover, it provides that a need to harmonise laws in order to achieve effective regulation is necessary.¹¹⁷ The Policy demands strong commitments to child online safety and an approach that integrates multi-stakeholders.¹¹⁸ Of particular relevance to this paper, the participation of children is one of the measures set out in the Implementation plan of the Policy.¹¹⁹ This highlights the importance of child participation in the eyes of the African Union. The Policy also calls on businesses and the corporate sector to act responsibly when engaging with children's use of social media, a call that would be particularly salient in the case of kidfluencers.

This Policy indicates a shift by the AU towards a call for better regulation and empowerment of children online. The Policy itself, however, also highlights many of the inadequacies present within the existing regulatory framework. This paper will now place specific focus on the evolving capacities of the kidfluencer.

¹¹² African Children's Committee (n 105) para 25.

¹¹³ African Children's Committee (n 105) para 24.

¹¹⁴ African Children's Committee (n 105) 26.

¹¹⁵ African Union *The African Union Child Online Safety and Empowerment Policy* (2024), adopted by the 44th Ordinary Session of the African Union Executive Council 6 (AU Online Safety Policy).

¹¹⁶ AU Online Safety Policy (n 115) 7.

¹¹⁷ AU Online Safety Policy (n 115) 11.

¹¹⁸ As above.

¹¹⁹ As above.

3 EVOLVING CAPACITIES OF THE CHILD IN AFRICAN REGIONAL LAW

The ‘evolving capacities of the child’ is a crucial and familiar concept in child law. Article 5 of the CRC, in its effect and application, recognises that the child has what has been referred to as ‘evolving capacities’. Article 5 provides that parents have the right to provide the child with guidance and assistance in the exercise of their CRC rights but that this should be done ‘in a manner that is consistent with the evolving capacities of the child’.

Previously, ‘capacity’ and ‘competency’ were not concepts that were recognised as attributes of children under international law.¹²⁰ Childhood was ‘viewed as a singular, fixed and universal stage of life’.¹²¹ The CRC’s recognition of the child and their evolving capacities, is a break from this traditionally held position, and makes the child ‘visible’ under international law.¹²²

The African Children’s Charter recognises the child’s evolving capacities. Article 9(2) of the African Children’s Charter specifically mentions the child’s evolving capacities in the context of freedom of thought, conscience and religion. It provides that while parents and legal guardians have the right to provide guidance to the child, this must be done by taking their evolving capacities and best interests into account. The inclusion of taking the child’s ‘age’ and ‘maturity’ into account when determining the weight to attach to their views in the process of participation, indicates the acknowledgment of the child’s evolving capacities, as age and maturity are not static concepts nor concepts which determine a fixed competency.¹²³ Such a conception does not create a presumption of incompetence for children below a certain age threshold to enjoy their participatory rights, through recognising the fact that the child’s capacities are not static.¹²⁴

Article 7 of the African Children’s Charter also grants the child the right to freedom of expression, and states that the child has the right to communicate their views. Gose argues that the African Children’s Charter neglects the fact that the right to access information works alongside the right to express views.¹²⁵ Moreover, Gose provides that freedom of expression is empty without the requisite information needed to form a view to communicate.¹²⁶ Additionally, the African Children’s Charter recognises that the child has the right to be heard

¹²⁰ S Varadan ‘The principle of the evolving capacities under the UN Convention on the Rights of the Child’ (2019) 27 *The International Journal of Children’s Rights* 307.

¹²¹ As above.

¹²² G Lansdown *The evolving capacities of the child* (2005) 6.

¹²³ A Moyo ‘Child participation under South African law: beyond the Convention on the Rights of the Child?’ (2015) 31(1) *South African Journal on Human Rights* 173, 175.

¹²⁴ As above.

¹²⁵ M Gose *The African Charter on the Rights and Welfare of the Child* (2002) 129.

¹²⁶ Gose (n 125) 129-130

both directly and through the means of a representative.¹²⁷ However, this right is limited to 'judicial and administrative proceedings' which affect the child, rather than 'all matters' as is the case in the CRC.¹²⁸ The child's evolving capacities under the African Children's Charter, therefore play a key role in the participatory process as it recognises the child's vulnerability alongside their autonomy.¹²⁹

The African Children's Committee's General Comment 5¹³⁰ also recognises that children's views need to be given due weight when participating.¹³¹ The African Children's Committee further provides that when children exercise their views, it should not be 'formalistically considered without affecting real change'.¹³² This illustrates that the evolving capacities are not just a mere concept which exists, but is a concept that needs to be more than tokenistic or meaningless in its implementation.

African children face a unique set of circumstances caused by socio-cultural differences.¹³³ This is no clearer than when considering the child's evolving capacities: The African Children's Charter, while recognising children as independent rights bearers, also recognises the central role played by elements of 'parental or guardian power' in the lives of children.¹³⁴ This is further compounded by the recognition of the responsibilities that children have towards the families¹³⁵ and the duties in terms of respect for adults.¹³⁶ This can complicate the implementation and recognition of 'the evolving capacities of the child' and the child's related right to participate, but the African Children's Committee has made it clear that 'respect for adults' should not function as a trump for the recognition and implementation of the rights of the child.¹³⁷ The CRC - the leading international children's rights instrument - in its drafting, recognises that local custom also plays a role in the implementation of article 5 as well as the different conceptions of duty towards the community.¹³⁸ Thus, the 'evolving

¹²⁷ Children's Charter art 4(2).

¹²⁸ AE Boniface 'Resolving disputes with regards to child participation in divorce mediation' (2013) 1 *Speculum Juris* 138.

¹²⁹ T Kaime *The African Charter on the Rights and Welfare of the Child: a socio-legal perspective* (2009) 132.

¹³⁰ African Children's Committee Child General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and systems strengthening for child protection (1 October 2018) (General Comment 5).

¹³¹ ACERWC (n 118) 14.

¹³² General Comment 5 (n 130) 14.

¹³³ As above.

¹³⁴ YE Ayalew, V Verdoodt & E Lievens 'General Comment No. 25 on children's rights in relation to the digital environment: implications for children's right to privacy and data protection in Africa' (2024) 24 *Human Rights Law Review* 10.

¹³⁵ Children's Charter art 31; Ayalew, Verdoodt & Lievens (n 134) 10.

¹³⁶ As above.

¹³⁷ As above.

¹³⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 5. (CRC); Ayalew, Verdoodt & Lievens (n 134) 11.

capacities of the child' with the cultural context in mind needs to be implemented in order to recognise the child as an independent rights-bearer.

Specifically in the digital environment, the CRC has recognised that there must be flexibility when implementing the child's rights to align such implementation with the specific contextual considerations applicable to the parent-child relationship, such as in the case of the African region.¹³⁹

What can be concluded is that the 'evolving capacities of the child' is thus much more complex than the child simply expressing their wishes or being protected from their own immaturity, and requires a greater level of consideration.¹⁴⁰ This is even further complicated by any socio-cultural considerations, as I will set out to argue.

4 EVOLVING CAPACITIES OF THE AFRICAN KIDFLUENCER AND THE REGIONAL REGULATORY FRAMEWORK

What emerges from the formulations of 'evolving capacities' under the different levels of regulation above, is a sort of tension or dichotomy between protection and participation of children which is a common theme in children's rights discourse and history.¹⁴¹ This theme also challenges the traditional view that children are *just* vulnerable and dependent.¹⁴²

This article will now turn to consider various components which form part of 'the evolving capacities of the child' and how the African regional framework deals with these components in the case of kidfluencing.

4.1 Minimum age thresholds

Part of recognising the evolving capacities of the child means recognising that there is a stage at which a child may not be able to provide consent or unassisted consent to certain acts.¹⁴³ Minimum age thresholds have often been introduced to deal with this. However, in the case of kidfluencing, the implementation of minimum age thresholds is a more complicated matter.

¹³⁹ CRC (n 65 above) paras 85-86.

¹⁴⁰ A Parkes *Children and international human rights law: the right of the child to be heard* (2013) 7- 8.

¹⁴¹ D Reynaert and others *Routledge international handbook of children's rights studies* (2015) 4.

¹⁴² As above.

¹⁴³ L Pienaar 'Access to medical records of a child: legislative review required' (2014) 30 *South African Journal on Human Rights* 510

The social media platforms, which are often used for kidfluencing, do have minimum age requirements for the creation of an account on the platform.¹⁴⁴ This means that, theoretically speaking, children under the age of thirteen cannot independently create or manage their own social media accounts.¹⁴⁵ These children need to be assisted by their parents in the opening and running of these accounts, or the parents can open these accounts and run them on the child's behalf.¹⁴⁶

This article takes the position that these minimum age thresholds imposed by the terms and conditions of the platforms, have the potential to protect younger kidfluencers from their own immaturity by not allowing them to share content independently on said platforms. This results, however, in the parents being given the responsibility and right to make the decision on whether to share content of said child on social media or not. Parents are empowered to make decisions on behalf of their children where this may be necessary as part of their parental responsibilities and rights. This empowerment, however, decreases as the child matures and their capacity increases.¹⁴⁷

A challenge arises as the regional regulatory frameworks applicable to social media generally do not provide a process which informs parents of the risks associated with sharing their children on social media in the process of kidfluencing, or with information around social media more generally. In so doing, parents are automatically 'assumed' to be in a position where they can make the best decision for their child in this context.

Furthermore, what 'the evolving capacities of the child' also recognises is that older children have an increased capacity to make decisions for themselves, with or without parental assistance. This component of the 'evolving capacities of the child' recognises the autonomy of the child.

However, there is no minimum age indicator that is imposed by any of the regional regulatory frameworks. This means that there is no age at which the regulatory frameworks presume that children have the capacity to consent to the publication of content of themselves online or at which they are presumed to be consulted at any stage in the decision-making process as kidfluencers. This can diminish the recognition of the child's evolving capacities as it then fails to recognise both the child's agency, and the younger child's need for protection.¹⁴⁸

It should also be noted that minimum age thresholds are not perfect metrics as they are merely *indicators* of capacity, and not confirmations

¹⁴⁴ TikTok 'TikTok Terms of Service' 2021, <https://www.tiktok.com/legal/page/row/terms-of-service/en> (accessed 24 July 2025); YouTube 'Terms of Service' <https://www.youtube.com/static?template=terms> (accessed 6 December 2024); Instagram 'Terms of Use' 26 July 2022, <https://help.instagram.com/581066165581870/> (accessed 6 December 2024).

¹⁴⁵ As above.

¹⁴⁶ As above.

¹⁴⁷ African Children's Charter art 9(2).

¹⁴⁸ CRC art 5; Children's Charter art 4; UNCRC General Comment 25 (n 64) paras 14-15.

thereof.¹⁴⁹ There may still be circumstances where parents would need to consent even if a minimum age indicator were to exist and the child were as old as or older than this indicator, such as in circumstances in which children may have an intellectual disability which affects their maturity or even where a particular child is simply not mature enough.¹⁵⁰

4.2 Sharing of personal information

Kidfluencers are also subject to the sharing of personal information or information that is not usually accessible to outsiders.¹⁵¹ This is because many influencers achieve success by publishing content that is highly curated, often involving aspects of the influencer's personal life as there is a reliance on the creation of the parasocial relationship between audience and influencer.¹⁵² Doing this allows the audience to feel closer to the influencer, and encourages them to engage with their content, making the influencer more public.¹⁵³ This is particularly true in cases in which influencers are not already established celebrities, such as kidfluencers. These influencers rely on 'developments in their personal lives to connect with their followers and establish their self-branding'.¹⁵⁴ In this context, this would mean that the influencer's entire platform consists of the sharing of personal and intimate details about the child.¹⁵⁵

Such personal information can range from something as simple as the child's age to information about the child's health, such as medical conditions.¹⁵⁶ Some parents even go so far as to film the child influencer experiencing medical episodes to 'educate' their audience.¹⁵⁷ Because of the uniqueness of their content, there is also an increased public interest and concern, which then increases the following of the influencer.¹⁵⁸ Some influencers have gone so far as to 'manufacture' storylines about their children suffering from serious medical

149 Moyo (n 123) 181.

150 L Lundy, J Tobin & A Parkes 'The right to respect for the views of the child' in *The United Nations Convention on the Rights of the Child: A Commentary* 405; E Fokala & A Rudman 'Age or maturity? African children's right to participate in medical decision-making processes' (2020) 20 *African Human Rights Law Journal* 667, 682.

151 Abidin (n 47) 3.

152 As above.

153 As above.

154 As above.

155 F Latifi 'Chronic illness influencers on TikTok are showing the reality of being sick' *TeenVogue* 22 September 2022, <https://www.teenvogue.com/story/chronic-illness-influencers-on-tiktok-are-showing-the-reality-of-being-sick> (accessed 23 July 2025).

156 RC Abrams 'Family influencing in the best interests of the child' (2023) *Chicago Journal of International Law* 104.

157 As above; C Bonnello 'Ten vital reasons to never, ever share an autism meltdown video' 17 August 2020, <https://autisticnotweird.com/meltdown-videos/> (accessed 24 July 2025).

158 Kay and others (n 8) 278.

conditions.¹⁵⁹ Consequently, such videos have reached millions of viewers.¹⁶⁰ This indicates how receptive the public is to this kind of content.¹⁶¹ Resultingly, very large audiences are able to access very personal information about children.¹⁶²

The regional framework does not provide much detailed guidance on the protection of the personal information of children. The Malabo Convention comes the closest to providing such data protection, however it does not specifically deal with kidfluencing. This means that it can miss many of the nuances of the practice. Examples of these nuances can include, for instance, the way in which information is shared and reshared in the process of kidfluencing, the profit-making incentive which motivates the data sharing, the different way kidfluencing occurs on different platforms, among others.

Not even the binding sub-regional frameworks, such as ECOWAS, go so far as to do this. Even though article 10 of the African Children's Charter, the privacy provision, can be interpreted to include the digital environment such protection is merely *implied*. In the case of children, I contend that a mere implication of protecting their privacy is not enough. Children are vulnerable members of society, who need the strongest protection.

The AU has, however, taken steps in the form of resolutions and guidelines to advocate for greater data protection for children, which should be regarded as a step in the right direction. However, binding regulation remains lacking.

The decision to grant this access to the personal information is not always going to be made by the child themselves; this could be due to the child being incapable of forming a view on the matter, or the child simply not being given an opportunity to express their view.¹⁶³ Additionally, kidfluencers – even if given the opportunity – would be providing consent to their parents in relation to something which occurs within the family environment.¹⁶⁴ This can be a daunting position to place a child in as they may feel obliged to 'please' their caregivers, upon whom they are reliant or may be offered rewards for

¹⁵⁹ C Yates 'Influencing 'kidfluencing': protecting children by limiting the right to profit from sharenting' (2023) 25 *Vanderbilt Journal of Entertainment & Technology Law* 847-848.

¹⁶⁰ C Young 'Family vloggers are using cancer as clickbait and coaching tears for views' 10 September 2021, <https://betches.com/family-vloggers-are-using-cancer-as-clickbait-and-coaching-tears-for-views/> (accessed 24 July 2025).

¹⁶¹ S Goliath 'The Protection of Personal Information Act 4 of 2013: child social media influencers and their right to privacy' (2024) 1 *African Journal on Privacy and Data Protection* 89.

¹⁶² MN Fineman 'Honey, I monetized the kids: commercial sharenting and protecting the rights of consumers and the internet's child stars' (2023) 111 *Georgetown Law Journal* 861.

¹⁶³ Shomai, Unwin & Sealey (n 27) 1110.

¹⁶⁴ S Liebenberg *Socioeconomic rights adjudication under a transformative constitution* (2010) 230-231.

their compliance.¹⁶⁵ Shari Franke, a former kidfluencer, reported that her parents would convince her to participate in family vlogging with promises of family holidays or other material goods, making it difficult to decline.¹⁶⁶ An empirical study also reflected this acceptance by children that the parents are the authority and they are unable to say no because of this power imbalance.¹⁶⁷ It should not be forgotten that children exist primarily within the family environment and structure, and conflict within this environment can have a more profound effect on the child than conflict outside thereof.¹⁶⁸ The South African Constitutional Court, as an example, provided that:

[i]n the age of social media, the immediate and far-reaching dissemination of information means that disclosure and the choice to disclose, if and when a person is ready to do so, is of practical significance.¹⁶⁹

The autonomy of the kidfluencer is impaired or not even recognised *at all* when participating in influencing.¹⁷⁰

The recognition of, and facilitation of, the child's autonomy is an important part of the evolving capacities of the child. Kidfluencers do not have an assured opportunity to participate in the decision to share their personal information, nor do they even receive an assured participation opportunity when this information is reshared by the large audiences to which they are exposed. This stands in contrast to the child's evolving capacities because of the importance of participation to its recognition. While it could be argued that some children are old enough to decide to share such personal information, it does not necessarily follow that said children understand the implications of the permanency of the internet for their future selves. Moreover, the adult, which the kidfluencer will become, may not be in agreement with sharing this information and will suffer the consequences of this decision. This is precisely what recognising the evolving capacities of the child seeks to address.

4.3 Audience size

Once the content of the kidfluencer is shared, and the audience has grown, there is a lack of control over what the audience will do with the content, or whether and how they will further distribute such

¹⁶⁵ L Lundy “Voice” is not enough: conceptualising article 12 of the United Nations Convention on the Rights of the Child’ (2007) *British Educational Research Journal* 935; Shomai, Unwin & Sealey (n 27) 1111; Shari Franke ‘Sharilfranke’ 17 October 2024, https://www.instagram.com/sharilfranke/p/DBM51fjOcVo/?img_index=1 (accessed 9 December 2024).

¹⁶⁶ As above.

¹⁶⁷ N Kutscher ‘Positionings, challenges and ambivalence in children’s and parents’ perspectives in digitalized familial contexts’ in N Dethloff, K Kaesling & L Specht-Riemenschneider (eds) (2023) *Families and new media: Comparative perspectives on digital transformations in law and society* 66.

¹⁶⁸ As above.

¹⁶⁹ *Centre for Child Law v Media 24 Limited* 4 2020 SA 319 (CC) para 86.

¹⁷⁰ Kutscher (n 167) 66.

content.¹⁷¹ Once the content is subsequently reshared – as is often the case – audience sizes increase even further.¹⁷² TikTok, for example, frequently allows older content to resurface, with content becoming popular years after it was first posted.¹⁷³ The unpredictability of exposing children and their personal information on social media can have various negative impacts on the child.¹⁷⁴

Allowing large masses of the general public access to the personal information of children through social media, can also pose safety risks for the child in both the short and long-term.¹⁷⁵ Those who seek to harm the child could potentially gain information about the child, which was posted for the purposes of social media influencing, in order to harm them.¹⁷⁶ All of this has the potential to occur, without the child having an opportunity to consent thereto. Even if the parents were obliged and willing to engage with the child on this matter, it can be difficult to expect adults to ‘actively’ listen when it is challenging for the parent to anticipate what exactly would be considered ‘harmful’ content to share.¹⁷⁷ This is on account of the lack of processes in place to ensure that adults have this information, and the empowering provisions appear to merely assume that parents will know what decision would be in the child’s best interests.¹⁷⁸ This assumption is a flawed and dangerous one, particularly in circumstances in which the consequences of a decision based on this flawed assumption can persist into adulthood.¹⁷⁹ Furthermore, even where parents intend to make the best decision for their child in terms of online disclosures of information concerning their child, it does not always follow that such decision was indeed the best one.¹⁸⁰ Additionally, these consequences amount to the formation of a lasting ‘digital identity’,¹⁸¹ one which the child may not have knowingly, or willingly, contributed to.¹⁸²

The existing regulatory framework does not provide a process whereby any form of information is given to the decision maker (or the kidfluencer) before the decision is made to share the content on social media for kidfluencing purposes. I regard this to be a significant oversight when considering the implications for the child’s privacy,

¹⁷¹ AM Iskül & K Joamets ‘Child right to privacy and social media – Personal information oversharing parents’ (2021) 14 *Baltic Journal of Law & Politics* 101.

¹⁷² As above.

¹⁷³ C Ahlgrim & T Tyson ‘How TikTok revives old songs and turns them into new hits’ 11 April 2023, <https://www.insider.com/popular-tiktok-songs-from-past-decades-trending-now-2023-4> (accessed 24 July 2025).

¹⁷⁴ Iskül & Joamets (n 171) 107.

¹⁷⁵ As above; MB Jayroe ‘Kidfluencers: new child stars in need of protection’ (2024) 76 *Arkansas Law Review* 789-790.

¹⁷⁶ As above.

¹⁷⁷ S Livingstone & B O’Neill *Children’s rights online: challenges, dilemmas and emerging directions* 29.

¹⁷⁸ CRC art 5; African Children’s Charter art 4; UNCRC (n 65) paras 14-15.

¹⁷⁹ Steinberg (n 58) 843.

¹⁸⁰ JS Bartels ‘Parents’ growing pains on social media: modeling authenticity’ (2015) 1 *Character and Social Media* 63.

¹⁸¹ Shomai, Unwin & Sealey (n 27) 1110.

¹⁸² As above.

both in the short and long term.¹⁸³ While the regulatory frameworks make attempts to address this, this article argues that these are not sufficient. For instance, the frameworks do not address the concept of a ‘digital identity’ and the lasting implications of forming one. The safety risks that are posed by sharing children on social media when doing so generally, or for the purposes of influencing. These safety risks can also last in perpetuity.¹⁸⁴

While the regulatory frameworks provide opportunities to request that information be removed, this article takes the position that this is too little, much too late. Nothing on the internet is ever truly deleted and even if it were able to be, the consequences of such exposure can never be undone.¹⁸⁵

4.4 Due weight requirement

This due weight requirement is a familiar one in child law, and forms an important part of recognising and enabling the child’s evolving capacities, but it is often difficult to enforce or assess.¹⁸⁶ Allocating ‘due weight’ is done in accordance with metrics such as the child’s maturity, age, stage of development and capacity.¹⁸⁷ This entails a consideration of these metrics by the decision-maker.¹⁸⁸

Firstly, the challenge with kidfluencing is that there is not even an assured mechanism for the child to express a view, there is accordingly no guarantee that there will even be a view to attach weight to at all, or even to enter into a determination of whether ‘due weight’ was attached to such view.

Secondly, even if it *were* to be argued that the regulatory frameworks do provide an opportunity for the child to express their views and attach due weight thereto, there is no requirement to account to the child themselves with regards to the decision made, or how their views were taken into account.¹⁸⁹ If a child cannot consent for themselves, the parents are empowered to simply grant this consent on the child’s behalf with nothing further said or needing to be explained to the child at any stage.¹⁹⁰ Without such express requirement, there is no indication that even a mere *expectation* exists that the child’s views will be given due weight to.

¹⁸³ Shomai, Unwin & Sealey (n 27) 1110.

¹⁸⁴ Iskül & Joamets (n 172) 107.

¹⁸⁵ Goliath (n 162) 97-98.

¹⁸⁶ T Gerdts-Andresen ‘A scoping review of when and how a child’s view is weighted in decision-making processes in law proceedings’ (2021) 129 *Children and Youth Services Review* 2.

¹⁸⁷ As above.

¹⁸⁸ As above.

¹⁸⁹ Children’s Charter art 4; CRC (n 65) paras 14-15.

¹⁹⁰ As above.

4.5 Diversity of actors

Alongside the issues discussed, there are a diversity of arenas and actors at play which makes effective, uniform regulation challenging.¹⁹¹ For instance, minimum age indicators where they may be imposed by legislation are complicated by the terms of service of the relevant social media platforms used by influencers.¹⁹² This can lead to jurisdictional challenges when practically implementing the laws and terms of service of service which do exist.¹⁹³ The AU has also identified that the global nature of the digital environment brings with it cross-border challenges, but also an opportunity for different jurisdictions to work together to achieve effective regulation.¹⁹⁴ At present, the regulatory frameworks in existence do not set out a procedure according to which the different stakeholders should work together to regulate or manage kidfluencing and the consequences thereof.

4.6 Difficulty of a case-by-case assessment

It is also difficult to assess each individual child's level of capacity, making the institution and implementation of a regulatory framework to protect the child's evolving capacities a difficult exercise to conduct.¹⁹⁵ Even if a nuanced, robust and comprehensive regulatory framework did exist, it would still be a challenge to conduct and monitor an individualised assessment. An empirical study conducted found dissensus amongst children's level of comfort when it comes to what content they felt satisfied with sharing on social media.¹⁹⁶ Some children expressed discomfort with the content their parents shared about them, while others reported no concerns.¹⁹⁷ This indicates that different children have different levels of comfortability with social media, which means that a broad assessment would be insufficient to address this.

5 OPPORTUNITY OR CONCERN?

Against these specific impacts for the evolving capacities of the African kidfluencer, this article also engages with other effects or opportunities that can arise from kidfluencing. This engagement is important in order to come to a more nuanced and comprehensive conclusion, as only engaging with the averse considerations would be reductionist. It is

¹⁹¹ AU Onlife Safety Policy (n 115).

¹⁹² Z Takhshid 'Regulating social media in the Global South' (2024) 24 *Vanderbilt Journal of Entertainment and Technology Law* 14.

¹⁹³ As above.

¹⁹⁴ AU Onlife Safety Policy (n 115) 8.

¹⁹⁵ Shomai, Unwin & Sealey (n 27) 1115-1116.

¹⁹⁶ As above.

¹⁹⁷ As above.

against these considerations that this article will make its recommendations.

5.1 Individual empowerment

On an individual level, kidfluencing can be empowering for African children. Children themselves have reported that social media has benefitted them in teaching them new skills and learning information, and gives them a platform to express themselves.¹⁹⁸ It gives the child access to a larger audience who may be more equipped to listen to the child's points of view when expressing their opinions and can be a means to influence policy change in other areas, as but one example.¹⁹⁹ Overall, the digital environment affords children 'diverse development opportunities', as confirmed by the African Union.²⁰⁰ Examples of these development opportunities include e-education tools and the right to play.²⁰¹

5.2 Expansion of discourse and change in narrative

On a broader level, social media generally has been shown to have impacts on the expansion of discourse and provided a platform to share experiences with similarly minded communities, or for the purposes of educating.²⁰² This article regards this to be empowering for African children in particular as it can provide them with a platform to connect and share their cultures. The African region is subject to significant stereotyping, and the global community tends to lack knowledge about the African reality.²⁰³ Content shared on social media in the process of influencing can not only shift narratives, but in accordance with this shift in narratives it can also enable tangible societal and political transformation and impact.²⁰⁴ However, kidfluencing is a profit-deriving process and these benefits are merely secondary to these profit-making goals as discussed in this article. Given the implications for the child's evolving capacities, this article takes the view that the achievement of these secondary goals should not overshadow the recognition of these evolving capacities.

198 A Choudhuri 'Conceptualising children's rights in digital spaces: emerging issues and challenges' (2019) 15(2) *Socio-Legal Review* 159.

199 M Riedl and others 'The rise of political influencers – perspectives on a trend towards meaningful content' (2021) 6 *Frontiers in Communication* 3; McCorquodale (n 9) 180-181.

200 AU Onlife Safety Policy (n 115) 6.

201 As above.

202 Choudhuri (n 198) 159.

203 S Wilder 'Racism in media: how media shapes our views of people of color in society' (2020) *Community Engagement Student Work* 8-9.

204 McCorquodale (n 9) 180-185

5.3 Duty towards family and community

The benefits deriving from kidfluencing can also be beneficial for the community the child forms part of. This is because kidfluencing is primarily a profit-deriving tool.²⁰⁵ These benefits are particularly significant and valuable in the African region. Given that Africa faces high levels of poverty, kidfluencing can present a way to alleviate the pressure of these circumstances on children as social media influencing is also not an expensive endeavour and is largely accessible.

Article 31 of the African Children's Charter recognises that the child has duties and responsibilities towards the family. Sloth-Nielsen and Mezmur refer to the 'language of duties' within the African human rights context.²⁰⁶ This means that the importance of the group or community is recognised alongside the importance and significance of the individual.²⁰⁷ Specifically, article 31(a) provides that children have the duty to assist the family in the case of need. Accordingly, it needs to be acknowledged that this opportunity to work, earn an income and opportunity for upward social mobility, can be a way in which the child can fulfil this sense of responsibility towards the family. This responsibility, culminating in a duty towards the family is not, however, unconstrained.²⁰⁸

The duties on the child are subject to the child's age and ability as well as limitations as contained in the African Children's Charter.²⁰⁹ This article argues that kidfluencing and the implications thereof can go beyond what is appropriate for children in terms of, for example, the impacts on their evolving capacities.²¹⁰ Moreover, the constraints on article 31 entail 'an open-ended consideration of the child's evolving capacity and ability'. The second constraint to which article 31 is subject is that it does not allow for children's duty towards the family to be used as a justification for violation of their rights as contained in the African Children's Charter.

Accordingly, while children do have a duty and responsibility towards the family in terms of the African Children's Charter, and kidfluencing can present a way to financially, or otherwise,²¹¹ fulfil this duty, the manifestation of this duty in the present context – particularly in terms of recognising the evolving capacities of the child – is unconstrained. Moreover, this lack of constraint can manifest in a complete disregard for the child's evolving capacities, as has been illustrated in this article. This article therefore takes the position that given the implications for the evolving capacities of the child, the child's

²⁰⁵ R Abrams 'Family Influencing in the best interests of the child' (2023) 2 *Chicago Journal of International Law* 100.

²⁰⁶ J Sloth-Nielsen & B Mezmur 'A dutiful child: the implications of article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 159, 170.

²⁰⁷ As above.

²⁰⁸ As above.

²⁰⁹ As above.

²¹⁰ Sloth Nielsen & Mezmur (n 206) 171-172.

²¹¹ As above.

duty towards the family should not be used as a sole justification for non-recognition of the kidfluencer's evolving capacities.

6 RECOMMENDATIONS AND CONCLUDING REMARKS

While social media can be a space for children to participate in a multitude of ways, this particular instance of participation leaves much to be desired when it comes to a recognition of the evolving capacities of the child. Importantly, the African region's regulatory frameworks lack an assured process whereby the needs of the differently capable children are provided for. As identified by the African Union, member states are encouraged to both listen to children and give due weight to their views.²¹² In light of this, the overarching recommendation put forth by this article is that a single, specific regulatory framework that deals with kidfluencing should be implemented in Africa. A single framework would also be a more harmonious approach, making regulation clear and more accessible. These recommendations are motivated considering the practical reality of kidfluencing and the growth and prevalence of this practice.

Substantively, the framework should, at the very least, address the six areas analysed in section 4. All of this should be done with the acknowledgment that kidfluencing does present opportunity for the African child and the context within which these children live, as shown in section 5. But like with any opportunity, specific potential concerns should still be addressed.

Specifically, a general theme emanating from the analysis conducted in this article is the absence of obtaining informed consent from children to participate in kidfluencing. The framework should apply children's existing rights and account for cross cutting issues – examples of these issues can include, as illustrated in this article, a consideration of both the opportunities and risks presented by the digital environment.²¹³ Several other recommendations can also be made:

First, it is recommended that this framework should introduce a requirement and procedure whereby consent needs to be obtained from the child to participate in kidfluencing. This consent should also be required to be informed, requiring capacity on the part of the child. If the child is not capable of providing consent themselves, the consent provided by the parent should be both informed and subject to the realisation of the child's best interests. France has taken an approach to the regulation of kidfluencing which requires parental consent to be informed where the child cannot consent for themselves.²¹⁴ The inclusion of this requirement within the African regional framework

²¹² AU Onlife Safety Policy (n 115) 10.

²¹³ AU Onlife Safety Policy (n 115) 11.

²¹⁴ Law No. 2023-451.

would better give effect to the child's evolving capacities as it will protect the younger or less capable child whose capacity is still limited, while giving the older or more capable child the opportunity to participate. The envisaged process should be clear and specific to kidfluencing.

Second, the introduction of minimum age thresholds have often been a way in which legislation or policies have made it possible to have a starting point to evaluate the child's capacity to consent. To illustrate, the social media platforms themselves impose a minimum age requirement to join these platforms.²¹⁵ However, this can very easily be circumvented if the child – or parent – is not honest about their age upon creating an account. Thus, a minimum age threshold for the purposes of participating in kidfluencing can act as a further 'safeguard' in this regard. France's influencer law implements a minimum age threshold of 16, where parents of children below this threshold need consent from the French Administration to participate in kidfluencing.²¹⁶ This requirement also applies to the companies wanting to use kidfluencers for advertising purposes.²¹⁷

Thirdly, the consent given – or withheld – by the child or those acting on behalf of the child should be afforded due weight. This proposed consent requirement or procedure should thus not be tokenistic in nature. This is particularly salient when considering how lasting and significant the sharing of personal information for kidfluencing purposes can be.²¹⁸ Affording due weight to the child's views is an important part of giving effect to the child's evolving capacities especially in this context.

In sum, a potential framework should place emphasis on obtaining informed consent from the child, and safeguards such as the implementation of minimum age thresholds and the capacity requirement are ways in which this can be done. This article does acknowledge, however, that the transnational nature of the digital environment and the involvement of several actors therein would make the implementation and monitoring of such a framework challenging.²¹⁹ Much of kidfluencing also takes place within the family home, further complicating the issue of monitoring the implementation of any regulation.²²⁰ Thus, this article proposes that any such framework should be collaborative in nature, drawing on a combined effort by regional bodies, states, parents and the social media platforms.

²¹⁵ Takhshid (n 193) 14.

²¹⁶ AU Onlife Safety Policy (n 115).

²¹⁷ As above.

²¹⁸ C Mol & E Goanta 'Shedding light on child influencers' (2023) 36 *Tijdschrift voor Familie- en Jeugdrecht* 185, 193-194.

²¹⁹ R Reed & A Murray *Rethinking the jurisprudence of cyberspace* (2018) 44-45.

²²⁰ Mol & Goanta (n 218) 193-194.

Additionally, because kidfluencing involves the parent-child relationship, children can be placed in a difficult position should they disagree with their parents.²²¹ However, this should not mean that no regulation is, at the very least, implemented. The AU has, in the Policy, suggested ways in which implementation of regulatory frameworks such as these can be monitored in light of the aforementioned challenges.²²² A potential way in which violations of the framework can be addressed could be through the inclusion of recourse procedures, contained within the text of the legislation itself. Inspiration can be drawn from the approach taken by South Africa in the Protection of Personal Information Act 4 of 2013 (POPIA), as an example. POPIA provides a procedure according to which recourse can be sought. This takes the form of a request to the Information Regulator to remove personal information shared within the digital environment.²²³ This is an example of how such regulation could be enforced. Another example is the position in France's Influencer Law, whereby fines are imposed for non-compliance with its provisions.²²⁴

In conclusion, the considerations discussed in this article are important, even if simply because the consequences of the decisions made for kidfluencers endure in perpetuity. The African regional framework should be alive to dynamic regulation, as envisaged in the AU Empowerment Policy, to derive the benefits presented by kidfluencing, but to do so in a protected environment. This article accordingly recommends that a more robust, and nuanced framework be developed to regulate the practice of kidfluencing that gives effect to the evolving capacities of the child.

²²¹ As above.

²²² AU Online Safety Policy (n 115) 11.

²²³ Sec 35 Protection of Personal Information Act 4 of 2013.

²²⁴ Law 2023-451.